RATINGS: Moody's: Baa2 KBRA: BBB See "RATINGS" herein

In the opinion of the Attorney General of the State of Michigan and in the opinion of Dykema Gossett PLLC, Bond Counsel, subject to compliance with certain covenants, under existing law, interest on the Series 2018 Bonds (as defined below) is excluded from gross income for federal income tax purposes to the extent described herein, and the Series 2018 Bonds, the interest thereon and their transfer are exempt from all taxation in the State, except estate, gift and inheritance taxes. However, such interest is an item of tax preference for purposes of the alternative minimum tax imposed on individuals and, for tax years beginning before January 1, 2018, imposed on corporations. See "TAX MATTERS" herein and APPENDICES J-1 and J-2 "Form of Approving Opinion of Bond Counsel" and "Form of Approving Opinion of Attorney General" hereto.

\$610,300,000

MICHIGAN STRATEGIC FUND LIMITED OBLIGATION REVENUE BONDS (I-75 IMPROVEMENT PROJECT), SERIES 2018

Dated: Date of Delivery

Due: as shown on inside cover

The above captioned Michigan Strategic Fund Limited Obligation Revenue Bonds (I-75 Improvement Project), Series 2018 (the "Series 2018 Bonds") are being issued pursuant to an Indenture of Trust, dated as of November 1, 2018 (the "Indenture"), between the Michigan Strategic Fund (the "Issuer" or "MSF"), a public body corporate and politic of the State of Michigan (the "State"), and U.S. Bank National Association, as trustee (the "Trustee"). The proceeds of the Series 2018 Bonds are being loaned to Oakland Corridor Partners LLC, a Delaware limited liability company (the "Company"), that was formed to develop and operate the Project defined herein. The Company is an indirect subsidiary of AECOM Capital, Inc., John Laing Investments Limited, Jay Dee Contractors, Inc., Ajax Paving Industries, Inc. and Dan's Excavating, Inc. (collectively, the "Sponsors").

The Sponsors, through wholly-owned subsidiaries, own membership interests in Oakland Corridor Partners HoldCo LLC, which is the sole direct owner of the Company. The Company will use the proceeds to: (a) pay a portion of the costs and expenses incurred in connection with the design, construction and financing of the Project; (b) pay a portion of the interest payable on the Series 2018 Bonds during construction of the Project; and (c) pay certain costs of issuing the Series 2018 Bonds and other permitted financing costs. See "FINANCING FOR THE PROJECT."

The Project consists of the design, construction, financing and maintenance of the Michigan I-75 Modernization Project (Segment 3) consisting of 1.5 miles of rural freeway and 4 miles of urban depressed freeway with service drives and a storage and drainage tunnel and pump station, as set forth more fully in the Public-Private Partnership (P3) Design-Build-Finance-Maintain Agreement, dated as of October 12, 2018, as amended and restated from time to time (the "Project Agreement"), between the Company and the Michigan Department of Transportation ("MDOT") and pursuant to which the Company is authorized to design, construct, finance and maintain the Project.

All of the Company's rights under the Project Agreement and under the other Material Project Contracts described herein, together with the other Security Interests created under the Security Documents for the benefit of the Collateral Agent on behalf of the Owners of the Series 2018 Bonds, form part of the Trust Estate pledged and assigned to the Trustee as security for the Company's obligation under the Senior Loan Agreement, described below, to make payments to the Trustee equal to the amounts due on the Series 2018 Bonds. **The Project Agreement is not a general obligation of MDOT or the State. Neither the full faith and credit nor the taxing power of the State are pledged to secure payments under the Project Agreement.**

Interest on the Series 2018 Bonds from their date of delivery is payable semi-annually on each June 30 and December 31, commencing on June 30, 2019, at the rates shown on the inside cover page. The Series 2018 Bonds are subject to optional, mandatory sinking fund and extraordinary mandatory redemption and purchase in lieu of redemption prior to maturity, as described herein.

The scheduled payment of principal and interest with respect to the Series 2018 Bonds maturing on June 30, 2035, December 31, 2038 and June 30, 2048 (having a rate of 4.500%) (the "Insured Series 2018 Bonds") when due will be guaranteed under an insurance policy to be issued concurrently with the delivery of the Series 2018 Bonds by Assured Guaranty Municipal Corp.



The Series 2018 Bonds are being issued as fully registered bonds in denominations of \$5,000 and integral multiples thereof and, when issued, the Series 2018 Bonds will be registered in the name of Cede & Co., as nominee for The Depository Trust Company of New York ("DTC"). DTC will act as securities depository for the Series 2018 Bonds. Purchases of beneficial interests in the Series 2018 Bonds will be made in book-entry form only, and purchasers will not receive certificates representing their interests in the Series 2018 Bonds except as described herein. See APPENDIX I—"BOOK-ENTRY ONLY SYSTEM."

The Series 2018 Bonds are limited obligation revenue bonds of the Issuer as described in this Official Statement. The Issuer is not generally liable on the Series 2018 Bonds or on any other obligation incurred by the Issuer under the Indenture or the Senior Loan Agreement. The Series 2018 Bonds are not general obligations and do not constitute debts or pledges against the credit of the Issuer or the credit or taxing power of the State or any political subdivision thereof. The Series 2018 Bonds are limited obligations of the Issuer, which will, if and when issued, be payable solely through revenues, properties or other funds as described in this Official Statement, the Indenture and the Senior Loan Agreement. Payments to the Company under the Project Agreement are subject to appropriation by the State and are not general obligations of the State. No owner of any Series 2018 Bond shall have the right to demand payment of the principal of, premium, if any, or interest on such Series 2018 Bond out of any funds to be raised by taxation. The Issuer has no taxing power.

The Series 2018 Bonds are offered when, as and if issued and delivered and accepted by the Underwriters and subject to receipt of the approving legal opinion of Dykema Gossett PLLC, Bond Counsel, and to certain other conditions. Certain legal matters will be passed upon for the Issuer by its counsel, the Attorney General of the State of Michigan; for MDOT by its counsel, the Attorney General of the State of Michigan; for the Underwriters by their special counsel, Greenberg Traurig, LLP. It is expected that delivery of the Series 2018 Bonds will be made through the facilities of DTC on or about November 20, 2018.

This cover page contains certain information for quick reference only. It is not a summary of this issue. Investors must read the entire Official Statement to obtain information essential to the making of an informed investment decision.

BofA Merrill Lynch

\$610,300,000 MICHIGAN STRATEGIC FUND LIMITED OBLIGATION REVENUE BONDS (I-75 IMPROVEMENT PROJECT), SERIES 2018

MATURITY SCHEDULE

Series 2018 Bonds

	PRINCIPAL	INTEREST			
MATURITY DATE	AMOUNT	RATE	YIELD	PRICE	CUSIP ⁺
December 31, 2023	\$2,310,000	5.000%	3.050%	109.160	594698PU0
June 30, 2024	6,395,000	5.000%	3.110%	109.659	594698PV8
December 31, 2024	6,710,000	5.000%	3.150%	110.207	594698PW6
June 30, 2025	6,880,000	5.000%	3.230%	110.457	594698PX4
December 31, 2025	6,995,000	5.000%	3.300%	110.693	594698PY2
June 30, 2026	7,250,000	5.000%	3.400%	110.646	594698PZ9
December 31, 2026	7,375,000	5.000%	3.470%	110.732	594698QA3
June 30, 2027	7,635,000	5.000%	3.550%	110.673	594698QB1
December 31, 2027	7,770,000	5.000%	3.620%	110.625	594698QC9
June 30, 2028	8,045,000	5.000%	3.690%	110.515	594698QD7
December 31, 2028	8,185,000	5.000%	3.760%	110.346	594698QE5
June 30, 2029	8,435,000	5.000%	3.800%	109.992**	594698QF2
December 31, 2029	8,600,000	5.000%	3.850%	109.552**	594698QG0
June 30, 2030	8,920,000	5.000%	3.900%	109.114**	594698QH8
December 31, 2030	9,080,000	5.000%	3.920%	108.940**	594698QJ4
June 30, 2031	9,395,000	5.000%	3.940%	108.765**	594698QK1
December 31, 2031	9,565,000	5.000%	3.980%	108.418**	594698QL9
June 30, 2032	9,895,000	5.000%	3.990%	108.331**	594698QM7
December 31, 2032	10,080,000	5.000%	4.000%	108.245**	594698QN5
June 30, 2033	10,415,000	5.000%	4.010%	108.158**	594698QP0
December 31, 2033	10,610,000	5.000%	4.060%	107.727**	594698QQ8

\$33,545,000 4.125% Series 2018 Term Bonds due June 30, 2035* Yield 4.260% Price 98.400 CUSIP+ 594698QR6 \$87,140,000 4.250% Series 2018 Term Bonds due December 31, 2038* Yield 4.400% Price 98.007 CUSIP+ 594698QS4 \$153,125,000 5.000% Series 2018 Term Bonds due December 31, 2043 Yield 4.420% Price 104.683** CUSIP+ 594698QT2 \$95,945,000 5.000% Series 2018 Term Bonds due June 30, 2048 Yield 4.480% Price 104.186** CUSIP+ 594698QV7 \$70,000,000 4.500% Series 2018 Term Bonds due June 30, 2048* Yield 4.570% Price 98.865 CUSIP+ 594698QU9

⁺ Copyright, American Bankers Association. CUSIP data herein is provided by CUSIP Global Services, managed by Standard & Poor's Financial Services LLC on behalf of The American Bankers Association. This data is not intended to create a database and does not service in any way as a substitute for CUSIP Global Services. CUSIP numbers are provided for convenience of reference only for the purchasers of the Series 2018 Bonds. None of the Issuer, MDOT, the Company nor the Underwriters assume any responsibility for the selection or accuracy of such numbers.
* Insured Series 2018 Bonds

^{**}These Series 2018 Bonds are priced to the December 31, 2028 optional redemption date.



No dealer, broker, salesman or other person has been authorized by the Company, the Issuer, MDOT, the Underwriters or any other person described herein to give any information or to make any representations, other than those contained in this Official Statement, and, if given or made, such other information or representations must not be relied upon as having been authorized by the Company, the Issuer, MDOT or the Underwriters or any such other person. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor will there be (i) any sale of the Series 2018 Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale or (ii) any offer, solicitation or sale to any person to whom it is unlawful to make such offer, solicitation or sale. The information set forth herein concerning DTC has been furnished by DTC, and no representation. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sales made hereunder will, under any circumstances, create any implication that there has been no change in the affairs of the Issuer, MDOT, the Company, the Sponsors or DTC (or any other information) since the date hereof.

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

The Issuer has not prepared or assisted in the preparation of this Official Statement except for information and statements made under the headings "SUMMARY—THE SERIES 2018 BONDS—Limited Obligations of the Issuer," "RISK FACTORS—Risks Relating to the Issuer, the Company and MDOT—The Series 2018 Bonds are Limited Obligations," "THE SERIES 2018 BONDS—Issuer," "THE SERIES 2018 BONDS—Limited Obligations," "CONTINUING DISCLOSURE AND OTHER REPORTING REQUIREMENTS—Continuing Disclosure under Rule 15c2-12—General" (but only with respect to the second paragraph) and "NO LITIGATION —The Issuer" herein and, except as noted above, the Issuer is not responsible for any information or statements made in this Official Statement.

MDOT has not prepared or assisted in the preparation of this Official Statement except for (a) information and statements related to MDOT contained under the heading "INTRODUCTION"; (b) information and statements under the headings "SUMMARY – THE PROJECT PARTICIPANTS-MDOT," "THE I-75 MODERNIZATION PROJECT-Overview of the Project," "THE I-75 MODERNIZATION PROJECT-Scope of Work," "THE I-75 MODERNIZATION PROJECT-Rationale for the Project," "SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2018 BONDS—Sources of Payment Generally" (other than the information under the subheading "Payments from the Company"), "RISK FACTORS-Risks Relating to the Issuer, the Company and MDOT-Appropriation Risk," "RISK FACTORS-Risks Relating to the Issuer, the Company and MDOT-Federal Highway Trust Fund" (but only with respect to the last sentence), "RISK FACTORS-Risks Relating to the Project Agreement-Failure to Comply with Project Agreement; Termination of the Project Agreement" (but only with respect to such information related to appropriation risk), "RISK FACTORS-Risks Relating to the Project Agreement-Non-Performance or Delay Under Project Agreement" (but only with respect to such information related to appropriation risk), "PROJECT PARTICIPANTS-The Michigan Department of Transportation", "CONTINUING DISCLOSURE AND OTHER REPORTING REQUIREMENTS—Continuing Disclosure under Rule 15c2-12-General (but only with respect to the first paragraph and such information related to MDOT)," "CONTINUING DISCLOSURE AND OTHER REPORTING REQUIREMENTS-Continuing Disclosure under Rule 15c2-12-The State and the MDOT Continuing Disclosure Certificate," "CONTINUING DISCLOSURE AND OTHER REPORTING REQUIREMENTS—Continuing Disclosure under Rule 15c2-12—Compliance by the State" and "NO LITIGATION-MDOT"; and (c) information and statements in "APPENDIX H-1-FORM OF MDOT CONTINUING DISCLOSURE CERTIFICATE," "APPENDIX L-SUMMARY OF CERTAIN PROVISIONS OF THE MICHIGAN CONSTITUTION AND ACT 51" and "APPENDIX M-EXCERPTED FINANCIAL STATEMENTS (EXCLUDING NOTES TO FINANCIAL STATEMENTS)-STATE TRUNK LINE FUND AND MICHIGAN TRANSPORTATION FUND" herein; and, except as noted above, MDOT is not responsible for any information or statements made in this Official Statement.

Except for the execution and delivery of documents required to effect the issuance of the Series 2018 Bonds, the Issuer and MDOT have not otherwise assisted in the public offer, sale or distribution of the Series 2018 Bonds. Accordingly, except as aforesaid, the Issuer and MDOT disclaim responsibility for the disclosures set forth in this Official Statement or otherwise made in connection with the offer, sale and distribution of the Series 2018 Bonds. Assured Guaranty Municipal Corp. ("AGM") makes no representation regarding the Series 2018 Bonds or the advisability of investing in the Series 2018 Bonds. In addition, AGM has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding AGM supplied by AGM and presented under the heading "Bond Insurance" and "Appendix K—Specimen Municipal Bond Insurance Policy".

The Series 2018 Bonds have not been registered with the Securities and Exchange Commission under the Securities Act of 1933, as amended. Neither the Securities and Exchange Commission nor any other state securities commission has approved or disapproved of the Series 2018 Bonds or passed upon the accuracy or adequacy of this Official Statement. Any representation to the contrary is a criminal offense.

In making an investment decision, investors must rely on their own examination of the Company, the Issuer, MDOT, the Sponsors, the Design-Build Contractor, the Design-Build Guarantors, the Project, the Collateral and the terms of the offering, including the merits and risks involved. None of the Company, the Issuer, MDOT, the Sponsors or the Underwriters or any of their representatives or affiliates is making any representation regarding the legality of an investment by you under applicable investment or similar laws. You should not construe anything in this Official Statement as legal, business or tax advice and you should consult with your own advisors as to legal, tax, business, financial and related aspects of the Series 2018 Bonds.

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

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

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

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVER-ALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2018 BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

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OFFICIAL STATEMENT

\$610,300,000 MICHIGAN STRATEGIC FUND LIMITED OBLIGATION REVENUE BONDS (I-75 IMPROVEMENT PROJECT), SERIES 2018

INTRODUCTION

This Official Statement, which includes the cover page, inside cover page and appendices, is being distributed in connection with the issuance by the Issuer of the Series 2018 Bonds in an aggregate principal amount of \$610,300,000. The Series 2018 Bonds will be issued pursuant to an Indenture of Trust, to be dated as of November 1, 2018 (the "Indenture"), between the Issuer and the Trustee, and pursuant to the provisions of the laws of the State of Michigan including specifically, without limitation, Act No. 270, Michigan Public Acts, 1984, as amended and supplemented from time to time (the "Act"). All capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to them in the definitions set forth in APPENDIX A— "DEFINITIONS OF TERMS."

The Series 2018 Bonds are being issued by the Issuer to fund a loan to Oakland Corridor Partners LLC (the "Company" or the "Developer") to, among other things, finance a portion of the costs of designing and constructing the Project described below.

The Project consists of the design, construction, financing and maintenance of a 5.5 mile segment ("Segment 3") of the I-75 Corridor. Segment 3 is located north of 13 Mile Road to north of 8 Mile Road in the Cities of Madison Heights, Royal Oak, and Hazel Park, which are all within Oakland County, as more fully described in "THE I-75 MODERNIZATION PROJECT—Overview of the Project." Segment 3 is part of the State's Trunkline Highway System.

The Project is being developed pursuant to the Project Agreement under which the State, acting by and through the Michigan Department of Transportation ("MDOT"), has granted to the Company an exclusive concession to, and the Company has agreed to, design, construct and finance the Project to perform the Interim Maintenance Work and the Long Term Maintenance Work within the Storage and Drainage Tunnel Maintenance Limits prior to the Substantial Completion Date and to maintain Segment 3 within the Maintenance Limits in return for payments by MDOT to the Company primarily in the form of Milestone Payments and Availability Payments. The funds for payment of the Milestone Payments, the Availability Payments and other amounts due to the Company under the Project Agreement are subject to appropriation by the Legislature of the State (the "Legislature") and the availability of the amounts necessary to fund such appropriations. See "RISK FACTORS—Risks Relating to the Issuer, the Company and MDOT."

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SUMMARY

This Summary is not complete and does not contain all of the information that investors should consider before making any investment decision with respect to the Series 2018 Bonds. Investors should read the more detailed information appearing in this Official Statement and the documents summarized or described herein in their entirety for a more complete understanding of the Project, the offering and the Series 2018 Bonds. All capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to them in the definitions set forth in APPENDIX A—"DEFINITIONS OF TERMS."

THE SERIES 2018 BONDS

Bonds Offered	Michigan Strategic Fund Limited Obligation Revenue Bonds (I-75 Improvement Project), Series 2018 issued by the Michigan Strategic Fund in the aggregate principal amount of \$610,300,000. The Series 2018 Bonds are being issued as fully registered bonds in denominations of \$5,000 and integral multiples thereof. See "THE SERIES 2018 BONDS." As a general matter, it is expected the Series 2018 Bonds will be repaid from sources, including Milestone Payments and Availability Payments made to the Company by MDOT under the Project Agreement, and other available amounts, all as more fully described herein.
Interest	The Series 2018 Bonds will bear interest at the rates shown on the inside cover page of this Official Statement. Interest on the Series 2018 Bonds will be calculated on the basis of a 360-day year consisting of twelve 30-day months.
Interest Payment Dates	Interest on the Series 2018 Bonds will be payable semi-annually on June 30 and December 31 of each year, commencing on June 30, 2019.
Maturity Dates	The maturity dates are set forth on the inside cover page of this Official Statement.
Optional Redemption	The Series 2018 Bonds maturing after December 31, 2028 are subject to optional redemption in whole or in part, and if in part by lot in accordance with DTC procedures within such maturities as selected by the Issuer at the direction of the Company prior to maturity on or after December 31, 2028 at a Redemption Price of 100% of the principal amount thereof plus accrued interest to, but not including, the date fixed for redemption. See "THE SERIES 2018 BONDS—Redemption of the Series 2018 Bonds—Optional Redemption."
Mandatory Sinking Fund Redemption	Certain of the Series 2018 Bonds will be subject to mandatory sinking fund redemption prior to maturity on the dates set forth herein, at a redemption price of par plus accrued interest to, but not including, the date fixed for redemption. See "THE SERIES 2018 BONDS—Redemption of the Series 2018 Bonds—Mandatory Sinking Fund Redemption."
Extraordinary Mandatory Redemption	<i>Insurance Proceeds.</i> To the extent permitted under the Project Agreement and the Collateral Agency Agreement, the Series 2018 Bonds are subject to extraordinary mandatory redemption from Insurance Proceeds transferred from the Loss Proceeds Account to the Mandatory Prepayment Account pursuant to the Collateral Agency Agreement from net amounts of insurance or loss proceeds (excluding business interruption, advance loss of profits or delay in

start up insurance or any insurance proceeds in respect of amounts necessary to compensate losses or damages to, or liabilities incurred by, third parties) or condemnation proceeds. Such redemption will be in whole or in part, and if in part, by lot within such maturities as selected by the Trustee (provided that the Series 2018 Bonds may be redeemed in part only in Authorized Denominations), at a redemption price equal to Amortized Redemption Price or Accreted Redemption Price of the Series 2018 Bonds, as applicable, to be redeemed, plus accrued interest to, but not including, the redemption date.

Project Agreement Termination Compensation. Subject to the Collateral Agency Agreement, the Series 2018 Bonds are subject to extraordinary mandatory redemption if the Company receives any Termination Amount payments made as termination compensation pursuant to the Project Agreement that are deposited in the Mandatory Prepayment Account pursuant to the Collateral Agency Agreement. Such redemption will be in whole or in part, and if in part, by lot within such maturities as selected by the Trustee (provided that the Series 2018 Bonds may be redeemed in part only in Authorized Denominations), at a redemption price equal to Amortized Redemption Price or Accreted Redemption Price of the Series 2018 Bonds, as applicable, to be redeemed, plus accrued interest to the date of redemption.

Unspent Series 2018 Bonds Proceeds. The Series 2018 Bonds are subject to extraordinary mandatory redemption by lot within such maturities as selected by the Trustee from any remaining unspent Series 2018 Bonds proceeds (rounded down to the nearest multiple of \$5,000) on deposit in the Bond Proceeds Sub-Account that are transferred from the Bond Proceeds Sub-Account to the Mandatory Prepayment Account pursuant to the Collateral Agency Agreement on a date that is no earlier than five (5) years and thirty (30) days after the date of issuance of the Series 2018 Bonds and no later than five (5) years and ninety (90) days after the date of issuance of the Series 2018 Bonds unless the Company has obtained an opinion of Bond Counsel stating that the failure to redeem any such Series 2018 Bonds will not adversely affect the exclusion of interest on such Series 2018 Bonds from gross income for federal or State income tax purposes and that such redemption is not required by State law. Notwithstanding the foregoing, the unspent proceeds will be transferred to the Series 2018 Rebate Fund, if applicable, before the remaining amount of unspent proceeds are applied to the redemption of Series 2018 Bonds.

Purchase in Lieu of Optional Redemption.

If Series 2018 Bonds are called for optional redemption, the Company may elect to purchase in lieu of optional redemption all or any portion of the Series 2018 Bonds called for optional redemption at a purchase price equal to the then applicable Redemption Price of such Series 2018 Bond upon written request of the Company to the Issuer and delivery of written notice to the Bondholders of the purchases of the Series 2018 Bonds not less than 30 days or more than 60 days prior to the date fixed for redemption. See "THE SERIES 2018 BONDS—Purchase in Lieu of Redemption."

Bond Insurance	Payment of the principal of and interest on the Series 2018 Bonds maturing on June 30, 2035, December 31, 2038 and June 30, 2048 (having a rate of 4.500%) will be insured by a municipal bond insurance policy. See "BOND INSURANCE."
Series 2018 Bond Ratings	Moody's and S&P are expected to assign ratings of "A2" and "AA", respectively, to the Insured Series 2018 Bonds, which long- term ratings are based on the understanding that the Insurer will issue the Bond Insurance Policy simultaneously with the delivery of the Series 2018 Bonds. Moody's and KBRA have assigned underlying long-term ratings on the uninsured Series 2018 Bonds of "Baa2 (stable outlook)" and "BBB (stable outlook)", respectively. The foregoing ratings reflect only the respective views of the rating agencies and any desired explanation of the significance of such ratings should be obtained from the rating agency furnishing the same. A rating is not a recommendation to buy, sell or hold the Series 2018 Bonds. There is no assurance that any such ratings will continue for any given period of time or that any such ratings will not be revised downward, suspended or withdrawn entirely if, in the judgment of each rating agency, circumstances so warrant.
Book-Entry-Only System	The Depository Trust Company will act as the securities depository for the Series 2018 Bonds. The Series 2018 Bonds will be issued as fully-registered securities in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Series 2018 Bond certificate will be issued for each maturity and each interest rate within a maturity, if applicable, of the Series 2018 Bonds in the aggregate principal amount of such maturity, and will be deposited with DTC. For more information, see "THE SERIES 2018 BONDS—General" and APPENDIX I—"BOOK-ENTRY ONLY SYSTEM."
Limited Obligations of the Issuer	The Series 2018 Bonds are limited obligations, issued by the Issuer and the principal of and premium, if any, and interest on the Series 2018 Bonds are payable solely and exclusively from the Trust Estate, which includes the revenues and other funds, and investment earnings thereon, and moneys pledged and assigned under the Indenture, including loan repayments received by the Issuer pursuant to the Senior Loan Agreement. Payments to the Company under the Project Agreement are subject to appropriation by the State and are not general obligations of the State. None of the Issuer, the State, nor any political subdivision of the State shall in any event be liable for the payment of the principal of, premium, if any, or interest on the Series 2018 Bonds or for any pledge or the performance of any pledge, obligation or agreement of any kind whatsoever except as set forth in the Indenture or any Supplemental Indenture. None of the Series 2018 Bonds or any of the agreements of the Issuer in the Indenture, a Supplemental Indenture or the Senior Loan Agreement shall represent or constitute a debt of the Issuer, the State, or any political subdivision of the State or a pledge of the faith and credit of the State, the Issuer or any political subdivision of the State or a pledge of the taxing power of the State or political subdivision of the State or any political subdivision of the State or a pledge of the taxing power of the State or political subdivision of the State or any political subdivision of the State or a pledge of the taxing power of the State or political subdivision of the State or any political subdivision of the State or a pledge of the taxing power of the State or political subdivision of the State or any political subdivision of the State or a pledge of the taxing power of the State or political subdivision of the State or any political subdivision thereof obligated or pledged for the payment of debt service. The

Series 2018 Bonds and the Project Agreement shall not be construed to constitute an indebtedness of or a loan of the credit of or the taxing power or a moral obligation of any of the Issuer, the State or any political subdivision thereof within the meaning of any constitutional or statutory provision. See "THE SERIES 2018 BONDS—Limited Obligations."

THE PROJECT PARTICIPANTS

MDOT was established in 1978 by constitutional amendment and replaced the Michigan State Highway Department. MDOT is the State agency with the primary programmatic and regulatory responsibilities for the development and operation of public transportation facilities, port and harbor improvements, railroad facilities, highways and airports in the State. See "PROJECT PARTICIPANTS—The Michigan Department of Transportation."

The Company, a Delaware limited liability company, has entered into the Project Agreement with MDOT. See "PROJECT PARTICIPANTS-Oakland Corridor Partners LLC." Oakland Corridor Partners LLC is wholly-owned by Oakland Corridor Partners HoldCo LLC ("HoldCo"), a Delaware limited liability company, the members of which are John Laing I-75 HoldCo Corp. ("John Laing HoldCo") (40%), a wholly-owned subsidiary of John Laing Investments Limited ("John Laing"), AECOM OCP HoldCo LLC ("AECOM HoldCo") (30%), a wholly-owned subsidiary of AECOM Capital, Inc. ("AECOM Capital"), DEI Segment 3, LLC ("Dan's HoldCo") (10%), a wholly-owned subsidiary of Dan's Excavating, Inc. ("Dan's"), API-OCP Holdings, LLC ("Ajax HoldCo") (10%), a wholly-owned subsidiary of Ajax Paving Industries, Inc. ("Ajax"), and Jay-Dee I-75 Holdings, LLC ("Jay-Dee HoldCo") (10%), a wholly-owned subsidiary of Jay Dee Contractors, Inc. ("Jay Dee"). See "PROJECT PARTICIPANTS-The Equity Members' Parent Companies."

THE PROJECT

The Project consists of the design, construction, financing and maintenance of a 5.5 mile segment ("Segment 3") of the I-75 Corridor. Segment 3 is located north of 13 Mile Road to north of 8 Mile Road in the Cities of Madison Heights, Royal Oak, and Hazel Park, which are all within Oakland County, as more fully described in "THE I-75 MODERNIZATION PROJECT—Overview of the Project." Segment 3 is part of the State's Trunkline Highway System. Key aspects of the design and construction of the Project include the realignment and reconstruction of the I-75 mainline, service drives and ramps; addition of a new lane in both directions; reconstruction of a minimum 14-foot diameter and 4-mile long stormwater Storage and Drainage Tunnel and installation of a new Pump Station; and ITS upgrades.

The Project also includes grading, environmental compliance, site work, landscaping, aesthetics, traffic signals, noise and retaining walls, traffic maintenance during construction, paving, pavement marking, signing, certain utility work and coordination, quality, construction safety, permitting and public information.

MDOT

Company.....

The Project.....

Also included in the Project is the Interim Maintenance Work during the D&C Term and Long Term Maintenance Work during each Maintenance Term for certain asset categories.

Total costs of the Project are currently estimated to be approximately \$828,577,062. Project Costs are to be funded from proceeds of the Series 2018 Bonds, Equity Contributions from the Equity Members, Milestone Payments received by the Company under the Project Agreement and interest earnings on all amounts in the Securities Accounts. See "PROJECTED SOURCES AND USES OF FUNDS" and "FINANCING FOR THE PROJECT."

All of the D&C Work relating to the Project is being undertaken by the Design-Build Contractor, a Michigan limited liability company whose members consist of Ajax, a corporation organized and existing under the laws of Michigan, Dan's, a corporation organized and existing under the laws of Michigan, Jay Dee, a corporation organized and existing under the laws of Michigan and C.A. Hull Co., Inc. ("C.A. Hull"), a corporation organized and existing under the laws of Michigan. The Design-Build Contract includes, on a fixed price "lump-sum, turn-key basis," any and all work and services required or appropriate in connection with the design and construction of the Project, performance of the Interim Maintenance Work and performance of the Long Term Maintenance Work to be performed in relation to the Storage and Drainage Tunnel prior to the Substantial Completion Date, except to the extent expressly excluded by the Design-Build Contract. In addition, each of Ajax, Dan's, Jay Dee, C.A. Hull, C.D.M. Leasing, L.L.C. ("C.D.M. Leasing") and JAJ Holdings LLC ("JAJ Holdings"), in their capacities as the Design-Build Guarantors, will provide a joint and several guaranty to support the Design-Build Contractor's obligations under the Design-Build Contract pursuant to the Design-See "PROJECT PARTICIPANTS-MI 75 Build Guarantee. Constructors, LLC," "PROJECT PARTICIPANTS-Design-Build Guarantors," "THE PRINCIPAL PROJECT DOCUMENTS-The "THE Contract," PRINCIPAL Design-Build PROJECT DOCUMENTS-The Design-Build Contract-D&C Performance Security and DB Performance Support" and APPENDIX C-"SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT."

To guarantee performance of its obligations, the Design-Build Contractor will provide a performance security package to the Company that includes: (a) the D&C Performance Security required by the Project Agreement, being D&C Performance Bonds 1 and 2 and the D&C Payment Bond, (b) a liquidity bond in the initial amount of \$51,383,416.32, and (c) the Design-Build Guarantee. See APPENDIX C—"SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—D&C Performance Security and DB Performance Support."

Project Costs.....

Construction

Maintenance

Pursuant to the Project Agreement, the Company is responsible for (a) the Interim Maintenance Work, being maintenance, rehabilitation and other work to be performed and services to be provided prior to the Substantial Completion Date related to the Roadway, the Existing Pump Stations and the Freeway Lighting System; (b) Long Term Maintenance Work to be performed in relation to the Storage and Drainage Tunnel between the completion of such tunnel and the Substantial Completion Date; and (c) all Long Term Maintenance Work, including Routine Maintenance, Renewal Work and Handback Work, to be performed on the entire I-75 Segment 3 during a 25-year I-75 Segment 3 Maintenance Term which commences following the Substantial Completion Deadline, being August 31, 2023, as that date may be adjusted pursuant to the Project Agreement.

FINANCING FOR THE PROJECT

Senior Debt.....

Equity Contributions.....

The initial senior debt to be incurred in connection with the financing of the Project will be comprised solely of the Series 2018 Bonds, which will be issued pursuant to the Indenture. The proceeds of the Series 2018 Bonds will be loaned to the Company pursuant to the Senior Loan Agreement between the Company and the Issuer, and will be available to the Company, subject to the terms and conditions set forth in the Senior Loan Agreement and the Indenture, to pay certain costs of the Project. The proceeds of the Series 2018 Bonds, after payment of transaction expenses, will be invested in the Series 2018 GIC. Pursuant to the terms of the Series 2018 GIC, interest will be paid to the Collateral Agent for deposit in the Bond Proceeds Sub-Account in arrears on each date identified as a payment date in accordance with a specified amortized payment schedule as described under "PROJECT ACCOUNTS AND FLOW OF FUNDS-Description of Project Accounts-Construction Account-Bond Proceeds Sub-Account." Pursuant to the Senior Loan Agreement, the Company agrees to make payments to the Trustee in the amounts and on the dates required to pay the principal of and interest on the Series 2018 Bonds and agrees to comply with various covenants for the benefit of the Trustee and the Owners of the Series 2018 Bonds. See "FINANCING FOR THE PROJECT-Senior Loan Agreement."

Each Equity Member will be obligated to make Equity Contributions to the Company in the amount of its respective total equity commitment on the dates provided in accordance with the Equity Contribution Agreement, unless earlier required due to demand therefor by the Collateral Agent following the occurrence and during the continuance of an Event of Default. The obligation of each Equity Member to fund its respective Equity Contribution shall be supported by a direct pay Equity Letter of Credit delivered on the Closing Date to the Collateral Agent, which may be drawn if such Equity Contribution is not made when due and any applicable cure period has passed. The total equity commitment (i) with respect to John Laing HoldCo, is US\$19,637,982.85; (ii) with respect to AECOM HoldCo, is US\$14,728,487.14; (iii) with respect to Jay- Dee HoldCo, is US\$4,909,495.71; (iv) with respect to Ajax HoldCo, is US\$4,909,495.71; and (v) with respect to Dan's HoldCo, is US\$4,909,495.71. Each Equity Member's obligation to make its Equity Contribution to the Company may at its option be

satisfied by (i) making Equity Investments in or providing loans to HoldCo and (ii) causing HoldCo to make a corresponding equity contribution to the Company. See "FINANCING FOR THE PROJECT—Equity Contributions."

Additional Parity Bonds

Under the Indenture, upon request from the Company, the Issuer may issue Additional Parity Bonds subject to satisfying various requirements set forth in the Indenture, the Senior Loan Agreement and the Project Agreement. The requirements, terms and conditions of any such Additional Parity Bonds are set forth in more detail in APPENDIX E–"SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE." For a description of the restrictions on issuing Additional Parity Bonds, see "RISK FACTORS—Risks Related to the Series 2018 Bonds—Additional Senior Debt and Additional Parity Bonds", "FINANCING FOR THE PROJECT—Senior Loan Agreement," and "THE SERIES 2018 BONDS—Additional Parity Bonds."

PROJECT AGREEMENT

Pursuant to, and subject to the terms of, the Project Agreement, MDOT (a) granted the Company the exclusive right to design, construct and finance the Project, to perform the Interim Maintenance Work and the Long Term Maintenance Work to be performed prior to the Substantial Completion Date, and to perform the Long Term Maintenance Work for I-75 Segment 3 located within the Maintenance Limits and (b) agreed to make Milestone Payments, Availability Payments and, following various compensatory delay, relief and termination events, compensation and termination payments to the Company. The obligation of MDOT to make such payments is subject to the appropriation of sufficient funds therefor by the Legislature. The term of the Project Agreement is expected to be twenty-five (25) years following the Substantial Completion Deadline of August 31, 2023, subject to adjustment in accordance with the Project Agreement. See "THE PRINCIPAL PROJECT DOCUMENTS-The Project Agreement" OF THE PROJECT AGREEMENT."

Pursuant to, and subject to the terms of, the Project Agreement, MDOT has agreed to pay Milestone Payments totaling \$101,000,000 (subject to adjustment, as set forth below) upon satisfactory achievement of four certain milestones during the D&C Term. Each Milestone Payment may be reduced by accumulated D&C Deductions and Unavailability Adjustments assessed by MDOT for the Company's failure to adhere to the Project's lane closure and other performance requirements. While the D&C Deductions and Unavailability Adjustments assessed against each of Milestone Payment 1 and Milestone Payment 2 cannot reduce such payments to less than 65% of the applicable maximum Milestone Payment, any Deductions or Unavailability Adjustments that are not deducted from either such Milestone Payment are carried over and applied against the next payable Milestone Payment. The Milestone Payments will be applied by the Company to pay Project Costs and interest on the Series 2018 Bonds. MDOT intends to use a combination of federal aid and state-restricted revenues from the MDOT budget line-item "State Trunkline federal aid and road and bridge construction" appropriation to fund the payment of the

Project Agreement

Milestone Payments.....

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Milestone Payments; however, while MDOT has indicated its intent to use such sources to make the Milestone Payments, MDOT has not pledged nor is MDOT contractually obligated to use such sources to make the Milestone Payments. See "SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2018 BONDS— Sources of Payment Generally," "FINANCING FOR THE PROJECT—Milestone Payments and Availability Payments— Milestone Payments" and "THE PRINCIPAL PROJECT DOCUMENTS—The Project Agreement—Payments to the Company" and APPENDIX B—"SUMMARY OF CERTAIN PROVISIONS OF THE PROJECT AGREEMENT."

Pursuant to, and subject to the terms of, the Project Agreement, MDOT has agreed to make quarterly Availability Payments (up to a Quarterly Total Maximum Availability Payment for each Quarter) during the I-75 Segment 3 Maintenance Term based on the portion of the Project located within the Maintenance Limits being open and available for public traffic. The Company will receive Availability Payments commencing after the Substantial Completion Date but in no case prior to August 31, 2023, and continuing for the remaining term of the Project Agreement. The Availability Payments will be applied by the Company to pay the costs of Long Term Maintenance Work, scheduled debt service on the Series 2018 Bonds and Additional Parity Bonds (if any) and certain other costs.

The quarterly Availability Payment for a Quarter is equal to (a) ¹/₄ of the Maximum Availability Payment for the Contract Year in which such Quarter falls, indexed in accordance with the Project Agreement, plus (b) the relevant Base Renewal Work Payment set out in the related payment schedule applicable to such Quarter and Contract Year, indexed in accordance with the Project Agreement, less (c) generally, the Quarterly Unavailability Adjustments and Quarterly Noncompliance Adjustments for such Quarter. Total Deductions and Unavailability Adjustments cannot reduce the Quarterly Total Maximum Availability Payment for a Quarter to less than 65% of the Quarterly Total Maximum Availability Payment available for the relevant Quarter, but Deductions or Unavailability Adjustments that are not so deducted will be carried over and applied against the next Quarterly Total Maximum Availability Payment. The 65% floor does not apply to the last three Quarterly Total Maximum Availability Payments during the I-75 Segment 3 Maintenance Term, where there will be no limit on the amount of Deductions and Unavailability Adjustments that may be applied to such Quarterly Total Maximum Availability Payments. MDOT intends to use a combination of federal aid and staterestricted revenues from the MDOT budget line-item "State Trunkline federal aid and road and bridge construction" appropriation to fund the payment of the Availability Payments; however, while MDOT has indicated its intent to use such sources to make the Availability Payments, MDOT has not pledged nor is MDOT contractually obligated to use such sources to make the Availability Payments. See "SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2018 BONDS-Sources of Payment Generally" and "FINANCING FOR THE PROJECT-Milestone Payments and Availability Payments-Availability Payments."

Availability Payments.....

Delay Events.....

Relief Events.....

Termination

Pursuant to the Project Agreement, during the D&C Term, the Company will be entitled to schedule relief for certain delays incurred as a result of a Delay Event. A Delay Event is a Force Majeure Event or a Compensable Delay Event. Compensation in the nature of Extra Work Costs, Delay Costs and/or Financing Delay Costs is payable by MDOT only in connection with a Delay Event that is a Compensable Delay Event, while Financing Delay Costs only may be paid by MDOT in certain circumstances for a Delay Event that is a Force Majeure Event. A Delay Event may only occur during the D&C Term and must directly impact the D&C Work, the Interim Maintenance Work or the Long Term Maintenance Work for the Tunnel and Pump Station. During the D&C Term, subject to the terms and conditions of the Project Agreement, upon the occurrence of a Delay Event, the Company will be entitled to an extension of the Substantial Completion Deadline or the Final Acceptance Deadline, as applicable, arising out of the Delay Event, equal to the delay to the Critical Path directly caused by the Delay Event. The Company is not entitled to an extension of the Substantial Completion Deadline or the Final Acceptance Deadline, as applicable, to the extent and for so long as the Delay Event is concurrent with any other unrelated delay to a Critical Path for which any Developer-Related Entity is responsible under the Project Agreement. A Delay Event also provides relief from performance of the Project Work, determination of any Developer Defaults under the Project Agreement and the assessment of Unavailability Adjustments and Noncompliance Points in certain circumstances. See APPENDIX B-"SUMMARY OF CERTAIN PROVISIONS OF THE PROJECT AGREEMENT-Relevant Events-Delay Events."

Pursuant to the Project Agreement, during the Maintenance Term, the Company will be entitled to relief from Project Agreement obligations and penalties and compensation for certain costs incurred as a result of a Relief Event. A Relief Event is either a Force Majeure Event or a Compensable Relief Event. Compensation in the nature of Extra Work Costs alone is payable by MDOT only in connection with a Relief Event that is a Compensable Relief Event. A Relief Event must interfere directly and adversely with, or cause a failure of, the performance of the Punch List or Long Term Maintenance Work after the Substantial Completion Date. During the Maintenance Term, subject to the terms and conditions of the Project Agreement, upon the occurrence of a Relief Event, the Company will be granted relief from any Developer Defaults and from the assessment by MDOT of Unavailability Adjustments and Noncompliance Points in certain circumstances. The Company is entitled to claim compensation for Extra Work Costs actually incurred by it as a direct result of a Compensable Relief Event. The funds for payment of Relief Event compensation are subject to appropriation by the State. See APPENDIX B-"SUMMARY OF CERTAIN PROVISIONS OF THE PROJECT AGREEMENT-Relevant Events-Relief Events."

Upon the occurrence of any of the termination events set forth in the Project Agreement, the Project Agreement may be terminated by either MDOT or the Company, as applicable, in either event creating an obligation of MDOT to pay the applicable Termination Amount to the Company. Depending on the circumstances of

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termination, the Termination Amount is due and payable between 60 and 120 days after such Termination Amount is finally agreed or determined. The funds for payment of any applicable Termination Amount are subject to appropriation by the State. See APPENDIX B—"SUMMARY OF CERTAIN PROVISIONS OF THE PROJECT AGREEMENT."

SECURITY FOR THE SERIES 2018 BONDS

Security Interests

Senior Debt Service Reserve Account......

The payment of the Series 2018 Bonds will be payable from the Trust Estate under the Indenture, including the payments to be made by the Company to the Issuer under the Senior Loan Agreement, and secured by the Security Interests in the Collateral described below created for the benefit of the Collateral Agent on behalf of the Owners of the Series 2018 Bonds and any other indebtedness secured thereby, pursuant to the Security Documents:

- (a) all of the Company's right, title and interest, whether now owned or in the future acquired by it and whether now existing or in the future coming into existence and wherever located, in the following:
 - (i) the Project Revenues;
 - (ii) the Project Agreement, the Design-Build Contract and the Design-Build Guarantee;
 - (iii) the Project Accounts; and
 - (iv) all other amounts received or receivable by the Company under the Project Agreement and all other Assigned Agreements; and
- (b) the membership interests of the Company and the other Pledged Collateral under the Pledge Agreement.

The Senior Debt Service Reserve Account will be funded with an amount equal to the Senior Debt Service Reserve Required Balance not later than three (3) Business Days after the Company receives Milestone Payment 3. The Senior Debt Service Reserve Required Balance for the Series 2018 Bonds generally is equal to the maximum amount of principal and interest on the Series 2018 Bonds payable during the next six month period. On each Transfer Date upon and after the date of Substantial Completion, the Collateral Agent will cause amounts in the Revenue Account, to the extent available, to be deposited into the Senior Debt Service Reserve Account, in an amount necessary, together with amounts on deposit therein, to cause the amounts on deposit in the Senior Debt Service Reserve Account to equal the Senior Debt Service Reserve Required Balance. The Senior Debt Service Reserve Account will be established solely for the benefit of the relevant Secured Parties and will be held by the Collateral Agent, and the lien thereon maintained, for the exclusive benefit of only such Secured Parties. For a complete description, see "SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2018 BONDS-Senior Debt Service Reserve Account" and "PROJECT ACCOUNTS AND FLOW OF FUNDS-Description of Project Accounts-Senior Debt Service Reserve Account."

Maintenance Reserve Account The Maintenance Reserve Account will be funded on each Transfer Date as required to maintain the funds in the Maintenance Reserve Account in an amount equal to the Maintenance Reserve Account Required Balance, being an amount equal to the next three (3) months of maintenance expenditures required for Maintenance Work. The Maintenance Reserve Account is scheduled to be funded with the initial Availability Payment after Substantial Completion. The Maintenance Reserve Account may be replaced with an Acceptable Letter of Credit at the option of the Company (but without recourse to the Company) in accordance with the provisions of the Collateral Agency Agreement. Any amounts on deposit in the Maintenance Reserve Account in excess of the Maintenance Reserve Account Required Balance (including as a result of funding of the Maintenance Reserve Account with an Acceptable Letter of Credit) shall be transferred directly to the Distribution Account or as otherwise directed by the Company without being subject to the funds described in "First" through "Twelfth" under "Flow of Flow of Funds-Revenue Account-Upon the Substantial Completion Date" or requiring satisfaction of Restricted Payment Conditions. Subject to certain requirements, the Collateral Agent will make withdrawals, transfers and payments from the Maintenance Reserve Account for the payment of Long Term Maintenance Work. For a complete description, see "PROJECT ACCOUNTS AND FLOW OF FUNDS-Description of Project Accounts-Maintenance Reserve Account" or APPENDIX D-"SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT—The Project Accounts—Reserve Accounts; Reserve Letters of Credit."

Other Accounts and Flow of Funds

Certain funds and accounts, including the Project Accounts (excluding the Operating Account and the PA Handback Account), are being established under the Collateral Agency Agreement and the Indenture. A portion of the proceeds received from the sale of the Series 2018 Bonds will be deposited directly into certain subaccounts within the Construction Account, to be disbursed periodically upon the satisfaction by the Company of certain requirements set forth in the Collateral Agency Agreement for payment of Project Costs during the D&C Term. All Milestone Payments and any other payments received by the Company prior to Substantial Completion pursuant to the Project Agreement (except for any Termination Amount payment received from MDOT) will be deposited into the Milestone Payment Sub-Account. After Substantial Completion, the Availability Payments, all other amounts received by the Company pursuant to the Project Agreement (excluding certain insurance payments, compensation amounts for Relevant Events and any Termination Amount) and all other operating revenues of the Company will be deposited into the Revenue Account, in each case, under the Collateral Agency Agreement. The Company has granted a Security Interest in all of the Project Accounts, other than the PA Handback Account and the Distribution Account, to the Collateral Agent pursuant to the terms of the Security Agreement. Under the Indenture, the Trustee has a Security Interest only in the accounts that constitute the Trust Estate. Accounts established under the Indenture that are not part of the Trust Estate are not subject to the Security Interest of the Trustee and are not collateral for the repayment of the Series 2018 Bonds. As described under "PROJECT ACCOUNTS AND FLOW OF FUNDS," the Collateral Agent will make withdrawals, transfers and payments from the Revenue Account in the amounts, at the

times, for the purposes and in the order of priority (the "Flow of Funds") set forth in the Collateral Agency Agreement.

For a description of all the funds and accounts established in relation to the Project and a more detailed description of the Flow of Funds, see "PROJECT ACCOUNTS AND FLOW OF FUNDS."

ADVISOR REPORTS

Lenders' Technical Advisor's Report......

Risk Factors.....

WT was engaged to prepare an independent technical advisor's report (the "Lenders' Technical Advisor's Report") to review and report on the Project documentation. The Lenders' Technical Advisor's Report is included as APPENDIX G to this Official Statement. Matters addressed in the Lenders' Technical Advisor's Report are based on various assumptions and methodologies and are subject to certain qualifications. Reference is hereby made to the entire Lenders' Technical Advisor's Report for such important opinions, projections, qualifications and assumptions.

RISK FACTORS

A number of risks could affect the payments to be made on the Series 2018 Bonds and the market value of the Series 2018 Bonds. Risks include but are not limited to: litigation risk; State appropriation risk and other factors that may affect the payments to be made by MDOT under the Project Agreement; the risk of changes of law; the risk of increased costs of, or delays in, the proper construction of the Project; the risk that construction will be completed at all; the risk of performance of Long Term Maintenance Work on I-75 Segment 3 by the Company; the risk that the Company's failure to comply with certain requirements of the Project Agreement could result in reductions in the payments the Company is entitled to receive from MDOT; the risk that the maintenance expenses actually incurred differ from those assumed or projected; and the risk that claims by Owners of the Series 2018 Bonds to the Trust Estate will be proportionately reduced by the claims of the holders, if any, of Additional Parity Bonds. See "RISK FACTORS" for a discussion of some of these risks. Such discussion is not exhaustive, should be read in conjunction with all other parts of this Official Statement and the documents incorporated by reference in this Official Statement and should not be considered as a complete description of all risks that could affect such payments or the market value of the Series 2018 Bonds. Investors should carefully consider the information set forth in such section along with all of the other information provided herein or incorporated by reference in this Official Statement and additional information in the form of the complete documents summarized herein (copies of which are available as described in this Official Statement) before deciding whether to invest in the Series 2018 Bonds.

THE SERIES 2018 BONDS

General

The Series 2018 Bonds are being issued in the aggregate principal amount of \$610,300,000, and will mature, subject to prior redemption, on the dates shown on the inside cover page of this Official Statement. The Series 2018 Bonds will be subject to redemption prior to maturity as described below. The Series 2018 Bonds are being issued as fully registered bonds in denominations of \$5,000 and integral multiples thereof.

The Series 2018 Bonds will be dated their date of their original issuance and delivery and will bear interest from that date or from the most recent Interest Payment Date to which interest has been paid or duly provided for at the per annum rate set forth on the inside cover page of this Official Statement.

Interest on the Series 2018 Bonds is payable semi-annually on June 30 and December 31 of each year, commencing on June 30, 2019, until maturity or prior redemption. Interest on the Series 2018 Bonds will be calculated on the basis of a 360-day year consisting of twelve (12) thirty-day months.

The Series 2018 Bonds will be registered in the name of Cede & Co., as nominee for DTC. Purchases of beneficial interests in the Series 2018 Bonds will be made only in book-entry form. Purchasers of beneficial interests in the Series 2018 Bonds (the "Beneficial Owners") will not receive physical delivery of certificates representing their interest in the Series 2018 Bonds. Interest on the Series 2018 Bonds, together with principal of the Series 2018 Bonds, will be paid by the Trustee directly to DTC, so long as DTC or its nominee is the registered owner of the Series 2018 Bonds. The final disbursement of such payments to Beneficial Owners of the Series 2018 Bonds will be the responsibility of the DTC's Direct and Indirect Participants, all as defined and more fully described herein. See APPENDIX I—"BOOK-ENTRY ONLY SYSTEM."

Limited Obligations

THE SERIES 2018 BONDS ARE LIMITED OBLIGATION REVENUE BONDS OF THE ISSUER. THE PRINCIPAL OF AND PREMIUM, IF ANY, AND INTEREST ON THE SERIES 2018 BONDS ARE PAYABLE SOLELY AND EXCLUSIVELY FROM THE TRUST ESTATE, WHICH INCLUDES THE REVENUES AND OTHER FUNDS, AND INVESTMENT EARNINGS THEREON, AND MONEYS PLEDGED AND ASSIGNED UNDER THE INDENTURE. INCLUDING LOAN REPAYMENTS RECEIVED BY THE ISSUER PURSUANT TO THE SENIOR LOAN AGREEMENT. NEITHER THE ISSUER NOR THE STATE, NOR ANY POLITICAL SUBDIVISION OF THE STATE, SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE SERIES 2018 BONDS OR FOR ANY PLEDGE OR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER EXCEPT AS SET FORTH IN THE INDENTURE. NONE OF THE SERIES 2018 BONDS OR ANY OF THE AGREEMENTS OF THE ISSUER IN THE INDENTURE OR THE SENIOR LOAN AGREEMENT SHALL REPRESENT OR CONSTITUTE A DEBT OF THE ISSUER, THE STATE, OR ANY POLITICAL SUBDIVISION OF THE STATE OR A PLEDGE OF THE FAITH AND CREDIT OF THE STATE, THE ISSUER OR ANY POLITICAL SUBDIVISION OF THE STATE OR A PLEDGE OF THE TAXING POWER OF THE STATE OR POLITICAL SUBDIVISION OF THE STATE, AND THE HOLDERS AND BOOK-ENTRY **INTEREST OWNERS OF THE SERIES 2018 BONDS SHALL HAVE NO RIGHT TO HAVE MONEYS** RAISED BY TAXATION BY THE STATE OR ANY POLITICAL SUBDIVISION THEREOF **OBLIGATED OR PLEDGED FOR THE PAYMENT OF DEBT SERVICE. THE SERIES 2018 BONDS** SHALL NOT BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF OR A LOAN OF THE CREDIT OF OR THE TAXING POWER OR A MORAL OBLIGATION OF ANY OF THE ISSUER OR THE STATE OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE ISSUER HAS NO TAXING POWER.

Issuer

The Issuer is a public body corporate and politic of the State, created pursuant to the Act, and is housed within the Michigan Department of Talent and Economic Development. The Issuer provides public and private development finance opportunities for agriculture, forestry, business, industry, and communities within the State; and thereby to alleviate and prevent conditions of unemployment, preserve existing jobs, and create new jobs to meet the employment demands of population growth and shifts, promote the development of existing business enterprises and meet competition among states and nations for business enterprises, revitalize and diversify the Michigan economy, to achieve long-term economic growth and full employment and provide a solid tax base for the State and its local units of government to provide funds for needed public services.

In furtherance of those general purposes, the Issuer is authorized to issue the Series 2018 Bonds and to loan the proceeds from the sale of the Series 2018 Bonds to the Company to finance a portion of the costs of the Project.

The Series 2018 Bonds are limited obligations of the Issuer as described in this Official Statement. The Issuer is not generally liable on the Series 2018 Bonds or on any other obligation incurred by the Issuer under the Indenture or the Senior Loan Agreement. The Series 2018 Bonds are not general obligations and do not constitute debts or pledges against the credit of the Issuer or the credit or taxing power of the State or any political subdivision thereof. No member or officer of the Issuer or any person executing the Series 2018 Bonds on behalf of the Issuer shall be personally liable thereon. The Series 2018 Bonds are limited obligations of the Issuer, which will, if and when issued, be payable solely through revenues, properties or other funds as described in this Official Statement, the Indenture and the Senior Loan Agreement. No owner of any Series 2018 Bond shall have the right to demand payment of the principal of, premium, if any, or interest on such Series 2018 Bond out of any funds to be raised by taxation. The Issuer has no taxing power. All representations and covenants of the Issuer herein and in any proceeding, document or certification incidental to the issuance of the Series 2018 Bonds shall not create a pecuniary liability of the Issuer, except to the extent of the Trust Estate.

The membership of the Board of Directors of the Issuer consists of the following duly appointed persons:

Name	Occupation
Carl Camden	Retired President Kelly Services
Paul Gentilozzi	President Gentilozzi Real Estate
Jeremy Hendges	Director Michigan Department of Talent and Economic Development
Stephen Hicks	President & CEO JM Longyear
Nick Khouri	State Treasurer Michigan Department of Treasury
Larry Koops	Retired - Community President for Lakeshore Region Fifth Third Bank
Jeff Mason	MSF President & Chairman CEO, Michigan Economic Development Corporation
Terrence J.L. Reeves	Managing Attorney Taft Stettinius & Hollister LLP
Terri Jo Umlor	President Springfield Commercial Roofing
Shaun W. Wilson	Senior Vice President Truscott Rossman
Wayne Wood	Retired - President Michigan Farm Bureau

The Issuer's offices are located on the 4th floor, 300 North Washington Square, Lansing, Michigan 48913, and its telephone number is (517) 241-6750.

The Issuer has experienced defaults with respect to certain issues of limited obligation revenue bonds issued by it because of the non-payment of the required debt service payments by the party receiving financing through the Issuer. Obligations issued by the Issuer are payable solely from the funds specifically pledged for the payment of those obligations. The Series 2018 Bonds will be payable solely from the loan repayments paid by the

Company under the Senior Loan Agreement and the other funds pledged under the Indenture. A default on another obligation issued by the Issuer not involving the Company would not constitute a default on the Series 2018 Bonds. Accordingly, the Issuer does not consider that disclosure relating to defaults on other limited obligation revenue bonds of the Issuer would be appropriate or material to prospective purchasers of the Series 2018 Bonds.

The Issuer has not prepared any material for inclusion in this Official Statement except the statements in this Section and the matters under the headings "SUMMARY—THE SERIES 2018 BONDS—Limited Obligations of the Issuer," "RISK FACTORS—Risks Relating to the Issuer, the Company and MDOT—The Series 2018 Bonds are Limited Obligations," "THE SERIES 2018 BONDS—Limited Obligations," "CONTINUING DISCLOSURE AND OTHER REPORTING REQUIREMENTS—Continuing Disclosure under Rule 15c2-12—General" (but only with respect to the second paragraph) and "NO LITIGATION—The Issuer". The distribution of this Official Statement has been duly approved and authorized by the Issuer. Such approval and authorization do not, however, constitute a representation of approval by the Issuer of the accuracy of sufficiency of any information contained herein except to the extent of the information described in this paragraph.

Payment of the Series 2018 Bonds

The principal of, the redemption premium, if any, and interest on the Series 2018 Bonds will be payable only to the Owner thereof appearing on the registration books.

Pursuant to the Indenture, the principal and Redemption Price of any Series 2018 Bond will be paid to the Owner thereof as shown on the registration records of the Trustee upon maturity or prior redemption thereof in accordance with the terms of the Indenture and upon presentation and surrender of such Series 2018 Bond at the designated payment office of the Trustee in Lansing, Michigan. Interest on the Series 2018 Bonds (other than interest paid as part of the Redemption Price of a Bond) is payable to the Owner whose name appears in the registration books at the close of business on the Record Date and will be paid (a) by check or draft mailed on or prior to each Interest Payment Date, by the Trustee to the address of the Owner appearing in the registration books of the Series 2018 Bond and the Trustee. The "Record Date" for the Series 2018 Bonds is the first day of the month in which the applicable Interest Payment Date occurs. If any such Record Date is not a Business Day, then the Record Date is the Business Day next preceding such date.

The Indenture provides that any interest not timely paid will cease to be payable to the Owner thereof at the close of business on the Record Date and will be payable to the Person who is the Owner thereof at the Special Record Date. Such Special Record Date will be fixed by the Trustee whenever moneys become available for payment of the defaulted interest, and notice of the Special Record Date will be given by the Trustee to the Owners of the Series 2018 Bonds, not less than ten (10) days prior to the Special Record Date, by certified or first-class mail to each such Owner as shown on the Trustee's registration records on a date selected by the Trustee, stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest.

While the Series 2018 Bonds are held under the book-entry system, the principal of, interest on and Redemption Price of the Series 2018 Bonds will be paid by wire transfer to DTC, as securities depository, or its nominee.

Redemption of the Series 2018 Bonds

The Series 2018 Bonds are subject to redemption prior to their stated maturity, in accordance with the terms and provisions of the Indenture, as follows:

Optional Redemption. The Series 2018 Bonds maturing after December 31, 2028 are subject to redemption prior to maturity, at the option of the Issuer, at the direction of the Company, on or after December 31, 2028, from amounts deposited in the Series 2018 Redemption Account (excluding accrued interest, which is payable from the Series 2018 Interest Account), in whole or in part from time to time, on any date, at a Redemption Price equal to 100% of the principal amount of Series 2018 Bonds to be redeemed, plus accrued interest thereon to the date of redemption, without penalty or make-whole premium.

Mandatory Sinking Fund Redemption. The Series 2018 Bonds maturing on June 30, 2035, December 31, 2038, December 31, 2043, June 30, 2048 (in the principal amount of \$95,945,000 and having a rate of 5.000%) and June 30, 2048 (in the principal amount of \$70,000,000 and having a rate of 4.500%) are subject to mandatory redemption prior to maturity, in part, on each June 30 and December 31 (or, if such date is not a Business Day, then the Business Day succeeding such date) of the years and in the respective principal amounts set forth below, at a

Redemption Price equal to 100% of the principal amount thereof, plus accrued interest to the date of redemption, without penalty or make-whole premium, through mandatory Sinking Fund Installments which are required to be made in amounts sufficient to redeem on June 30 and December 31 each year the principal amount of the Series 2018 Bonds specified for each of the dates shown below:

Series 2018 Bonds Maturing June 30, 2035

Mandatory	Principal
Redemption Date	Amount (\$)
June 30, 2034	10,970,000
December 31, 2034	11,125,000
June 30, 2035*	11,450,000

* Final Maturity

Series 2018 Bonds Maturing December 31, 2038

Mandatory Redemption Date	Principal Amount (\$)	
December 31, 2035	11,615,000	
June 30, 2036	11,960,000	
December 31, 2036	12,110,000	
June 30, 2037	12,465,000	
December 31, 2037	12,665,000	
June 30, 2038	13,060,000	
December 31, 2038*	13,265,000	

* Final Maturity

Series 2018 Bonds Maturing December 31, 2043

Mandatory Redemption Date	Principal Amount (\$)
June 30, 2039	13,650,000
December 31, 2039	13,915,000
June 30, 2040	14,375,000
December 31, 2040	14,650,000
June 30, 2041	15,120,000
December 31, 2041	15,425,000
June 30, 2042	15,915,000
December 31, 2042	16,240,000
June 30, 2043	16,750,000
December 31, 2043*	17,085,000

* Final Maturity

Series 2018 Bonds Maturing June 30, 2048 (Rate-5.000%)

Mandatory Redemption Date	Principal Amount (\$)
June 30, 2044	10,210,000
December 31, 2044	8,075,000
June 30, 2045	7,655,000
December 31, 2045	11,400,000
June 30, 2046	9,925,000
December 31, 2046	12,500,000
June 30, 2047	10,070,000
December 31, 2047	13,580,000
June 30, 2048*	12,530,000

* Final Maturity

Series 2018 Bonds Maturing June 30, 2048 (Rate-4.500%)

Mandatory Redemption Date	Principal Amount (\$)	
June 30, 2044	7,420,000	
December 31, 2044	5,795,000	
June 30, 2045	5,790,000	
December 31, 2045	8,030,000	
June 30, 2046	7,150,000	
December 31, 2046	9,230,000	
June 30, 2047	7,340,000	
December 31, 2047	10,020,000	
June 30, 2048*	9,225,000	

* Final Maturity

There will be credited against and in satisfaction of all or a portion of the sinking fund installment payable on any date the principal amount of Series 2018 Bonds of a particular maturity redeemed or purchased with money in the Series 2018 Redemption Account (excluding accrued interest, which is payable from the Series 2018 Interest Account) and the principal amount of such Series 2018 Bonds so redeemed or purchased shall be applied against and in fulfillment of the applicable required sinking fund installment of the applicable maturity of such Series 2018 Bonds in accordance with the Indenture. In addition, there shall be credited against and in satisfaction of the applicable Sinking Fund Installments of the applicable maturity of Series 2018 Bonds (i) Series 2018 Bonds redeemed at the election of the Company, (ii) Series 2018 Bonds purchased by the Company and delivered to the Trustee for cancellation; or (iii) Series 2018 Bonds deemed to have been paid in accordance with the Indenture, and the principal amount of such Series 2018 Bonds shall be applied against and in fulfillment of the applicable required Sinking Fund Installments thereafter payable on such Series 2018 Bonds, as nearly as practicable pro rata, taking into consideration the Authorized Denominations.

Extraordinary Mandatory Redemption

Insurance Proceeds. To the extent permitted under the Project Agreement and the Collateral Agency Agreement, the Series 2018 Bonds are subject to extraordinary mandatory redemption from Insurance Proceeds transferred from the Loss Proceeds Account to the Mandatory Prepayment Account pursuant to the Collateral Agency Agreement from net amounts of insurance or loss proceeds (excluding business interruption, advance loss of profits or delay in start up insurance or any insurance proceeds in respect of amounts necessary to compensate losses or damages to, or liabilities incurred by, third parties) or condemnation proceeds. Such redemption will be in whole or in part, and if in part, by lot within such maturities as selected by the Trustee (provided that the Series 2018

Bonds may be redeemed in part only in Authorized Denominations), at a redemption price equal to Amortized Redemption Price or Accreted Redemption Price of the Series 2018 Bonds, as applicable, to be redeemed, plus accrued interest to, but not including, the redemption date.

Project Agreement Termination Compensation. Subject to the Collateral Agency Agreement, the Series 2018 Bonds are subject to extraordinary mandatory redemption if the Company receives any Termination Amount payments as termination compensation pursuant to the Project Agreement that are deposited in the Mandatory Prepayment Account pursuant to the Collateral Agency Agreement. Such redemption will be in whole or in part, and if in part, by lot within such maturities as selected by the Trustee (provided that the Series 2018 Bonds may be redeemed in part only in Authorized Denominations), at a redemption price equal to Amortized Redemption Price or Accreted Redemption Price of the Series 2018 Bonds, as applicable, to be redeemed, plus accrued interest to the date of redemption.

Unspent Series 2018 Bonds Proceeds. The Series 2018 Bonds are subject to extraordinary mandatory redemption by lot within such maturities as selected by the Trustee from any remaining unspent Series 2018 Bonds proceeds (rounded down to the nearest multiple of \$5,000) on deposit in the Bond Proceeds Sub-Account that are transferred from the Bond Proceeds Sub-Account to the Mandatory Prepayment Account pursuant to the Collateral Agency Agreement on a date that is no earlier than five (5) years and thirty (30) days after the date of issuance of the Series 2018 Bonds and no later than five (5) years and ninety (90) days after the date of issuance of the Series 2018 Bonds will not adversely affect the exclusion of interest on such Series 2018 Bonds from gross income for federal or State income tax purposes and that such redemption is not required by State law. Notwithstanding the foregoing, the unspent proceeds will be transferred to the Series 2018 Rebate Fund, if applicable, before the remaining amount of unspent proceeds are applied to the redemption of Series 2018 Bonds.

Selection of Series 2018 Bonds to Be Redeemed. If less than all of a single maturity of the Series 2018 Bonds are to be redeemed, the Trustee shall select for redemption in any manner that is customary in the industry a portion of each such maturity, which selection shall be as nearly as practicable, taking into consideration the Authorized Denominations, a pro rata portion of each such Bond.

Partial Redemption of Series 2018 Bonds. Upon surrender of any Series 2018 Bond redeemed in part only, the Issuer shall execute (but need not prepare) and the Trustee shall register, authenticate and deliver to the Owner thereof, a new Series 2018 Bond or Series 2018 Bonds of the same maturity and interest rate and in Authorized Denominations, equal in aggregate principal amount to the unredeemed portion of the Series 2018 Bond surrendered.

Redemption of Additional Parity Bonds. The provisions of the Indenture, insofar as they apply to any Additional Parity Bonds, may be varied by the Supplemental Indenture providing for those Additional Parity Bonds.

Notice of Redemptions

Notice of Optional Redemption and Mandatory Redemption. Notice of the call for any optional redemption, or any mandatory redemption identifying the Series 2018 Bonds or portions thereof to be redeemed and specifying the terms of such redemption (including, in the case of any optional redemption whether there any conditions thereon, including if the Issuer's obligation to redeem the Series 2018 Bonds is subject to conditions, a statement that describes the conditions to such redemption) shall be given by the Trustee by mailing a copy of the redemption notice by United States first-class mail, postage pre-paid at least thirty (30) days and not more than sixty (60) days prior to the date fixed for redemption, to the Owner of each Series 2018 Bond to be redeemed at their last known addresses, if any, appearing on the registration records of the Trustee not more than ten (10) Business Days prior to the date such notice is given; provided, however, that failure of an Owner of a Series 2018 Bond to receive any such notice shall not affect the validity of any proceedings for the redemption of the Series 2018 Bonds.

So long as DTC is effecting book-entry transfers of the Series 2018 Bonds, the Trustee will provide the redemption notices specified herein to DTC. It is expected that DTC will, in turn, notify its Direct Participants and that the Direct Participants, in turn, will notify or cause to be notified the Beneficial Owners (as defined below) of the Series 2018 Bonds. Any failure on the part of DTC or a Direct Participant, or failure on the part of a nominee of a Beneficial Owner of a Series 2018 Bond (having been mailed notice from the Trustee, DTC, a Direct Participant or otherwise) to notify the Beneficial Owner of the Series 2018 Bond so affected, will not affect the validity of the redemption of such Series 2018 Bond. See APPENDIX I—"BOOK-ENTRY ONLY SYSTEM."

Purchase in Lieu of Redemption

The Series 2018 Bonds maturing after December 31, 2028 are subject to purchase prior to maturity, at the election of the Issuer, upon the written request of the Company, on or after December 31, 2028 in any order, in whole or in part at any time, at a purchase price equal to one hundred percent (100%) of the principal amount thereof (the "Purchase Price"), plus accrued interest to the date set for purchase (the "Purchase Date") set forth in the notice of purchase to the registered owners of the Series 2018 Bonds to be so purchased.

If the Issuer, upon written request of the Company, elects to purchase Series 2018 Bonds, the Issuer shall provide written notice to the Trustee of such election at least forty-five (45) days prior to the Purchase Date, and the Trustee shall give notice of the purchase of Series 2018 Bonds in the name of the Issuer to the registered owners of the Series 2018 Bonds to be purchased by first-class mail, postage prepaid, not less than thirty (30) days nor more than sixty (60) days prior to the Purchase Date specified in such notice. The Series 2018 Bonds to be purchased are required to be tendered on the Purchase Date to the Trustee. The Series 2018 Bonds to be purchased that are not so tendered will be deemed to have been properly tendered for purchase. Such purchase will not operate to extinguish the indebtedness of the Issuer evidenced thereby or modify the terms of the Series 2018 Bonds and such Series 2018 Bonds need not be cancelled, but will remain Outstanding under the Indenture and continue to bear interest.

The Issuer's obligation to purchase a Series 2018 Bond is conditioned upon the availability of sufficient money to pay the Purchase Price for all of the Series 2018 Bonds to be purchased on the Purchase Date. If sufficient money is available on the Purchase Date to pay the Purchase Price of the Series 2018 Bonds to be purchased, the former registered owners of such Series 2018 Bonds will have no claim thereunder or under the Indenture or otherwise for payment of any amount other than the Purchase Price. If sufficient money is not available on the Purchase Price, the Series 2018 Bonds tendered or deemed tendered for purchase will continue to be registered in the name of the registered owners on the Purchase Date, who will be entitled to the payment of the principal of and interest on such Series 2018 Bonds in accordance with their respective terms.

Additional Parity Bonds

The Issuer may issue Additional Parity Bonds in accordance with the Indenture for the purpose of Project completion if (i) the Lenders' Technical Advisor certifies that such debt is required to complete the Project; (ii) such debt does not exceed 5% of the principal amount of the Series 2018 Bonds and (iii) no Event of Default would exist after such issuance.

Additional Parity Bonds may also be issued to refurbish, upgrade, modify, expand or add to the Project in connection with certain Work Orders, Change Orders, Relief Events or to comply with the Project Agreement so long as (i) no Specified Default or Event of Default would exist after issuance, (ii) such Additional Parity Bonds would not result in a downgrade of the then-current rating for the Series 2018 Bonds, (iii) the Lenders' Technical Advisor confirms that the Company's maintenance and lifecycle projections will continue to be satisfied and (iv) DSCR is projected to be 1.15x or greater for each year of the remaining term of the Senior Secured Obligations after giving effect to such Additional Parity Bonds.

Additional Parity Bonds may also be issued to replace or refund the Series 2018 Bonds so long as (i) debt service in each year thereafter would not exceed the debt service which would have been payable in each year for the Series 2018 Bonds prior to such refunding or (ii) DSCR is 1.15x or greater and such Additional Parity Bonds would not result in a downgrade of the then-current rating for the Series 2018 Bonds.

Additional Parity Bonds may also be issued with the consent of the Majority Holders.

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

To the extent that any or all of the Series 2018 Bonds (or any Additional Parity Bonds) are Outstanding at the time the Additional Parity Bonds are proposed to be incurred, the additional Finance Documents entered into in connection therewith (i) shall not prohibit the Company from incurring new indebtedness to refinance such Bonds (at least to the extent permitted under the Indenture and under the Senior Loan Agreement); and (ii) shall provide that all Principal Payment Dates and Interest Payment Dates with respect to such Additional Parity Bonds will be the same Principal Payment Dates and Interest Payment Dates as for the Bonds to remain outstanding through maturity of such Bonds. Prior to the issuance of any Additional Parity Bonds, the Company must cause compliance with the requirements of the Indenture for the delivery of Bonds and in addition deliver to the Trustee and the Collateral Agent the following:

(a) a certificate of the Company, signed by a Company representative, dated as of the date of issuance of such proposed Additional Parity Bonds stating that no Event of Default has occurred and is continuing or will result from the issuance of such Additional Parity Bonds; and

(b) executed counterparts of all Finance Documents related to the Additional Parity Bonds including, without limitation, (i) a certified copy of the executed counterpart of the Additional Parity Bonds Loan Agreement, under which the Issuer agrees to loan the proceeds of the Additional Parity Bonds to the Company; and (ii) an original executed counterpart of the Supplemental Indenture under which the Additional Parity Bonds have been issued.

Notwithstanding anything to the contrary in the Indenture, any issuance of Additional Parity Bonds is subject to the further condition that it must comply with the refinancing requirements set forth in the Project Agreement.

Additional Secured Debt

The Company may issue additional indebtedness under (and in accordance with the conditions set forth in) the Collateral Agency Agreement.

See "RISK FACTORS—Risks Relating to the Series 2018 Bonds—Additional Senior Debt and Additional Parity Bonds."

THE I-75 MODERNIZATION PROJECT

Overview of the Project

The Project is approximately 5.5 miles in length and consists of 1.5 miles of rural freeway and 4 miles of urban depressed freeway with service drives. The Project includes the addition of one general purpose lane in each direction from 8 Mile Road to 12 Mile Road, the addition of an HOV lane in each direction from 12 Mile Road to 13 Mile Road, reconstruction of the existing freeway lanes and the construction/replacement, reconstruction or removal of 28 structures. The Project also includes a large Storage and Drainage Tunnel approximately 4 miles in length with an approximate inside diameter of 14-feet with a new Pump Station at the George W. Kuhn Retention Treatment Facility, and the maintenance work described below in "—Scope of Work.". The Project is located in the Cities of Madison Heights, Royal Oak and Hazel Park, which are all within Oakland County.

Only a portion of the costs of the Project are being financed with proceeds of the Series 2018 Bonds. Other costs of the Project are anticipated to be financed by the Company from other sources, including payments under the Project Agreement, Equity Contributions and interest earned on the Series 2018 GIC.

Scope of Work

The D&C Work includes the following:

- (a) Realign and reconstruct I-75 mainline, service drives and ramps within the D&C Limits.
- (b) Add a new general-purpose lane in both directions from north of 8 Mile Road to 12 Mile Road as shown in the Basic Roadway Configuration.
- (c) Add a new HOV lane in both directions from 12 Mile Road to north of 13 Mile Road.
- (d) Restripe the HOV lane in reconstructed I-75 (Segment 2) to connect with the new HOV lanes in Segment 3.
- (e) Construct/replace, reconstruct or remove the following structures.
 - (i) S01 of 63174 Gardenia Road over I-75,

- (ii) S02 of 63174 NB I-75 Service Drive over I-75,
- (iii) S03-1 of 63174 NB I-75 over 12 Mile Road,
- (iv) S03-2 of 63174 SB I-75 over 12 Mile Road,
- (v) S03-5 of 63174 EB 12 Mile Road to NB I-75 Ramp,
- (vi) S04 of 63103 Shevlin Avenue Double U-turn over I-75,
- (vii) S04-1 of 63174 NB I-75 over 13 Mile Road,
- (viii) S04-2 of 63174 SB I-75 over 13 Mile Road,
- (ix) S06 of 63103 Dallas Avenue Dual Turn Ramp over I-75,
- (x) S22 of 63174 Meyers Avenue over I-75,
- (xi) S23 of 63174 John R Road SB Turn Ramp over I-75,
- (xii) S24 of 63174 John R Road over I-75,
- (xiii) S25 of 63174 John R Road NB Turn Ramp over I-75,
- (xiv) S26 of 63174 9 Mile Road SB Turn Ramp over I-75,
- (xv) S28 of 63174 Woodward Heights Blvd over I-75,
- (xvi) S30 of 63174 10.5 Mile Road over I-75,
- (xvii) S31 of 63174 11 Mile Road over I-75,
- (xviii) S33 of 63174 I-696 to I-75N Connector over I-75N Exit Ramp (New structure),
- (xix) B02-1 of 63174 NB I-75 over Red Run Drain,
- (xx) B02-2 of 63174 SB I-75 over Red Run Drain,
- (xxi) B02-5 of 63174 NB I-75 On-Ramp over Red Run Drain,
- (xxii) B02-6 of 63174 SB I-75 Off-Ramp over Red Run Drain,
- (xxiii) P01 of 63174 Pedestrian Crossing south of 12 Mile Road over I-75,
- (xxiv) P02 of 63174 Pedestrian Crossing north of Bernhard Avenue over I-75,
- (xxv) P03 of 63174 Pedestrian Crossing Harry Avenue over I-75,
- (xxvi) P04 of 63174 Pedestrian Crossing of Highland Avenue over I-75,
- (xxvii) P05 of 63174 Pedestrian Crossing of Browning Avenue over I-75, and

(xxviii) P06 of 63174 - Pedestrian Crossing of Orchard Avenue over I-75.

- (f) S27 of 63174 9 Mile Road over I-75: Remove slope paving at both abutments, remove Pier 1A and construct Pier 1B on existing piles.
- (g) New carpool lot adjacent to the 12 Mile Road interchange accommodating 85 parking spaces.
- (h) Within the D&C Limits provide drainage improvements including a minimum 14-foot diameter Storage and Drainage Tunnel located approximately 100-feet beneath the northbound service drive from 12 Mile Road to 8 Mile Road in the Cities of Madison Heights and Hazel Park, with the installation of a new Pump Station at the Oakland County Water Resource Commissioner's George W. Kuhn Retention Treatment Facility.
- (i) Maintain existing drainage during construction, commission new Storage and Drainage Tunnel and Pump Station, and demolish and remove the existing seven (7) Pump Stations.
- (j) Upgrade ITS equipment including CCTV cameras and variable message signs, upgrade fiber optic cable and install Connected Vehicle Roadside Units (RSU).

The D&C Work also includes grading, environmental compliance, clearing and grubbing, landscaping and aesthetic treatments, traffic signals, temporary and permanent noise walls, retaining walls, maintenance of traffic, paving, lighting, pavement marking and signing. The Company is also responsible for utility coordination, and for relocation, quality, construction safety, permitting and public relations, as directed.

Also included in the Project is (a) the Interim Maintenance Work; (b) all Long Term Maintenance Work to be performed in relation to the Storage and Drainage Tunnel between the completion of such tunnel and the Substantial Completion Date; and (c) all Long Term Maintenance Work, including Routine Maintenance, Renewal Work and Handback Work, to be performed on the entire I-75 Segment 3 during a 25-year I-75 Segment 3 Maintenance Term which commences following the Substantial Completion Deadline, being August 31, 2023, as that date may be adjusted pursuant to the Project Agreement.

Rationale for the Project

The I-75 Modernization (Segment 3) Design-Build-Finance-Maintain (DBFM) Project is part of the I-75 Modernization Project which has been in planning and development for nearly 20 years. The corridor project encompasses approximately 18 miles of freeway from north of M 102 (8 Mile Road) to south of M 59 and has a current daily traffic volume between 103,000 to 174,000. The freeway was built in the 1960s but has not received comprehensive corridor improvements since that time. The need for increased capacity to relieve congestion is driven by growth along the corridor due to land use changes and the migration of people, services and industry. It is a critical commercial route, a key commuter route, a vital tourist route and a local area business route moving people and goods across the state daily. The procurement of the Project using a design-build-finance-maintain approach will accelerate completion by up to 12 years relative to MDOT's original improvement plan for I-75 (Segment 3).

Implementation of the Project

The Project Agreement governs the relationship between MDOT and the Company in connection with the design, construction, financing and maintenance of the Project. For a more detailed description of the Project Agreement, see "THE PRINCIPAL PROJECT DOCUMENTS—The Project Agreement" and APPENDIX B— "SUMMARY OF CERTAIN PROVISIONS OF THE PROJECT AGREEMENT."

The construction of the Project will be undertaken by the Design-Build Contractor, pursuant to the Design-Build Contract. For a more detailed description, see "THE PRINCIPAL PROJECT DOCUMENTS—The Design-Build Contract" and APPENDIX C—"SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT". The Company will perform the maintenance requirements of the Project following the Substantial Completion Date pursuant to the Project Agreement. For a more detailed description, see "THE PRINCIPAL PROJECT DOCUMENTS—The Project Agreement" and APPENDIX B—"SUMMARY OF CERTAIN PROVISIONS OF THE PROJECT AGREEMENT."

Company's Expected Schedule

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

Milestone	Estimated Date*	Milestone Payment**
Commencement of Design Work	21 November 2018	
Commencement of D&C Work	15 December 2018	
Milestone 1 Completion	31 May 2020	\$20,000,000
Milestone 2 Completion	30 June 2023	\$40,000,000
Milestone 3 / Substantial Completion	31 August 2023	\$40,000,000
Milestone 4 / Final Acceptance	29 February 2024	\$ 1,000,000

* These are estimated completion dates based on the current projected construction schedule, which may change due to actual events. Milestone Payments are made within 30 days following the satisfaction by the Company of the conditions applicable to the relevant Milestone and submission of an invoice in the required form together with required supporting documentation.

** Each Milestone Payment will be reduced to the extent the Company's invoice does not provide evidence of incorporating D&C Work into the Relevant Infrastructure or supplying equipment to the Project's Site with a value at least equal to the applicable Milestone Payment. The amount of the deduction, if any, shall be equal to the difference between the amount of the Milestone Payment less the value of the D&C Work or equipment evidenced in the invoice. Milestone Payments will also be reduced by the amount of any D&C Deductions and Unavailability Adjustments assessed under the Project Agreement.

SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2018 BONDS

Sources of Payment Generally

Payments from the Company

The Bonds are payable solely from the Trust Estate defined herein, which consists primarily of the Company's payment obligations under the Senior Loan Agreement. All of the Company's rights under the Project Agreement and under the other Material Project Contracts, together with the other Security Interests created under the Security Documents for the benefit of the Collateral Agent on behalf of the Owners of the Series 2018 Bonds, and other permitted secured indebtedness, form part of the Trust Estate. As described in greater detail below, payment of Milestone Payments, Availability Payments and other amounts due to the Company are contractual obligations of MDOT, payment of which is subject to the terms of the Project Agreement and applicable law, including annual appropriation.

Payments from MDOT

<u>General</u>. MDOT has entered into the Project Agreement with the Company pursuant to which MDOT agrees to make payments to the Company primarily in the form of Milestone Payments and Availability Payments. The Milestone Payments, Availability Payments and other amounts due to the Company under the Project Agreement (including any Termination Amount) (together the "MDOT Payments") are subject to and dependent on annual appropriation by the State legislature sufficient to pay all of MDOT's obligations, and the MDOT Payments are contingent upon such annual appropriation. As described below, appropriated monies remaining in the State Trunk Line Fund after payments of debt service on State Trunk Line Fund bonds and other MDOT obligations having priority are the only sources available to MDOT to make the MDOT Payments. MDOT Payments under the Project Agreement are anticipated to be paid from the MDOT budget line-item "*State Trunkline federal aid and road and bridge construction*," which consist of portions of funding from both (i) the State Trunk Line Fund and (ii) federal grants received each year by the State under the Federal-Aid Highway Program. MDOT Payments do not constitute bonds, notes or other obligations of MDOT under Section 18b or 18d of Act 51 and are not secured by a pledge of State Trunk Line Fund monies or federal aid monies.

The MDOT Payments are limited obligations of MDOT pursuant to the Project Agreement and do not constitute a pledge of the "full faith and credit," the "credit" or the taxing power of the State, and do not create "state indebtedness" or "borrowing" as prohibited by the Constitution of Michigan of 1963 (Article 9). The State has no continuing legal or moral obligation to appropriate money for payments to be made or other obligations to be performed under the Project Agreement. MDOT has no taxing power. The Company and the Bondholders have no right to have taxes levied or to compel appropriations by the State legislature for any payment of the MDOT Payments. See "SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2018 BONDS – Sources of Payment Generally—Payments from MDOT—The State of Michigan Budgetary Process" and "RISK FACTORS—Risks Relating to the Issuer, the Company and MDOT—Appropriation Risk."

<u>Covenants under the Project Agreement; Court of Claims</u>. In the Project Agreement, MDOT covenants that it will (i) include the Project in its five year capital plan; (ii) prepare, prior to the year end of each fiscal year, its annual budget request submission to the State legislature; (iii) include in the budget request described in clause (ii) a request for an appropriation sufficient for the MDOT Payments for the relevant fiscal year; and (iv) if MDOT becomes aware of any Non-Appropriation Event, promptly provide notice to the Company and will consult with the Company to discuss the situation and the possible solutions it being understood that such discussions shall be without prejudice to Company's right to termination or right to suspension for unexcused and undisputed non-payment by MDOT of the MDOT Payments, as set forth in the Project Agreement.

A "Non-Appropriation Event" under the Project Agreement means: (a) the legislature of the State fails to appropriate money, or otherwise for payments due under the Project Agreement by July 31 of the relevant fiscal year in an amount sufficient to pay the MDOT Payments; or (b) the legislature of the State by express terms of a statute in effect with respect to the relevant fiscal year provides that, of the funds appropriated for the MDOT Payments, either no amount or only an amount that is insufficient to pay the MDOT Payments may be used for payments due pursuant to the Project Agreement by July 31 of a fiscal year. A Non-Appropriation Event is deemed to occur on

August 1 of a fiscal year in which a Non-Appropriation Event as described in clause (a) occurs. In the case of a Non-Appropriation Event described in clause (b), a Non-Appropriation Event shall be deemed to occur on the due date of any MDOT Payment which cannot be paid when due because an insufficient amount was appropriated.

Contractual obligations of MDOT, including MDOT's contractual obligations under the Project Agreement, may be enforced against MDOT for breach of contract in the State of Michigan Court of Claims, provided, that, no claims may be made against MDOT for a Non-Appropriation Event. The Court of Claims is a statutorily created court of limited jurisdiction over suits and claims of a contractual nature for money against the State or any of its departments or agencies. The Court of Claims Act sets forth the manner in which judgments against the State are satisfied and provides in part that judgments shall be paid from an appropriation made by the Legislature. There is no assurance that the Legislature would make such an appropriation for any judgment against MDOT. The State possesses the power, through appropriate legislation, to abolish the Court of Claims.

The Project Agreement also specifically provides that nothing in the Project Agreement shall be construed to limit the future issuance of bonds or securing of other indebtedness (whether on parity or junior to the existing pledges for bonds), for which the debt service of current and future issuances will be prioritized ahead of any MDOT Payment. (See "—MDOT Revenue Dedicated Bonds" below)

<u>The State of Michigan Budgetary Process</u>. The Constitution of the State (the "Michigan Constitution") requires the Governor of the State (the "Governor") to propose an executive budget for state activities on an annual basis for the ensuing fiscal year (the "Executive Budget"). By law, the Executive Budget must be submitted to the State legislature within thirty days after the State legislature convenes in regular session on the second Wednesday in January. However, when a newly elected Governor is inaugurated into office, sixty days are allowed to prepare the proposal.

A Revenue Estimating Conference takes place in May of each year. Its purpose is to provide an updated consensus forecast of anticipated revenues for the Executive Budget. Upon completion of the revised consensus revenue estimate, legislative leadership meets with the Governor and the State Budget Director to establish final spending targets for each state department. While there is no specific legal time requirement for passage of the budget bills, this task is expected to be accomplished prior to the beginning of the new fiscal year. In recent years, appropriations bills have usually been considered and passed in April by the first house, in early June by the second house, and final action is usually completed in July.

The same procedures related to gubernatorial approval of other legislation also apply to appropriation bills. However, the Governor has additional authority to veto any distinct item or items ("line item") appropriating money in any appropriation bill. If the Legislature were to add any specific projects to the MDOT budget as a line item, the Governor may veto those projects' line item. The parts approved become law. Vetoed items are void unless the State legislature overrules the veto by a 2/3 vote of the members elected to and serving in each house. An appropriation line item vetoed by the Governor and not subsequently overridden by the State legislature is not funded unless another appropriation for that line item is enacted by the State legislature.

Each department prepares the allotment of appropriations and may request revisions, legislative or administrative transfers, or supplemental appropriations. The State Budget Office must approve revisions to allotments. Transfer of funds other than administrative transfers within a department must be submitted by the State Budget Office to the House and Senate Appropriations Committees. Expenditure increases for a new program or for the expansion of an existing program cannot be made until the availability of money has been determined and the program has been approved and appropriated by the State legislature. The Governor and the State legislature act on supplemental appropriation bills in a manner similar to original appropriations.

<u>MDOT's Budget</u>. In support of the Governor's Executive Budget, MDOT begins the development of each new fiscal year budget in August, approximately thirteen to fourteen months prior to the beginning of the new fiscal year. By October, MDOT submits its budget proposals to the State Budget Office. The State Budget Director makes preliminary budget recommendations to the Governor based on staff evaluations of the funding proposals. These recommendations are finalized during the next few months. The Revenue Estimating Conference held each January is a major part of the budget process. Participants of this conference include the State Budget Director and Directors of the House and Senate Fiscal Agencies, and the State Treasurer. During the conference, national and state economic indicators are used to formulate an accurate prediction of revenue available for appropriation in the upcoming fiscal year. Before and after the Revenue Estimating Conference, the State Budget Office, the Executive Office, and the state departments hold meetings to review requests and prepare recommendations. The Governor makes final budget decisions in December/January, prior to the presentation to the State legislature. During the budget presentation, the State Budget Director on behalf of the Governor presents the budget and accompanying explanations, recommendations, and legislation to the State legislature. This generally takes place in early February during a joint session of the House and Senate Appropriations Committees. By law, all the appropriation bills are introduced in both houses of the State legislature and are divided between the houses for consideration. The appropriation bills usually receive more detailed hearings in the house of origin.

MDOT's five-year capital plan must be approved by the State Transportation Commission. See "PROJECT PARTICIPANTS – The Michigan Department of Transportation" for more information regarding the State Transportation Commission.

MDOT's budget appropriation is funded primarily by dedicated tax revenues, fees, and revenues from federal agencies which are deposited into the following major funds:

- 1. Special Revenue
 - a. The Michigan Transportation Fund (MTF)
 - b. The Comprehensive Transportation Fund (CTF)
- 2. Debt Service
 - a. Combined State Trunk Line Bond and Interest Redemption Fund
 - b. Combined Comprehensive Transportation Bond and Interest Redemption Fund
- 3. Capital Projects
 - a. The State Trunk Line Fund (STF)
 - b. The State Aeronautics Fund (SAF)
 - c. Blue Water Bridge Fund
 - d. Combined State Trunk Line Bond Proceeds Fund
 - e. Combined Comprehensive Transportation Bond Proceeds Fund

As of December 31, 2017, Michigan's highway network under the control of MDOT consisted of 29,702 lane miles of highways and 4,844 bridges (spans over 20 feet). Although only 8% of Michigan's roads fall under MDOT jurisdiction, such roads carry over 53% of the total vehicular miles traveled in the State. The highways, roads and streets under MDOT's jurisdiction consisting of the interstate freeways, the Michigan expressway and arterial connector highways, and the State primary roads are collectively referred to as the "State Trunk Line System."

The revenues of the State Trunk Line Fund include a portion of the motor vehicle fuel taxes, vehicle registration taxes, and interest and miscellaneous fees deposited into the Michigan Transportation Fund established pursuant to PA 51 of 1951. These restricted revenues are distributed to the State Trunk Line Fund from the MTF, based on the formula in PA 51 of 1951, and are made available to fund the annual appropriations for the State Trunk Line Fund. In addition to state restricted revenues, the State Trunk Line Fund is funded with annual federal aid obligation authority from the FHWA. From funds appropriated to the State Trunk Line Fund, the priority of funding is outlined by PA 51 of 1951, which has as a first priority ahead of MDOT Payments, among other obligations, the payment of debt service for any STF or GARVEE bond issuances (See "—MDOT Revenue Dedicated Bonds" below). MDOT intends to use a combination of federal aid and state-restricted revenues from the MDOT budget line-item "*State Trunkline federal aid and road and bridge construction*" appropriation to fund the payments, MDOT has not pledged nor is MDOT contractually obligated to use such sources to make the MDOT Payments. See APPENDIX L—"SUMMARY OF CERTAIN PROVISIONS OF THE MICHIGAN CONSTITUTION AND ACT 51."

The funding for the MDOT Payments are included in the appropriation for the MDOT budget line-item "State Trunkline federal aid and road and bridge construction", and therefore not specifically identified in the appropriation bill.

MDOT Funds

Four funds (MTF, CTF, STF, and the SAF) account for over 91% of MDOT's total state sources of funding, with the balance covered by bond proceeds. MDOT's most significant interfund transaction is the distribution of Michigan Transportation Fund (MTF) revenues to the State Trunk Line Fund (STF) and Comprehensive Transportation Fund (CTF). This distribution is in accordance with Section 247.660 of Public Act 51 of 1951, as amended. Before the distribution is calculated, various deductions are taken from MTF's total gross receipts, such as rail grade crossings, local bridge fund, moveable bridge fund, wetland mitigation fund, and \$50 million set aside for STF bond debt service. After CTF's balance is distributed, additional deductions are taken for the Local Bridge program, the Economic Development program, and the Local Road program. Three of the four cents a gallon that MTF receives for gasoline taxes is then added to the total. The remaining penny is dedicated to bridge repair and is distributed evenly between STF and the Local Bridge fund. From the three of four cents a gallon that is distributed from gasoline taxes to the MTF, a portion of this revenue is earmarked to the Local Agency Wetland Mitigation and Moveable Bridge Programs. STF receives 39.1% of the remaining balance.

<u>Michigan Transportation Fund</u>. The Michigan Transportation Fund (MTF) established by Public Act 51 of 1951, Section 10, as amended, is established in the state treasury as a separate fund. MTF is a receiving fund for the several tax revenues dedicated to highway purposes. Transfers are made to state agencies to pay the cost of collection of the dedicated revenues and to the State Trunk Line Fund, Comprehensive Transportation Fund, the Economic Development Sub-Fund, Local Bridge Sub-Fund, and the Michigan Conservation and Recreation Legacy Fund in accordance with the statutory formula. Expenditures consist of distributions to counties, cities, and villages for highway purposes in accordance with statutory formula.

<u>Comprehensive Transportation Fund</u>. The Comprehensive Transportation Fund (CTF) was created for planning, developing, and funding public transportation systems within the State. It was created by Public Acts 326, 327, and 328 of 1972, and Public Act 197 of 1973. In 1975, Public Acts 195, 196, and 239 were enacted, providing further additions and amendments to the laws governing this fund. Fund revenues consist primarily of federal revenues, a portion of vehicle-related sales tax, and transfers from the MTF. Expenditures and transfers are for administration, transit and intercity bus operating and capital assistance, debt service, and rail freight services and safety programs. In accordance with statutory provisions, any unencumbered balance at fiscal year-end lapses and reverts to the fund for appropriation in the following fiscal year.

<u>State Trunk Line Fund.</u> The State Trunk Line Fund (STF) provides for construction and maintenance of highways and its overall budget is subject to annual legislative review and appropriation, but the State Transportation Commission has significant discretion in determining the funding of individual projects. Major funding sources for the State Trunk Line Fund include transfers from the Michigan Transportation Fund, federal aid, and local participation. Expenditures and transfers, in order of priority, are for debt service, Economic Development Fund, rail grade crossing fund, grade crossing surface account, operating expenses, highway maintenance, and construction. See "Use of Specific Taxes and Limitations" in Appendix L. In accordance with the annual appropriation act, unencumbered balances at fiscal year-end are transferred to the road and bridge construction account.

All the operation and maintenance expenditures for the State Trunk Line System as well as the general operating costs of MDOT related to State Trunk Line Fund operations are funded from the State Trunk Line Fund in the order noted above and were approximately \$314 million in the fiscal year ended September 30, 2017. Operation and maintenance includes such practices as plowing snow, resealing, patching, guardrail and shoulder repair, and other work required on a frequent basis to assure the continued safe operation of the State Trunk Line System.

Moneys remaining in the State Trunk Line Fund after payment of debt service on any outstanding State Trunk Line bonds, operation and maintenance costs, and general operating costs, are available to pay for capital improvements to the State Trunk Line System and the State's matching share of federally funded State Trunk Line System construction projects, including the MDOT Payments. In the fiscal year ended September 30, 2017, MDOT expended approximately \$876.0 million of State Trunk Line Fund moneys for capital improvements to the State Trunk Line System. During fiscal year ended September 30, 2017, the federal government contributed \$776.9 million to capital improvement projects. See APPENDIX L— "SUMMARY OF CERTAIN PROVISIONS OF THE MICHIGAN CONSTITUTION AND ACT 51" and APPENDIX M—"EXCERPTED FINANCIAL STATEMENTS (EXCLUDING NOTES TO FINANCIAL STATEMENTS) —STATE TRUNK LINE FUND AND MICHIGAN TRANSPORTATION FUND."

MDOT Payments under the Project Agreement.

MDOT Payments under the Project Agreement are anticipated to be paid from the MDOT budget line-item "*State Trunkline federal aid and road and bridge construction*," which consist of portions of funding from both (i) the State Trunk Line Fund and (ii) federal grants received each year by the State under the Federal-Aid Highway Program. MDOT Payments do not constitute bonds, notes or other obligations of MDOT under Section 18b or 18d of Act 51 and are not secured by a pledge of State Trunk Line Fund monies or federal aid monies.

Table 1 below shows the appropriation history since fiscal year 2011 of the MDOT budget lineitem "*State Trunkline federal aid and road and bridge construction*." As shown, the funding for the "*State Trunkline federal aid and road and bridge construction*" budget line item has grown from \$759.1 million in fiscal year 2011 to \$1.10 billion in fiscal year 2018.

The highest annual scheduled Availability Payment represents approximately 5.6% of the fiscal year 2018 "*State Trunkline federal aid and road and bridge construction*" budget line item.

	Michigan Department of Transporation					
State Road and Bridge Construction Appropriation History - STF and Federal Only						
	Public Act	State Trunkline Funds	Federal Funds	Total		
FY2011	PA 192 of 2010	\$ 46,099,400	\$ 713,019,500	\$ 759,118,900		
FY2012	PA 63 of 2011	63,110,700	742,092,000	805,202,700		
FY2013	PA 200 of 2012	161,853,900	742,092,000	903,945,900		
FY2014	PA 59 of 2013	63,194,200	742,092,000	805,286,200		
FY2015	PA 252 of 2014	27,976,500	742,277,800	770,254,300		
FY2016	PA 84 of 2015	56,805,200	742,277,800	799,083,000		
FY2017	PA 268 of 2016	251,464,000	757,714,800	1,009,178,800		
FY2018	PA 107 of 2017	317,585,200	783,367,300	1,100,952,500		

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK] Table 1

Source: MDOT

MDOT Revenue Dedicated Bonds.

MDOT periodically issues long-term bonds for specific purposes, with the requirement that debt service payments on such bonds is to come strictly from designated revenue sources as applicable, including State Trunk Line Funds (STF), Comprehensive Transportation Funds (CTF) and federal grants. The State's general credit does not support such bonds. Public Act 51 of 1951, as amended, provides that monies deposited in the STF and/or the CTF are appropriated for specific purposes, with debt service being the first priority. A sufficient portion of the STF and the CTF is appropriated to pay, when due, the principal of and interest outstanding on bonds and notes. The debt service on any MDOT issued STF bonds has first priority on funds in the State Trunk Line Fund in all respects. See APPENDIX L-"SUMMARY OF CERTAIN PROVISIONS OF THE MICHIGAN CONSTITUTION AND ACT 51-Issuance of Bonds and Notes." As of the date of this official statement, MDOT's STF and CTF bonds are rated "AA+", "Aa2", and "AA" by S&P, Moody's, and Fitch, respectively. More recent issues of MDOT's STF and CTF bonds are not rated by Fitch. Such ratings on MDOT's STF and CTF bonds reflect only the respective views of the rating agencies and any desired explanation of the significance of such ratings should be obtained from the rating agency furnishing the same. A rating is not a recommendation to buy, sell or hold any of MDOT's STF and CTF bonds. There is no assurance that any such ratings will continue for any given period of time or that any such ratings will not be revised downward, suspended or withdrawn entirely if, in the judgment of each rating agency, circumstances so warrant. The ratings on MDOT's STF and CTF bonds are shown for information purposes only and are not the ratings on the Series 2018 Bonds. By inclusion of the ratings on MDOT's STF and CTF bonds in this Official Statement for information purposes only, MDOT is not entering into any new Rule 15c2-12 continuing disclosure obligations with respect to MDOT's STF and CTF bonds. The Series 2018 Bonds have their own independent ratings. See "RATINGS" herein.

In addition, MDOT has previously issued Grant Anticipation Obligations, or GARVEEs, secured by the state share of all federal grants received each year by the State under the Federal-Aid Highway Program. The debt service on any MDOT issued GARVEE bonds has first priority on the state share of all federal grants received each year by the State. See APPENDIX L—"SUMMARY OF CERTAIN PROVISIONS OF THE MICHIGAN CONSTITUTION AND ACT 51—Issuance of Bonds and Notes." As of the date of this official statement, MDOT's GARVEE bonds are rated "AA" and "A2" by S&P and Moody's, respectively. Such ratings on MDOT's GARVEE bonds reflect only the respective views of the rating agencies and any desired explanation of the significance of such ratings should be obtained from the rating agency furnishing the same. A rating is not a recommendation to buy, sell or hold any of MDOT's GARVEE bonds. There is no assurance that any such ratings will continue for any given period of time or that any such ratings will not be revised downward, suspended or withdrawn entirely if, in the judgment of each rating agency, circumstances so warrant. The ratings on MDOT's GARVEE bonds are shown for information purposes only and are not the ratings on the Series 2018 Bonds. By inclusion of the ratings on MDOT's GARVEE bonds in this Official Statement for information purposes only, MDOT is not entering into any new Rule 15c2-12 continuing disclosure obligations with respect to MDOT's GARVEE bonds. The Series 2018 Bonds.

MDOT Payments under the Project Agreement are anticipated to be paid from the MDOT budget line-item "*State Trunkline federal aid and road and bridge construction*", which consist of portions of funding from both (i) the State Trunk Line Fund and (ii) federal grants received each year by the State under the Federal-Aid Highway Program. MDOT Payments do not constitute bonds, notes or other obligations of MDOT under Section 18b or 18d of Act 51 and are not secured by a pledge of State Trunk Line Fund monies or federal aid monies.

See Tables 2 and 3 below for pro-forma debt service on State Trunk Line Fund bonds and funds available from the State Trunk Line Fund for MDOT obligations after debt service on such MDOT Revenue Dedicated Bonds.

Table 2

HISTORICAL PRO-FORMA DEBT SERVICE COVERAGE ON THE OUTSTANDING BONDS

State Trunk Line Fund Historical Pro Forma Debt Service Coverage on Outstanding Bonds (in millions)

	Fiscal Year Ended September 30 2018 ⁽³⁾
Constitutionally Restricted Michigan Transportation Fund (MTF) Revenues:	
Motor Fuel Taxes	\$1,451.5
Registration Taxes	1,288.0
Miscellaneous Fees	44.0
Total:	\$2,783.5
Less: Deductions	489.4
Constitutionally Restricted Revenues Available for Distribution by Formula	\$2,294.1
Constitutionally Restricted Revenues Transferred by Formula	\$911.0
Additional Constitutionally Restricted Revenues ⁽¹⁾	125.6
Total Constitutionally Restricted Revenues Available for Debt Service:	\$1,036.6
Maximum Future Annual Debt Service	
on the Outstanding Bonds ⁽²⁾	160.8
Debt Service Coverage	6.4x

Note: Line items may not add to totals due to rounding.

(1) Includes distribution to the State Trunk Line Fund for subsequent allocation to the Local Program Fund, the Transportation Economic Development Fund, and debt service.

(2) Does not include any previously refunded bonds.

(3) Projected. There can be no assurance that actual revenues will be generated in the amounts shown.

Source: State Budget Office, annual financial reports and annual reports of MDOT.

Table 3

HISTORICAL PRO-FORMA DEBT SERVICE COVERAGE ON OUTSTANDING BONDS

State Trunk Line Fund Funds Available for Program After Debt Service (in millions)

	<u>Fiscal Year Ended September</u>
	<u>30, 2018⁽²⁾</u>
Constitutionally Restricted	
Revenues Available for Debt Service	\$1,036.6
Actual Debt Service	160.8
Constitutionally Restricted Revenues Available	
After Debt Service	\$875.8
Additional Non-Federal Revenues ⁽¹⁾	41.5
Total Non-Federal Revenues Available After Debt Service for Program Note: Line items may not add to totals due to rounding.	\$917.3

(1) Includes State Trunkline Fund investment earnings, sales of assets, and miscellaneous revenues as well as Michigan Transportation Fund other revenues.

(2) Projected. There can be no assurance that actual revenues will be generated in the amounts shown.

Source: MDOT.

Federal Aid.

The State annually receives grant proceeds, federal highway reimbursements and other federal highway assistance from the federal government under the Federal Aid-Highway Program established under Chapter 1 of Title 23, United States Code, ("Title 23") or any successor legislation thereto ("Federal Highway Reimbursements"), a portion of which (the "State Share") is available for use by MDOT in connection with highway and bridge projects administered by MDOT. The amount of funds available to the State is subject to authorization and periodic reauthorization by Congress and to approval on an annual basis by the United States Secretary of Transportation. As such, the State, as well as other state recipients of such highway reimbursements, compete, in reauthorization processes, for such funds with other national funding priorities. The State has previously issued bonds the payment of principal of and premium, if any, and interest on such bonds is a first charge lien, without preference of one such bond over another, against the State Share money received. Payment of principal of and premium, if any, and interest on such bonds from the State Share of Federal Highway Reimbursements shall be subject to an appropriation each year by the State Legislature in an amount sufficient to make payments. Under federal law, State Share funds can only be used for purposes permitted by the Federal-Aid Highway Program. The State Transportation Commission and the Director have covenanted in the resolutions for such bonds to take all actions within their control to cause the required annual appropriation to be included each year in MDOT's appropriations legislation.

See Table 4 below for historic and projected FHWA receipts.

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Table 4

State Share of Federal Aid Revenues for the Michigan Department of Transportation⁽¹⁾ Federal Fiscal Years 2005 through 2012 under SAFETEA-LU Federal Fiscal Years 2013 through 2015 under MAP-21 Federal Fiscal Years 2016 and 2017 and Projected through 2020 under FAST Act

Federal		Obligation	
<u>Fiscal Year</u>	<u>Apportionments⁽²⁾</u>	<u>Authority⁽²⁾</u>	Actual Receipts ⁽³⁾
2005(4)	\$ 770,400,504	\$ 644,814,024	\$ 805,330,000
2006 ⁽⁴⁾	765,750,376	660,764,290	808,409,000
2007(4)	828,532,468	781,131,812	889,896,000
2008(4)	805,918,202	769,543,294	748,660,000
2009(4)	790,886,335	761,400,000	943,918,000
2010 ⁽⁴⁾	788,673,824	763,749,676	993,377,000
2011(4)	814,279,984	782,813,325	1,091,420,000
2012(4)	758,574,571	755,847,815	776,400,000
2013(5)	764,789,753	809,497,265	880,305,000
2014 ⁽⁵⁾	762,166,123	770,177,347	876,669,000
2015 ⁽⁵⁾	763,821,456	764,642,039	907,784,000
2016 ⁽⁶⁾	802,517,096	837,780,264	847,930,000
2017(6)	814,835,227	894,868,116	850,243,000
2018(7)	831,392,000	837,608,000	N/A ⁽⁸⁾
2019(7)	854,051,807	811,349,217	N/A ⁽⁸⁾
2020 ⁽⁷⁾	874,505,894	830,780,599	N/A ⁽⁸⁾

(1) Amounts do not include federal American Recovery and Reinvestment Act stimulus dollars.

(2) Source: Michigan Department of Transportation.

⁽³⁾ Information in this Table for Actual Receipts has been obtained from the State's Comprehensive Annual Financial Report ("CAFR") under the section heading entitled "FINANCIAL SECTION--Combining and Individual Fund Statements and Schedules-Non-Major Funds--Governmental Funds--Capital Projects Funds--Combining Statement of Revenues, Expenditures, and Changes in Fund Balances" and was obtained by combining the amounts for federal agencies under "Revenues" for the State Trunk Line Fund and for the Combined State Trunk Line Fund Bond Proceeds Fund. The current CAFR is available at, and the CAFR for subsequent years is expected to be available at, http://www.michigan.gov/budget/. Actual receipts may be more or less than Obligation Authority due to the timing of receipt and expenditure of funds.

⁽⁴⁾ SAFETEA-LU authorization covered federal fiscal years 2005 through 2012.

⁽⁵⁾ MAP-21 authorization covered federal fiscal years 2013 through 2015.

⁽⁶⁾ Actual. FAST Act authorization covered federal fiscal years 2016 and 2017.

⁽⁷⁾ Projected. FAST Act is a five-year authorization that covers federal fiscal years 2016 through 2020. It is anticipated, based on the history the FHWA, that the authorization will be renewed under a new name for another multi-year period for 2021 and beyond.

⁽⁸⁾ Actual receipts not available for future years.

Road Funding Package.

In November 2015, the Michigan Legislature passed, and the Governor signed into law, a package of bills dealing primarily with transportation funding. The Road Funding Package provided additional funding for state transportation programs through increases in state motor fuel taxes and vehicle registration taxes – all for credit to the MTF. In total, MTF revenues have grown by \$715 million from fiscal year 2016 to fiscal year 2018 as a result of the Road Funding Package.

One of the bills in the package, House Bill 4738, increased the motor fuel tax for both gasoline and diesel motor fuel to 26.3 cents per gallon effective January 1, 2017. Prior to January 1, 2017, the tax on gasoline had been 19 cents per gallon and for diesel motor fuel, 15 cents per gallon. In addition, beginning January 1, 2022, motor fuel taxes would be indexed to inflation, with annual increases capped at 5%. Another bill in the package, House Bill 4736, amended the Michigan Vehicle Code to increase vehicle registration taxes by 20% for most Michigan-registered motor vehicles. This increase was also effective January 1, 2017.

In addition to increases in dedicated transportation taxes, the Road Funding Package also provided for the redirection of income tax revenue for transportation purposes. This earmarking is to be phased in, beginning in FY2018-19, with the redirection of \$150.0 million to the MTF. The earmark increases to \$325.0 million in FY 2019-20 and \$600 million for FY 2020-21 and each fiscal year thereafter. When the Road Funding Package is fully implemented in FY 2020-21, the anticipated \$1.2 billion increase in MTF revenue would result in an additional \$459.0 million in STF revenue as compared to the FY 2015-16 baseline.

Collateral Generally

The Bond Obligations will constitute direct, senior secured, absolute and unconditional obligations of the Company, which will rank *pari passu* and ratably without any preference or priority among themselves or Additional Parity Bonds, and will rank in priority to all unsecured obligations of the Company and will be payable from the Trust Estate under the Indenture, including the payments to be made by the Company to the Issuer under the Senior Loan Agreement, and secured by the Security Interests in the Collateral described below created for the benefit of the Collateral Agent on behalf of the Owners of the Series 2018 Bonds and other indebtedness secured thereby, pursuant to the Security Documents:

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

- (i) the Project Revenues;
- (ii) the Project Agreement, the Design-Build Contract and the Design-Build Guarantee;
- (iii) the Project Accounts; and
- (iv) all other amounts received or receivable by the Company under the Project Agreement and all other Assigned Agreements; and
- (b) the membership interests of the Company and the other Pledged Collateral under the Pledge Agreement.

The Series 2018 Bonds

Except for revenues received pursuant to the Senior Loan Agreement as described in the following sentence, the Owners of the Series 2018 Bonds may not look to any revenues of the Issuer or the State for payment of the Series 2018 Bonds. The only sources of payment of the Series 2018 Bonds are payments provided by the Company pursuant to the Senior Loan Agreement and the Security Interests that are part of the Trust Estate.

THE SERIES 2018 BONDS ARE LIMITED OBLIGATION REVENUE BONDS OF THE ISSUER. THE PRINCIPAL OF AND PREMIUM, IF ANY, AND INTEREST ON THE SERIES 2018 BONDS ARE PAYABLE SOLELY AND EXCLUSIVELY FROM THE TRUST ESTATE, WHICH INCLUDES THE REVENUES AND OTHER FUNDS, AND INVESTMENT EARNINGS THEREON, AND MONEYS PLEDGED AND ASSIGNED UNDER THE INDENTURE, INCLUDING LOAN REPAYMENTS RECEIVED BY THE ISSUER PURSUANT TO THE SENIOR LOAN AGREEMENT. NEITHER THE ISSUER NOR THE STATE, NOR ANY POLITICAL SUBDIVISION OF THE STATE SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE SERIES 2018 BONDS OR FOR ANY PLEDGE OR THE PERFORMANCE OF ANY PLEDGE. OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER EXCEPT AS SET FORTH IN THE INDENTURE. NONE OF THE SERIES 2018 BONDS OR ANY OF THE AGREEMENTS OF THE ISSUER IN THE INDENTURE OR THE SENIOR LOAN AGREEMENT SHALL REPRESENT OR CONSTITUTE A DEBT OF THE ISSUER, THE STATE, OR ANY POLITICAL SUBDIVISION OF THE STATE OR A PLEDGE OF THE FAITH AND CREDIT OF THE STATE, THE ISSUER OR ANY POLITICAL SUBDIVISION OF THE STATE OR A PLEDGE OF THE TAXING POWER OF THE STATE OR POLITICAL SUBDIVISION OF THE STATE, AND THE HOLDERS AND BOOK-ENTRY INTEREST OWNERS OF THE SERIES 2018 BONDS SHALL HAVE NO RIGHT TO HAVE MONEYS RAISED BY TAXATION BY THE STATE OR ANY POLITICAL SUBDIVISION THEREOF **OBLIGATED OR PLEDGED FOR THE PAYMENT OF DEBT SERVICE. THE SERIES 2018 BONDS** SHALL NOT BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF OR A LOAN OF THE CREDIT OF OR THE TAXING POWER OR A MORAL OBLIGATION OF ANY OF THE ISSUER OR THE STATE OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE ISSUER HAS NO TAXING POWER.

Senior Debt Service Reserve Account

The Senior Debt Service Reserve Account will be established solely for the benefit of the relevant Secured Parties and will be held by the Collateral Agent, and, except after an Enforcement Action has been taken, the Security Interest thereon will be maintained, for the exclusive benefit of only such relevant Secured Parties. As of the Closing Date, there are no Additional Parity Bonds or Other Permitted Senior Secured Indebtedness outstanding and the Bondholders will primarily have the benefit of the Security Interest. The Senior Debt Service Reserve Account will be funded not later than three (3) Business Days after receipt of Milestone Payment 3 in an amount equal to the Senior Debt Service Reserve Required Balance (as calculated on such date) and thereafter the Collateral Agent will cause amounts in the Revenue Account to be transferred to the Senior Debt Service Reserve Required Balance. The Collateral Agent will cause any amounts on deposit in the Senior Debt Service Reserve Account in excess of the Senior Debt Service Reserve Required Balance (including as a result of funding of the Senior Debt Service Reserve Account with an Acceptable Letter of Credit) to be deposited into the Revenue Account in accordance with the Collateral Agency Agreement or in the manner described in the fourth paragraph of APPENDIX D — SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT under the heading "The Project Accounts_Reserve Accounts; Reserve Letters of Credit."

The Collateral Agent will use the funds on deposit in the Senior Debt Service Reserve Account (without the requirement of a Funds Transfer Certificate) pursuant to the Collateral Agency Agreement as follows: (i) if on any Transfer Date immediately preceding or occurring on an Interest Payment Date or Principal Payment Date, as applicable, with respect to the Senior Secured Obligations, the funds on deposit in (x) the interest or principal sub-account under the Collateral Agency Agreement and (y) the Revenue Account and the Equity Lock-Up Account (in each case, as further detailed in the Collateral Agency Agreement) are insufficient to pay the principal, Redemption Price or interest on the Senior Secured Obligations, as applicable, on the applicable Interest Payment Date or Principal Payment Sub-Account or the Senior Interest Payment Sub-Account or the Senior Principal payment sub-account relating to such other Senior Secured Obligations, as applicable, for payment of interest or principal, as applicable, that is becoming due and payable on the Senior Secured Obligations as of such Interest Payment Date or Principal payment sub-account relating to such other Senior Secured Obligations, as applicable, for payment of interest or principal, as applicable, that is becoming due and payable on the Senior Secured Obligations as of such Interest Payment Date or Principal Payment Date; and (ii) following the taking of an Enforcement Action, moneys in such Senior Debt Service Reserve Account shall be applied in the manner set forth in the Collateral Agency Agreement. See "PROJECT ACCOUNTS AND FLOW OF FUNDS—Description of Project Accounts—Senior Debt Service Reserve Account."

The Company may, upon notice to the Collateral Agent and the relevant Secured Parties, substitute all or any portion of the cash or Permitted Investments on deposit (or required to be on deposit) in the Senior Debt Service Reserve Account with an Acceptable Letter of Credit in favor of the Collateral Agent for purposes of the Senior Debt Service Reserve Account; provided, however, that if any proceeds of the Series 2018 Bonds are on deposit in the Senior Debt Service Reserve Account, an opinion of Bond Counsel that such substitution will not adversely affect the tax-exempt status of the Series 2018 Bonds shall be required.

Security Agreement

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

Security Interest

In order to secure the prompt irrevocable payment in full when due of the Secured Obligations (whether at stated maturity, upon acceleration, because of mandatory prepayment or otherwise) and to secure the Company's performance of all other Secured Obligations now existing or hereafter arising, the Company will pledge and grant to the Collateral Agent, for the benefit of the Secured Parties, a first priority Security Interest on all of its right, title and interest in and to all of its personal property, whether now owned or in the future acquired by it and whether now existing or in the future coming into existence and wherever located, aside from the Excluded Assets. Such collateral includes the Company's rights, title and interest in, to and under the Project Agreement, the Design-Build Contract, the Design-Build Guarantee, each other Material Project Contract, the DB Performance Support, the D&C Performance Security, the Series 2018 GIC, moneys in all Project Accounts, all "securities accounts" (as defined in the Uniform Commercial Code) and all accounts and general intangibles (including payment intangibles), instruments, equipment, inventory, agreements, contracts, tangible and intangible property and fixtures, governmental approvals, commercial tort claims, proceeds of insurance policies and other associated proceeds and profits to the extent permitted by law and to the extent of the Company's rights, as further detailed in the Security Agreement; provided that the Secured Obligations will not be secured by the Distribution Account, the PA Handback Account or the Series 2018 Rebate Fund and certain other excluded assets as set forth in the Security Agreement (the "Excluded Assets").

Notwithstanding anything to the contrary in the Security Agreement, the Company will remain liable for all obligations under and in respect of the Collateral and nothing contained in the Security Agreement is intended to, or will be, a delegation of its duties to the Collateral Agent or the Secured Parties.

Remedies

If an Event of Default will have occurred and be continuing, to the extent permitted by applicable law, the Collateral Agent may exercise the following remedies: (a) the right to require the Company to assemble the Collateral owned by it at such place or places, reasonably convenient to both the Collateral Agent and the Company, designated in the Collateral Agent's request; (b) the right to make any reasonable compromise or settlement with respect to any of the Collateral and to extend the time of payment, arrange for payment in installments, or otherwise modify the terms of all or any part of the Collateral; (c) the right to, in its name or in the name of the Company or otherwise, demand, sue for, collect or receive any money or property at any time payable or receivable on account of or in exchange for all or any part of the Collateral, but will be under no obligation to do so; (d) the right to, upon 15 days' prior written notice to the Company of the time and place, with respect to the Collateral or any part thereof that will then be or will thereafter come into the possession, custody or control of the Collateral Agent or the other Secured Parties (or any of their respective agents), sell, lease, assign or otherwise dispose of all or any part of such Collateral, at such place or places as the Collateral Agent deems best, and for cash or for credit or for future delivery (without thereby assuming any credit risk), at public or private sale, without demand of performance or notice of intention to effect any such disposition or of the time or place thereof (except such notice as is required above or by applicable statute and cannot be waived), and any of the Secured Parties or anyone else may be the purchaser, lessee, assignee or recipient of any or all of the Collateral so disposed of at any public sale or, to the extent permitted by law, at any private sale, and thereafter hold the same absolutely, free from any claim or right of whatsoever kind, including any right or equity of redemption (statutory or otherwise), of the Company, any such demand, notice and right or equity being expressly waived and released; (e) the right to exercise, all of the rights, remedies, powers and privileges with respect to the Collateral of a secured party under the UCC (whether or not the UCC is in effect in the jurisdiction where such rights, remedies, powers and privileges are asserted) and such additional rights, remedies, powers and privileges to which a secured party is entitled under the laws in effect in any jurisdiction where any rights, remedies, powers and privileges in respect of the Security Agreement or the Collateral may be asserted; (f) to the full extent provided by law, the right to have a court having jurisdiction appoint a receiver, which receiver will take charge and possession of and protect, preserve, replace and repair the Collateral or any part thereof, and manage and operate the same, and receive and collect all rents, income, receipts, royalties, revenues, issues and profits therefrom; and (g) the right to enforce one or more remedies provided under the Security Agreement, successively or concurrently, and such action shall not operate to estop or prevent the Collateral Agent from pursuing any other

or further remedy which it may have under the Security Agreement or by law, and any repossession or retaking or sale of the Collateral pursuant to the terms of the Security Agreement will not operate to release the Company until indefeasible payment of any deficiency in respect of the Secured Obligations has been made in cash.

Pledge Agreement

HoldCo (the "Pledgor") and the Collateral Agent, for the benefit of the Secured Parties, will enter into the Pledge Agreement.

Grant

The Pledgor, as collateral security for the prompt, complete, irrevocable and indefeasible payment in full when due (whether at stated maturity, upon acceleration, due to any optional or mandatory prepayment or otherwise) and performance of any and all of the Secured Obligations, will assign, pledge and grant to the Collateral Agent, for the benefit of the Secured Parties, a first priority Security Interest, subject to the limitations under the Pledge Agreement, in all of its respective right, title and interest, as further detailed in the Pledge Agreement, in and to the following property, whether now owned or hereafter acquired (the "Pledged Collateral"):

- (i) (a) all of its limited liability company interests in the Company; (b) all options, warrants and rights to purchase limited liability company interests in the Company and any security certificates or other documents, instruments or certificates representing its limited liability company interests in the Company and all dividends, distributions, cash, securities, instruments and other property from time to time paid, payable or otherwise distributed in respect of or in exchange for all or any part of its limited liability company interests in the Company and all proceeds thereof; (c) all rights to vote or otherwise control the Company; (d) all other rights as a member of the Company; and (e) all other rights under the LLC Agreement (collectively, the "Pledged Membership Interests");
- (ii) any Indebtedness owed to such Pledgor by the Company from time to time, including any instruments (as such term is defined in the UCC) or payment intangibles (as such term is defined in the UCC) evidencing or relating to such Indebtedness; and
- (iii) other than certain dividends and distributions that are permitted to be made under the Finance Documents, all proceeds, dividends and distributions payable with respect to products and accessions of and to any and all of the foregoing, including, without limitation, "proceeds" as defined in UCC, including whatever is received upon any sale, exchange, collection or other disposition of any of the Pledged Membership Interests, and any property into which any of the Pledged Membership Interests are converted, whether cash or non-cash proceeds, and any and all other amounts paid or payable under or in connection with any of the Pledged Membership Interests.

Additional Pledged Collateral

Upon obtaining any additional Pledged Collateral, including, without limitation, any additional Equity Interest in the Company issued in respect of any new equity investment or other consideration of any kind from the Pledgor, or any certificates or any other equity interests, whether as an addition to, in substitution for or exchange for any Pledged Collateral, Pledgor is obligated to hold such Pledged Collateral in trust for the Collateral Agent, segregate such Pledged Collateral from its other property or funds of the Pledgor, and promptly (and in any event, within ten (10) Business Days) deliver to the Collateral Agent the certificates or instruments evidencing such additional Pledged Collateral, if any, which shall be in suitable form for transfer by delivery, and shall be accompanied by duly executed instruments of transfer or assignment, where applicable, in blank, and accompanied by any required transfer tax stamps, all in form and substance reasonably satisfactory to the Collateral Agent (acting on the instructions of the Secured Parties).

Remedies

Subject to the terms of the Collateral Agency Agreement, upon the occurrence and during the continuance of an Event of Default, the Collateral Agent has the right to exercise, in addition to all other rights and remedies granted to it in the Pledge Agreement and in any other instrument or agreement securing, evidencing, or relating to the Secured Obligations, all rights and remedies with respect to the Pledged Collateral of a secured party under the UCC (whether or not the UCC is in effect in the jurisdiction where such rights, remedies, powers and privileges are

asserted) and such additional rights, remedies, powers and privileges to which a secured party is entitled under the laws in effect in any jurisdiction where any rights, remedies, powers and privileges in respect of the Pledge Agreement or the Pledged Collateral may be asserted, including the right, to the maximum extent permitted by law, to exercise all voting, consensual and other powers of ownership pertaining to the Pledged Collateral as if the Collateral Agent were the sole and absolute owner of the Pledged Collateral (and the Pledgor agrees to take all such action as may be reasonably appropriate to give effect to such right), provided, however, that in no event will the Pledgor be required, in the context of any foreclosure action or exercise of remedies contemplated under the Pledge Agreement, to register its Pledged Collateral with any state or federal securities regulatory agencies.

Without limiting the generality of the foregoing, the Collateral Agent, without demand of performance or other demand, presentment, protest, advertisement, or notice of any kind (except any notice required by law referred to below) to or upon the Pledgor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances, with respect to all or any part of its Pledged Collateral which will then be or will thereafter come into the possession, custody or control of the Collateral Agent or any of their respective agents, sell, lease, assign, give option or options to purchase, or otherwise dispose of all or any part of such Pledged Collateral (or contract to do any of the foregoing), at such place or places as the Collateral Agent deems best, for cash, for credit or for future delivery (without thereby assuming any credit risk) at public or private sale, and the Collateral Agent or any other Person may be the purchaser, lessee, assignee or recipient of any or all of the Pledged Collateral so disposed of at any public sale or, to the extent permitted by law, at any private sale, and thereafter hold the same absolutely free from any claim or right of whatsoever kind, including any right or equity of redemption (statutory or otherwise) of the Pledgor, any such demand, notice and right or equity being expressly waived and released. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the sale may be so adjourned.

Non-Recourse to Pledgor

Notwithstanding anything to the contrary contained in the Pledge Agreement, (a) neither Pledgor nor any Affiliates of the Company (collectively, the "Non-Recourse Parties"), or any past, present or future officers, directors, employees, advisors, shareholders, agents or representatives of any Non-Recourse Party will have any obligations or liabilities under the Finance Documents or be liable for any amount payable under the Pledge Agreement or any other Finance Documents, other than obligations or liabilities with respect to any Non-Recourse Party arising under any Finance Documents to which such Non-Recourse Party is a party; (b) no Secured Party will seek a money judgment or deficiency or personal judgment against any Non-Recourse Party for payment of the Indebtedness secured by the Pledge Agreement; and (c) no property or assets of any Non-Recourse Party, other than the Pledged Collateral, will be sold, levied upon or otherwise used to satisfy any judgment rendered in connection with any action brought with respect to the Pledge Agreement. The foregoing acknowledgments, agreements and waivers will survive the termination of the Pledge Agreement, will be enforceable by any Non-Recourse Party, and are a material inducement for Pledgor's execution of the Pledge Agreement.

Collateral Agency Agreement

The Collateral Agency Agreement will be entered into by the Company, the Collateral Agent, the Trustee and the Securities Intermediary and each other Secured Party that accedes to the Collateral Agency Agreement in accordance with the terms thereof.

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

All (i) net proceeds of the Series 2018 Bonds (in respect of the Series 2018 Loan); (ii) proceeds of all Equity Contributions, (iii) proceeds of Milestone Payments, (iv) Project Proceeds and (v) other amounts received by the Company, in its capacity as the Company, from any source whatsoever and other revenues from the operation of

the Project, will be deposited into certain Project Accounts, and the Company will irrevocably authorize the Collateral Agent to credit funds to or deposit funds in, and to withdraw and transfer funds from, each Project Account in accordance with terms of the Collateral Agency Agreement. The Project Accounts will be maintained at all times in New York, New York, or in the case of the Operating Account, in either New York, New York or at the Collateral Agent (or a Deposit Account Bank) branch office in Michigan. See "PROJECT ACCOUNTS AND FLOW OF FUNDS—Project Accounts," "PROJECT ACCOUNTS AND FLOW OF FUNDS—Flow of Funds," and for more detailed description of the Project Accounts and the Flow of Funds, see APPENDIX D—"SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT."

Direct Agreements

The following direct agreements will be entered into in connection with the design and construction of the Project:

(a) MDOT and the Company will enter into the PA Direct Agreement that will set forth certain assurances of the rights of the Owners of the Series 2018 Bonds with respect to the Project Agreement in the event of a default thereunder by the Company, including, subject to certain terms and conditions specified therein, step-in and cure rights, forbearance obligations of MDOT with respect to its exercise of remedies under the Project Agreement, rights of substitution and other rights of the Secured Parties.

(b) The Design-Build Contractor and the Design-Build Guarantors will enter into the Design-Build Lenders' Direct Agreement providing for their consent to the pledge and assignment of, and the granting of a lien on, all of the Company's right, title and interest in the Design-Build Contract and the Design-Build Guarantee, and certain assurances of the Collateral Agent's rights with respect to the Design-Build Contract and the Design-Build Guarantee generally, including, subject to certain terms and conditions specified therein, step-in and cure rights, forbearance obligations of the Design-Build Contractor with respect to its exercise of remedies under the Design-Build Contract, or the performance by the Design-Build Guarantors of their obligations under the Design-Build Guarantee, rights of substitution and other rights of the Collateral Agent for the benefit of the Secured Parties.

BOND INSURANCE

Bond Insurance Policy

Concurrently with the issuance of the Series 2018 Bonds, AGM will issue its Municipal Bond Insurance Policy (the "Policy") for the Series 2018 Bonds maturing on June 30, 2035, December 31, 2038 and June 30, 2048 (having a rate of 4.500%) (the "Insured Series 2018 Bonds"). The Policy guarantees the scheduled payment of principal of and interest on the Insured Series 2018 Bonds when due as set forth in the form of the Policy included as an exhibit to this Official Statement.

The Policy is not covered by any insurance security or guaranty fund established under New York, California, Connecticut or Florida insurance law. Such states' insurance security or guaranty funds, in any event, are not available to cover any municipal bond insurance policy.

Assured Guaranty Municipal Corp.

AGM is a New York domiciled financial guaranty insurance company and an indirect subsidiary of Assured Guaranty Ltd. ("AGL"), a Bermuda-based holding company whose shares are publicly traded and are listed on the New York Stock Exchange under the symbol "AGO". AGL, through its operating subsidiaries, provides credit enhancement products to the U.S. and global public finance, infrastructure and structured finance markets. Neither AGL nor any of its shareholders or affiliates, other than AGM, is obligated to pay any debts of AGM or any claims under any insurance policy issued by AGM.

AGM's financial strength is rated "AA" (stable outlook) by S&P, "AA+" (stable outlook) by KBRA and "A2" (stable outlook) by Moody's. Each rating of AGM should be evaluated independently. An explanation of the significance of the above ratings may be obtained from the applicable rating agency. The above ratings are not recommendations to buy, sell or hold any security, and such ratings are subject to revision or withdrawal at any time by the rating agencies, including withdrawal initiated at the request of AGM in its sole discretion. In addition, the rating agencies may at any time change AGM's long-term rating outlooks or place such ratings on a watch list for

possible downgrade in the near term. Any downward revision or withdrawal of any of the above ratings, the assignment of a negative outlook to such ratings or the placement of such ratings on a negative watch list may have an adverse effect on the market price of any security guaranteed by AGM. AGM only guarantees scheduled principal and scheduled interest payments payable by the issuer of bonds insured by AGM on the date(s) when such amounts were initially scheduled to become due and payable (subject to and in accordance with the terms of the relevant insurance policy), and does not guarantee the market price or liquidity of the securities it insures, nor does it guarantee that the ratings on such securities will not be revised or withdrawn.

Current Financial Strength Ratings

On June 26, 2018, S&P announced it had affirmed AGM's financial strength rating of "AA" (stable outlook). AGM can give no assurance as to any further ratings action that S&P may take.

On May 7, 2018, Moody's announced it had affirmed AGM's insurance financial strength rating of "A2" (stable outlook). AGM can give no assurance as to any further ratings action that Moody's may take.

On January 23, 2018, KBRA announced it had affirmed AGM's insurance financial strength rating of "AA+" (stable outlook). AGM can give no assurance as to any further ratings action that KBRA may take.

For more information regarding AGM's financial strength ratings and the risks relating thereto, see AGL's Annual Report on Form 10-K for the fiscal year ended December 31, 2017.

Capitalization of AGM

At September 30, 2018:

- The policyholders' surplus of AGM was approximately \$2,203 million.
- The contingency reserves of AGM and its indirect subsidiary Municipal Assurance Corp. ("MAC") (as described below) were approximately \$1,187 million. Such amount includes 100% of AGM's contingency reserve and 60.7% of MAC's contingency reserve.
- The net unearned premium reserves and net deferred ceding commission income of AGM and its subsidiaries (as described below) were approximately \$1,863 million. Such amount includes (i) 100% of the net unearned premium reserve and deferred ceding commission income of AGM, (ii) the consolidated net unearned premium reserves and net deferred ceding commissions of AGM's wholly owned subsidiary Assured Guaranty (Europe) plc ("AGE"), and (iii) 60.7% of the net unearned premium reserve of MAC.

The policyholders' surplus of AGM and the contingency reserves, net unearned premium reserves and deferred ceding commission income of AGM and MAC were determined in accordance with statutory accounting principles. The net unearned premium reserves and net deferred ceding commissions of AGE were determined in accordance with accounting principles generally accepted in the United States of America.

Incorporation of Certain Documents by Reference

Portions of the following documents filed by AGL with the SEC that relate to AGM are incorporated by reference into this Official Statement and shall be deemed to be a part hereof:

- (i) the Annual Report on Form 10-K for the fiscal year ended December 31, 2017 (filed by AGL with the SEC on February 23, 2018);
- (ii) the Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2018 (filed by AGL with the SEC on May 4, 2018);
- (iii) the Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2018 (filed by AGL with the SEC on August 2, 2018); and
- (iv) the Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2018 (filed by AGL with the SEC on November 9, 2018).

All consolidated financial statements of AGM and all other information relating to AGM included in, or as exhibits to, documents filed by AGL with the SEC pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, excluding Current Reports or portions thereof "furnished" under Item 2.02 or Item 7.01 of Form 8-K, after the filing of the last document referred to above and before the termination of the offering of the Series 2018 Bonds shall be deemed incorporated by reference into this Official Statement and to be a part hereof from the respective dates of filing such documents. Copies of materials incorporated by reference are available over the internet at the SEC's website at http://www.sec.gov, at AGL's website at http://www.assuredguaranty.com, or will be provided upon request to Assured Guaranty Municipal Corp.: 1633 Broadway, New York, New York 10019, Attention: Communications Department (telephone (212) 974-0100). Except for the information referred to above, no information available on or through AGL's website shall be deemed to be part of or incorporated in this Official Statement.

Any information regarding AGM included herein under the caption "BOND INSURANCE - Assured Guaranty Municipal Corp." or included in a document incorporated by reference herein (collectively, the "AGM Information") shall be modified or superseded to the extent that any subsequently included AGM Information (either directly or through incorporation by reference) modifies or supersedes such previously included AGM Information. Any AGM Information so modified or superseded shall not constitute a part of this Official Statement, except as so modified or superseded.

Miscellaneous Matters

AGM makes no representation regarding the Series 2018 Bonds or the advisability of investing in the Series 2018 Bonds. In addition, AGM has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding AGM supplied by AGM and presented under the heading "BOND INSURANCE".

FINANCING FOR THE PROJECT

Senior Debt

The initial senior debt to be incurred in connection with the financing of the Project will be comprised of the Series 2018 Bonds, which will be issued pursuant to the Indenture. Upon the issuance of the Series 2018 Bonds, all of the proceeds of such Series 2018 Bonds will be immediately loaned by the Issuer to the Company in accordance with and subject to the terms of the Senior Loan Agreement to be entered into between the Company and the Issuer.

Senior Loan Agreement

General. The Company and the Issuer will enter into a Senior Loan Agreement (the "Senior Loan Agreement"), pursuant to which the proceeds of the issuance of the Series 2018 Bonds will be loaned to the Company on the date of issuance of the Series 2018 Bonds, subject to the terms and conditions of the Senior Loan Agreement. The net proceeds received from the sale of the Series 2018 Bonds will be deposited directly into the Bond Proceeds Sub-Account of the Construction Account as required by the Collateral Agency Agreement. The Company will use the proceeds of the Series 2018 Loan solely to pay a portion of the Eligible Project Costs. In order to secure the payment of the Series 2018 Bonds, all the Issuer's rights in the Senior Loan Agreement (except for Reserved Rights) will be assigned to, and are subject to a Security Interest in favor of, the Trustee pursuant to the Indenture.

Compliance with the Indenture. In accordance with any applicable provisions of the Indenture, the Issuer will take any action directed by the Company to the extent required under the provisions of the Indenture or the Senior Loan Agreement. The Company will take all action required to be taken by, and will comply with all obligations of, the Company in the Indenture as if the Company were a party to the Indenture.

Prepayment Terms. The Company will have the option to prepay its obligations under the Senior Loan Agreement at the times and in the amounts as necessary to cause the Issuer to redeem the Series 2018 Bonds in accordance with the terms of the Indenture and the Series 2018 Bonds. The Issuer, at the request of the Company and at the Company's reasonable cost and expense, if applicable, will forthwith take all steps (other than the payment of funds necessary to effect such redemption) necessary under the applicable redemption provisions of the Indenture to effect redemption of all or part of the Outstanding Series 2018 Bonds, as may be specified by the

Company, on the date established for such redemption. For more information regarding the redemption terms, see "THE SERIES 2018 BONDS—Redemption of the Series 2018 Bonds."

Company to Provide Funds. In the event that proceeds derived from the Series 2018 Loan, or any other available (or to be available) funds, are not sufficient to finance the Project Costs, the Company will not be entitled to any reimbursement from the Issuer or the Trustee for the payment of such costs nor will the Company be entitled to any abatement, diminution or postponement of its payment obligations under the Senior Loan Agreement.

Covenants of the Company

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

Use of Proceeds; Tax Covenants

The Company will use the proceeds of the Series 2018 Loan solely to pay a portion of the Project Costs.

The Company will:

(a) use the proceeds of the Series 2018 Bonds only for the purposes described in Appendix F- "SUMMARY OF CERTAIN PROVISIONS OF THE SENIOR LOAN AGREEMENT—Loan to Finance Project Costs" and, for avoidance of doubt, at least ninety-five (95%) percent of the Series 2018 Loan proceeds will be used in a location permitted by 23 USC § 133(c) for a surface transportation project as defined in Section 142(m)(1)(A) of the Code and 23 USC § 133(b) as 23 USC § 133(b) was in effect on August 10, 2005;

(b) aid and assist the Issuer in connection with preparing and submitting to the IRS a Form 8038 (or other applicable information reporting statement) at the time and in the form required by the Code; provided that Company will not be responsible for late or non-conforming filings (except to the extent Company fails to timely provide information required for such filings);

(c) comply at all times with the Non-Arbitrage Certificate and not take any action, or omit to take any action, which, if taken or omitted, would violate its Non-Arbitrage Certificate;

(d) construct and operate the Project as a "qualified highway or surface freight transfer facility" within the meaning of Section 142(m) (1)(A) of the Code; and

(e) without limiting the generality of the foregoing, pay from time to time all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code and any temporary, proposed or final treasury regulations as may be applicable to the Series 2018 Bonds.

The Company <u>will not</u>:

(a) take any action or omit to take any action with respect to the Series 2018 Bonds, the proceeds thereof or any other funds of the Borrower if such action or omission (1) would cause the interest on the Series 2018 Bonds to lose its excludability from gross income for federal income tax purposes under Section 103 of the Code, (2) would cause interest on the Series 2018 Bonds to lose its exemption from income taxation in the State or (3) would otherwise violate the Non-Arbitrage Certificate;

(b) permit any use of the proceeds of the Series 2018 Bonds, or take or omit to take any action which would cause the Series 2018 Bonds to be classified as "arbitrage bonds" within the meaning of Section 148 of the Code; or

(c) sell, assign or otherwise transfer all or substantially all of its interest in the Project unless the Company, in addition to satisfying the other requirements of the Finance Documents, shall have delivered to the Trustee and the Issuer an opinion of Bond Counsel to the effect that such transaction will not adversely affect either the legality of the Series 2018 Bonds or the exclusion of interest on the Series 2018 Bonds from gross income of the holders thereof for Federal income tax purposes.

Project Accounts; Project Revenues

The Company will not establish and maintain any bank accounts except for (i) the Project Accounts, the Distribution Account, the Operating Account and such separate operating accounts as may be permitted by the Finance Documents, (ii) any accounts required to be established pursuant to the Project Agreement, (iii) any accounts as may be contemplated to be established pursuant to the Design-Build Contract, (iv) any accounts permitted to be established pursuant to the Design-Build Contract, (iv) any accounts permitted to be established pursuant to the Finance Documents, and (v) any other bank accounts established in the name of the Company if, in the reasonable judgment of the Company, the creation of such accounts will enable the Company to facilitate construction or operations or better administer the Project; provided that, to the extent any such account is held outside of the Collateral Agency Agreement, such account shall be held at an Acceptable Bank and the Company will, prior to depositing any monies into any such account, enter into a control agreement covering such account so as to create and perfect a Security Interest created in favor of the Collateral Agent over such account and the monies therein.

The Company will ensure that all Project Revenues received by the Company will be applied in accordance with the Finance Documents.

Arm's-Length Transactions

Other than the Transaction Documents in effect on the Closing Date, the Company will not enter into any transactions with any Affiliates unless such transaction is fair and commercially reasonable to Company and contains terms no less favorable to the Company than those which would be included in an arm's-length transaction with a non-Affiliate.

Material Project Contracts

The Company will not amend, assign, waive or modify in any material respect or terminate (or, if the Company has a right to consent, consent to the assignment or termination) prior to the expiration of its term any Material Project Contract without the prior written consent of the Majority Holders; provided that, without the consent of any Bondholders,

(a) the Company and MDOT may enter into change orders under the Project Agreement, Company and the Design-Build Contractor may enter into change orders under the Design-Build Contract, and Company may enter into any amendments of any Material Project Contract or new agreements, in each case, required for compliance with and to avoid a default under the Project Agreement or any change order or directive letter issued under the Project Agreement;

(b) the Company and the Design-Build Contractor may enter into change orders or amendments under the Design-Build Contract if such change will not require the payment by Company, net of any payments received from MDOT or any other party for payment of the change order or amendment, in any year to exceed in the aggregate an amount equal to \$15 million, provided that any change order or amendment that results in exceeding the \$15 million threshold on an individual basis will be permitted without the consent of any Bondholders if:

(1) it is required by applicable law,

(2) the scope of work under the Design-Build Contract will not have been changed materially as a result thereof, or

(3) the Lenders' Technical Advisor has certified that, in its reasonable opinion, (A) there are sufficient funds available to Company to pay for such change order or amendment, together with other Project Costs, necessary to complete the Project by the Substantial Completion Deadline and (B) such change order or amendment would not reasonably be expected to have a Material Adverse Effect, and

(c) the Company may amend, waive or terminate prior to the expiration of its term any Material Project Contract (other than the Project Agreement) upon satisfaction of the following (the "Replacement Conditions"):

(1) no Specified Default or Event of Default has occurred and is continuing,

(2) such amendment, waiver or termination would not reasonably be expected to have a Material Adverse Effect,

(3) in connection with any amendment of any Material Project Contract that replaces the counterparty thereto, the replacement party to such Material Project Contract is an Acceptable Replacement Party, provided that if a direct agreement existed with respect to such Material Project Contract, Company will cause a new (or amended and restated as the case may be) direct agreement to be entered into by the Acceptable Replacement Party, in form and substance substantially similar to the one being replaced or otherwise that is reasonably acceptable to the Collateral Agent within 90 days of entry into such amendment;

(4)in connection with any termination of any Material Project Contract, such Material Project Contract is replaced by a replacement agreement between Company and an Acceptable Replacement Party within sixty (60) days of termination thereof, or solely in the case of a replacement of Jay Dee within one hundred and twenty (120) days, that provides projected economic benefits for the Project that are, in light of the material risks and liabilities of such replacement contract taken as a whole, at least as favorable as the economic benefits for the Project of continuing under the existing contract, in light of the material risks and liabilities of such existing contract; provided that if such Material Project Contract being terminated is a Design-Build Guarantee, it is replaced by a guarantee of a person having a credit quality at least as great as the relevant Design-Build Guarantor on the Closing Date taking into account the remaining obligations to be guaranteed, provided that if a direct agreement existed with respect to such Material Project Contract prior to its replacement, Company will cause a new (or amended and restated as the case may be) direct agreement to be entered into by any counterparty to such Material Project Contract, in form and substance substantially similar to the one being replaced or otherwise that is reasonably acceptable to the Collateral Agent within 90 days of entry into such replacement or amended and restated Material Project Contract,

(5) no termination right of MDOT has arisen under the Project Agreement and is continuing that would not be cured by the replacement of the relevant counterparty or Material Project Contract,

- (6) the Company has certified that no Funding Shortfall exists or will result therefrom; and
- (7) the Lenders' Technical Advisor has certified that, in its reasonable opinion,

(A) based on the projected costs set forth in the current Project construction budget (taking into account the fixed-price nature of the Design-Build Contract) sufficient funds are available to Company to achieve Substantial Completion,

(B) Substantial Completion is reasonably expected to occur on or prior to the Lenders' Longstop Date; and

(C) it does not dispute the certification given by the Company that no Funding Shortfall exists or will result therefrom.

Additional Material Project Contracts

The Company will not enter into any material agreement or material contract other than the Transaction Documents or as necessary or desirable for the Company to maintain its existence and to comply with its obligations under the Transaction Documents and, in each case, agreements or arrangements ancillary thereto or contemplated thereby, except that the Company may:

(a) enter into employment contracts, contracts for the engagements of advisors and consultants and other agreements and contracts in the ordinary course of business, in each case to the extent consistent with the Annual Operating Budget then in effect;

(b) enter into agreements or contracts with unrelated third parties on an arm's-length basis or with Affiliates subject to the provisions related to "Arm's Length Transactions" described above that provide for services otherwise self-performed by the Company at a cost not greater than 115% of the amounts set forth for such self-performed services in the Base Case Model (without double counting increases in the Annual Operating Budget over amounts in the Base Case Model);

(c) enter into agreements or contracts that in the aggregate provide for payments by the Company of not more than \$10 million (Indexed) per fiscal year; and

(d) enter into any agreement or contract in replacement of any Material Project Contract in accordance with the Replacement Conditions;

provided that any such agreement must be capable, without consent, of assignment as security to the Collateral Agent for the benefit of the Secured Parties.

Performance and Enforcement of Obligations

The Company will perform all of its covenants and obligations under the Finance Documents and the Material Project Contracts and use commercially reasonable efforts to enforce against any counterparty to a Transaction Document each material covenant or obligation of such party in accordance with its terms, except, in each case, to the extent that the failure to do any of the foregoing would not reasonably be expected to have a Material Adverse Effect.

Additional Covenants

The Senior Loan Agreement contains a number of additional covenants of the Company (which covenants are qualified by materiality and other exceptions as set forth in the Senior Loan Agreement) relating to the following matters: (a) delivery to the Trustee and the Insurer (and filing on EMMA, to the extent provided in the Continuing Disclosure Agreement) of certain financial statements, reports, notices and information; (b) maintaining books and records; (c) maintaining legal existence and qualification; (c) obtaining, maintaining and complying with all Governmental Approvals and applicable laws; (d) payment of Taxes; (e) maintaining certain insurance; (f) maintaining perfection of Security Interests; (g) cooperating with rating agencies and maintaining independent auditors; (h) maintaining rights to intellectual property; (i) paying certain expenses of the Insurer; (j) restrictions on partnership, joint venture and profit-sharing arrangements; (k) restrictions on changes to the Company's name, jurisdiction of formation or fiscal year and restrictions on merger, liquidation, winding-up, dissolution, consolidation, amalgamation, demerger, reconstruction and similar transactions; (I) restrictions on liens; (m) restrictions on investments; (n) restrictions on distributions; (o) restrictions on speculative derivative transactions; (p) restrictions on abandonment of the Project; (q) compliance with Sanctions laws; (r) restrictions on disposition of assets; (s) restrictions on amendments to organizational documents; and (t) compliance with continuing disclosure requirements contained in the Continuing Disclosure Agreement. See APPENDIX F-"SUMMARY OF CERTAIN PROVISIONS OF THE SENIOR LOAN AGREEMENT" for a full description of these additional covenants.

Events of Default Under the Senior Loan Agreement

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

(a) The Company fails to pay

(1) principal or interest when due pursuant to the Senior Loan Agreement within three (3) Business Days after the same has become due and payable; provided that where such failure to pay principal is a result of a technical or an administrative error caused by a party other than the Company in connection with the administration of the accounts from which such payment is made or is due to be made (and, for clarity, without limiting Company's other cure rights set forth in the Senior Loan Agreement), Company will have three (3) additional Business Days after notice is received by Company from the Trustee requiring such payment to be made in which to cure such failure to pay; or

(2) any other sum owed by the Company under any of the Finance Documents within ten (10) Business Days after the same has become due and payable; provided that where such failure to pay is a result of a technical or an administrative error caused by a party other than the Company in connection with

the administration of the accounts from which such payment is made or is due to be made (and, for clarity, without limiting Company's other cure rights set forth in the Senior Loan Agreement), Company will have five (5) additional Business Days after notice is received by Company from the Trustee requiring such payment to be made in which to cure such failure to pay;

(b) Any representation or warranty made by Company, Equity Member or HoldCo in any Finance Document proves to have been incorrect in any material respect when made, and a Material Adverse Effect would reasonably be expected to result therefrom unless the effect of such misrepresentation is capable of remedy and is remedied, as reasonably determined by the Trustee, within thirty (30) days after the Company's receipt of written notice from the Trustee of such misrepresentation;

(c) Company fails to comply with any affirmative or negative covenant under any of the Finance Documents (other than those specified elsewhere in "Events of Default" under the Senior Loan Agreement), unless such failure is capable of being remedied and is remedied within forty-five (45) days after the earlier of (1) written notice specifying such failure shall have been given to the Trustee by Company or (2) written notice specifying such failure and requesting that it be remedied shall have been given to Company by the Trustee, provided that to the extent the Company is acting diligently to cure such failure or breach, the Company shall have an additional one hundred and thirty-five (135) days to cure such failure or breach or such longer period agreed to with the prior written approval of the Trustee, acting with the consent (or at the direction) of, the Majority Holders pursuant to the Indenture;

(d) A Bankruptcy Event occurs with respect to the Company or HoldCo;

(e) Any Finance Document (except to the extent otherwise permitted and other than any Acceptable Letter of Credit) ceases to be in effect as against the Company unless such document shall be replaced by a contract on substantially similar terms with a counterparty reasonably acceptable to the Trustee (acting in accordance with the Indenture) within five (5) days following the earlier of (i) Company's actual knowledge of such occurrence or (ii) the delivery of written notice thereof to Company by the Collateral Agent or the Trustee, or such longer period reasonably necessary to effect such replacement;

(f) Either (1) a Developer Default under the Project Agreement occurs and is continuing beyond any applicable cure period and has not been waived by MDOT and MDOT is entitled to serve a notice of termination pursuant to the terms of the Project Agreement as a result thereof, or (2) Company fails to perform or observe any material term or obligation in any Material Project Contract (other than the Project Agreement) and such failure constitutes an event of default under such Material Project Contract that shall not have been cured or waived within the grace period provided in such Material Project Contract and would reasonably be expected to result in a Material Adverse Effect; provided, however, that, in each case, Company shall be entitled to an extension of such time (such extension not to exceed one hundred and eighty (180) days) if corrective action is instituted by Company within the applicable period and diligently pursued until such failure is corrected and so long as the Company has been granted a concurrent extension by the applicable counterparty under such Material Project Contract and, if applicable, such extension would not diminish the rights of the Secured Parties under the applicable Material Project Contract or the applicable direct agreement;

(g) A non-appealable final judgment for the payment of money in excess of \$10,000,000 (Indexed) (and not covered by insurance) individually or such lesser aggregate amount which would reasonably be likely to have a Material Adverse Effect is entered against Company and such judgment remains unsatisfied without any procurement of a stay of execution within thirty (30) days;

(h) Any Security Document shall cease (other than as expressly permitted under the Finance Documents) to be effective to grant a perfected Security Interest on any material portion of the Collateral described therein other than as a result of actions or failure to act by the applicable Agent or any other Secured Party, and with the priority purported to be created thereby and such event continues for five (5) Business Days after the applicable Agent has given notice thereof to Company;

(i) The Project Agreement ceases to be valid and binding and in full force and effect (other than as a result of its expiration or any termination of the Project Agreement in accordance with its terms) and such invalidity has not been remedied within five (5) Business Days;

(j) If any Material Project Contract (other than the Project Agreement) is terminated for any reason without the consent of the Majority Holders, unless it is replaced by a replacement agreement in accordance with the Replacement Conditions;

(k) The Company fails to make any payment when due of principal or interest on any Indebtedness involving in the aggregate in excess of \$10,000,000, beyond the grace period (if any) provided in the applicable instrument or agreement under which such Indebtedness was created or the Company defaults in the performance of any obligation contained in any agreements or instruments evidencing any such Indebtedness involving in the aggregate in excess of \$10,000,000, beyond the grace period (if any) provided in the applicable instrument or agreement under which such Indebtedness was created and as a result thereof the maturity of such Indebtedness is accelerated or declared due and payable before its scheduled maturity date;

(l) An Equity Transfer resulting in a Change in Control that is prohibited under Section 23.2 of the Project Agreement has occurred and has not been waived or consented to by MDOT;

- (m) The occurrence of a termination of the Project Agreement pursuant to Section 30.7 thereof;
- (n) The Company fails to reach Substantial Completion by the Lenders' Longstop Date;
- (o) Either:

(1) the provider of any Equity Letter of Credit fails to honor its obligations to fund any draw request appropriately submitted thereunder (an "Equity LC Draw Failure") and either (X) a replacement Acceptable Letter of Credit is not issued within twenty (20) days following such Equity LC Draw Failure on substantially the same terms or (Y) the applicable Equity Member or Sponsor has not cash collateralized its respective obligations in substitution of such Equity Letter of Credit within twenty (20) days following such Equity LC Draw Failure on Equity LC Draw Failure of Sponsor has not cash collateralized its respective obligations in substitution of such Equity Letter of Credit within twenty (20) days following such Equity LC Draw Failure, or

(2) the Equity Members or Sponsors shall fail to make in full any Equity Contributions when required in accordance with the terms of the Equity Contribution Agreement (provided that if such Equity Member's or Sponsor's obligations are secured by an Equity Letter of Credit with an undrawn amount equal to or greater than the amount of such Equity Contribution (or such Equity Letter of Credit shall have been previously drawn and the proceeds thereof shall have been deposited in the Equity Contribution Sub-Account as security), before any such failure shall constitute an Event of Default, the Collateral Agent shall have made a drawing under the applicable Equity Letter of Credit supplied by such Equity Member or Sponsor pursuant to the Equity Contribution Agreement (or shall have withdrawn the applicable amount from the Equity Contribution Sub-Account), and the proceeds of such drawing (if any) shall have been insufficient to make the amount of such Equity Contribution in full), and such failure shall continue unremedied or unwaived for a period of twenty (20) days;

provided that with respect to each of clauses (1) and (2) above, no Event of Default shall occur if before the last day in which such Default could have been remedied prior to an Event of Default occurring, any one or more Equity Members or Sponsors have made a cash contribution or replaced the Equity Letter of Credit with an Acceptable Letter of Credit sufficient to fund any deficiencies resulting after the applicable Equity Letters of Credit have been drawn (or after the withdrawal of any applicable cash collateral (it being understood that, in each case, any draw on a letter of credit provided by an Equity Member or Sponsor pursuant to the Equity Contribution Agreement within the cure periods described above shall satisfy the obligations of such Equity Member or Sponsor with respect to Equity Contributions to be made by such Equity Member or Sponsor and cure any default in respect thereof)); provided, however, that if any of the events set forth above is caused by, or results from the action or inaction of, one (and not all) of the Equity Members or Sponsors, such event shall not constitute an Event of Default so long as such event is capable of being remedied by the other Equity Members or Sponsors and is remedied within twenty (20) days after the applicable Agent gives written notice thereof to such Equity Member or Sponsor, or, with the prior written approval of the Majority Holders, such longer period as is reasonably necessary under the circumstances to remedy such event;

(p) The Design-Build Contract becomes void, voidable, unenforceable or illegal or is terminated by any party thereto during the effective period of such contract, and such event or circumstance would reasonably be expected to have a Material Adverse Effect, unless the Design-Build Contract is replaced in accordance with the requirements set out in "Material Project Contracts" within sixty (60) days following delivery of written notice thereof to Company or such longer period as reasonably necessary to effect such replacement so long as Company is diligently pursuing such replacement, provided that in no event shall such period exceed one hundred twenty (120) days in the aggregate;

(q) One or more ERISA Events occur in respect of the Company that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect;

(r) Subject to Company's right to effect an Equity Cure Action (described under the heading "Equity Cure Action" below), DSCR for any twelve (12) consecutive month period ending on a Calculation Date after the first anniversary of the Substantial Completion Date is less than 1.00:1.00 (the "Minimum DSCR"); or

(s) A Bankruptcy Event occurs in respect of the Design-Build Contractor, any Design-Build Contractor Member or any Design-Build Guarantor, for so long as the Design-Build Contractor or such Design-Build Guarantor has any obligation under the Design-Build Contract or the Design-Build Guarantee unless:

(1) with respect to any Design-Build Contractor Member:

(A) not later than 60 days after the occurrence of the Bankruptcy Event with respect to such Design-Build Contractor Member (or not later than 120 days after the occurrence of the Bankruptcy Event with respect to Jay Dee), such Design-Build Contractor Member has been replaced by an Acceptable Replacement Party that has assumed all of the obligations of such Design-Build Contractor Member;

(B) no other Design-Build Contractor Default has occurred and is continuing;

(C) the Contractor Obligations (as defined in the Design-Build Contract) have continued and continue to be carried out by the Design-Build Contractor in accordance with the Design-Build Contract;

(D) at least one Required Non-Defaultor is not in breach or default of its obligations under the Design-Build Contract and a Bankruptcy Event has not occurred with respect to such Required Non-Defaultor; and

(E) no termination right of MDOT has arisen under the Project Agreement with respect to a Design-Build Contractor Default and is continuing that would not be cured by the replacement of the relevant Design-Build Contractor Member; or

(2) with respect to the Design-Build Contractor, the following shall have been satisfied:

(A) not later than 60 days after the occurrence of the Bankruptcy Event, the Design-Build Contractor has been replaced by an Acceptable Replacement Party that has assumed all of the obligations of the Design-Build Contractor pursuant to a fixed price replacement agreement between Company and an Acceptable Replacement Party that provides projected economic benefits for the Project that are, in light of the material risks and liabilities of such replacement contract taken as a whole, at least as favorable as the economic benefits for the Project of continuing under the existing Design-Build Contract, provided that if a direct agreement existed with respect to such Material Project Contract prior to its replacement, Company will cause a new (or amended and restated as the case may be) direct agreement to be entered into by the Acceptable Replacement Party, in form and substance substantially similar to the one being replaced or otherwise that is reasonably acceptable to the Collateral Agent;

(B) no termination right of MDOT has arisen under the Project Agreement and is continuing that would not be cured by the replacement of Design-Build Contractor;

(C) a Required Non-Defaultor is not in breach or default of its obligations under the Design-Build Contract or the Design-Build Guarantee; and

(D) the Lenders' Technical Advisor has certified that, in its reasonable opinion, (i) based on the projected costs set forth in the current Project construction budget (taking into account the fixed-price nature of the replacement Design-Build Contract) sufficient funds are available to Company to achieve Substantial Completion and (ii) Substantial Completion is reasonably expected to occur on or prior to the Lenders' Longstop Date; or (3) with respect to any Design-Build Guarantor, if a Bankruptcy Event has not occurred in respect of at least one Required Non-Defaultor and a Required Non-Defaultor is not otherwise in breach or default of its obligations under Design-Build Contract, the Design-Build Guarantee or the Design-Build Lenders' Direct Agreement.

Equity Cure Action

In the event of any Event of Default pursuant to clause (r) above under "Events of Default" under the Senior Loan Agreement for failure to achieve the Minimum DSCR, the Equity Members may, at their option at any time, make an equity contribution in addition to the Aggregate Capital Commitment (each an "Additional Equity Contribution") but no Equity Member shall have any obligation to make any Additional Equity Contribution. Any proceeds from any Additional Equity Contribution made within twenty (20) days following the relevant Calculation Date will, at the written request of the Company, be added to Project Revenues solely for the purposes of determining compliance with the Minimum DSCR pursuant to such clause (r) on the applicable Calculation Date and any subsequent period that includes such Calculation Date (any such Additional Equity Contribution for such purpose, a "Cure Action"); provided that:

(a) the amount of any Cure Action and the use of proceeds therefrom will be no greater than the amount required to cause the Company to be in compliance with the Minimum DSCR;

(b) all Cure Actions and the use of proceeds therefrom will be disregarded for all other purposes under the Finance Documents (including calculating DSCR for purposes of determining whether the Restricted Payment Conditions have been satisfied or determining satisfaction of DSCR for purposes of incurrence of Other Permitted Senior Secured Obligations);

(1) (i) there shall be no more than five (5) Cure Actions made during the term of the Senior Loan Agreement, (ii) a Cure Action may not be made in more than three (3) successive fiscal quarters; and (iii) the proceeds of all Cure Actions are actually received by the Company; and

(2) to the extent that the Company has applied the aggregate proceeds of a Cure Action to repay a portion of the Series 2018 Bonds, such repayment shall be ignored for purposes of calculating the DSCR for purposes of determining satisfaction with the Restricted Payment Conditions or incurrence of Other Permitted Senior Secured Obligations until such time that the Cure Action ceases to be added to Project Revenues pursuant to the provisions of the Senior Loan Agreement.

The Company will provide notice to the Trustee of its intention to cause to be made a Cure Action on or within five (5) Business Days after the relevant Calculation Date. If, after giving effect to the foregoing recalculations, the Company shall then be in compliance with the Minimum DSCR, the applicable Event of Default that had occurred shall be deemed cured for the purposes of the Finance Documents.

Remedies on Event of Default

Upon the occurrence and during the continuance of an Event of Default, any Bondholder or the Issuer may deliver to the Trustee written notice, with a copy to each of MDOT, the Company and the Insurer, that an Event of Default has occurred and is continuing.

Whenever any Event of Default as described above shall have occurred and be continuing, the Trustee, or the Issuer with the written consent of the Trustee, shall have the right to, in conjunction with its available remedies under the Indenture, take one or any combination of the following remedial steps, by notice to the Company and the Collateral Agent:

- (a) commencing on the date of delivery of the notice referred to above, the holders of not less than twenty-five percent (25%) of the aggregate principal amount of the outstanding Series 2018 Bonds shall have the right to give the Trustee, or the Issuer with the written consent of the Trustee, one or more enforcement directions under the Indenture directing the Trustee to take on behalf of the Bondholders whatever action at Law or in equity may appear necessary or desirable to enforce the rights of the Bondholders;
- (b) if so instructed by holders of not less than twenty-five percent (25%) of the aggregate principal amount of outstanding Series 2018 Bonds in accordance with the Indenture, the Trustee or the

Issuer with the written consent of the Trustee (except with respect to a Bankruptcy Event of the Company or HoldCo, in which case no instruction shall be required to either the Trustee or the Issuer), shall declare the Series 2018 Loan, all interest accrued and unpaid thereon, and all other amounts payable in respect of the Series 2018 Loan to be due and payable, whereupon the same shall become immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are waived by the Company;

- (c) have reasonable access to and inspect, examine and make copies of the books and records and any and all accounts, data and income tax and other tax returns of the Company during regular business hours of the Company and following prior reasonable notice; or
- (d) if so instructed by the holders of not less than twenty-five percent (25%) of the aggregate principal amount of outstanding Series 2018 Bonds in accordance with the Indenture, take on behalf of the Bondholders whatever other action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Company under the Senior Loan Agreement or the rights of the Bondholders.

Any amounts collected pursuant to action taken pursuant to the foregoing provisions under the Senior Loan Agreement and the Security Documents will be paid to the Trustee and applied in accordance with the Indenture.

Any rights and remedies as are given to the Issuer under the Senior Loan Agreement will also extend to the Trustee for the benefit of the Trustee and the Bondholders, subject to the provisions of the Indenture, which will be entitled to the benefit of all covenants and agreements contained in the Senior Loan Agreement, subject to the terms of the Security Documents.

Amendments, Changes and Modifications

Subsequent to the issuance of the Series 2018 Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), and except as otherwise expressly provided in the Senior Loan Agreement, the Senior Loan Agreement may not be effectively amended, changed, modified, altered or terminated except in accordance with the provisions of the Indenture.

For more detailed information relating to the terms of the Senior Loan Agreement in general, including provisions relating to covenants, defaults and terminations, see APPENDIX F—"SUMMARY OF CERTAIN PROVISIONS OF THE SENIOR LOAN AGREEMENT."

Equity Contributions

Pursuant to the Equity Contribution Agreement, each Equity Member has committed and undertook to make, or to cause any of its Affiliates to make on its behalf in the manner and at such times as contemplated in the Equity Contribution Agreement in the amount not exceeding, either alone or in the aggregate with such Equity Member's previous Equity Contributions, such Equity Member's total equity commitment. Total equity commitment (i) with respect to John Laing HoldCo, is US\$19,637,982.85; (ii) with respect to AECOM HoldCo, is US\$14,728,487.14; (iii) with respect to Jay- Dee HoldCo, is US\$4,909,495.71; (iv) with respect to Ajax HoldCo, is US\$4,909,495.71; and (v) with respect to Dan's HoldCo, is US\$4,909,495.71. Each Equity Member's obligation to make Equity Contribution to the Company may at its option be satisfied by (i) making Equity Investments in or providing loans to HoldCo and (ii) causing HoldCo to make a corresponding equity contribution to the Company.

On or prior to each Construction Funds Transfer Date occurring on or prior to the Final Equity Contribution Date, subject to the delivery of a contribution notice, each Equity Member will make or cause to be made through any of its Affiliates, an Equity Contribution in an amount equal to such Equity Member's percentage of Equity Interest of the following amount as of such Construction Funds Transfer Date: an amount equal to the greater of (1) zero and (2) the aggregate amount of the Project Costs due and payable pursuant to the terms of the Material Project Contracts minus:

- (a) any amounts reserved in the Construction Account and all sub-accounts thereof and, in each case, available to pay such Project Costs in accordance with the Collateral Agency Agreement; and
- (b) amounts of any Milestone Payments that are available or that the Company reasonably anticipates to be available to pay such Project Costs.

Acceleration

In the event that the entire principal amount of all outstanding Series 2018 Bonds (together with all accrued and unpaid interest and all other amounts) payable under such Bonds or the entire unpaid principal of the loan under the Senior Loan Agreement has or have been declared or become, or the Collateral Agent is entitled to declare the Series 2018 Bonds, immediately due and payable as a result of an occurrence and continuance of an Event of Default, subject to the delivery of a contribution notice, each Equity Member will make, or cause to be made through any of its Affiliates, an Equity Contribution equal to such Equity Member's unfunded equity commitment as of such date.

Upon the occurrence of the Final Equity Contribution Date, subject to the delivery of a contribution notice, each Equity Member shall make, or cause to be made through any of its Affiliates, an Equity Contribution equal to such Equity Member's unfunded equity commitment as of such date.

Additional Equity Contributions

Each Equity Member has the option but not the obligation to contribute additional funds to the Company at any time.

Equity Letters of Credit

The obligation of each Equity Member to make Equity Contributions in accordance with the Equity Contribution Agreement will be secured by irrevocable standby letters of credit (i) issued by one or more Acceptable Banks; (ii) for which such Equity Member (or its Affiliate) is the account party; (iii) which shall have reimbursement obligations that are not recourse to the Company or HoldCo, and (iv) substantially in the form attached to the Equity Contribution Agreement in an aggregate face amount not less than such Equity Member's unfunded equity commitment.

If any Equity Member has failed to perform its obligation to make the relevant Equity Contributions within two (2) Business Days of the due date for such payment, the Collateral Agent shall notify the Company of such non-payment, and draw under the Equity Letter of Credit of the non-performing Equity Member in the amount of such Equity Contribution for the purposes of satisfying such obligation of such Equity Member and deposit such amount into the Equity Contribution Sub-Account. Any amount drawn from an Equity Letter of Credit and deposited into the Equity Contribution Sub-Account to satisfy the obligations of an Equity Member shall be deemed to be an Equity Contribution by such Equity Member under the Equity Contribution Agreement.

In the event that the issuer of an Equity Letter of Credit fails to satisfy the requirements of an Acceptable Bank and upon receipt of a notice to that effect from the Company or the Collateral Agent, within forty-five (45) days of the date on which the existing issuer ceased to be an Acceptable Bank, the Equity Member on whose behalf such Equity Letter of Credit has been issued is required to replace such Equity Letter of Credit with an Equity Letter of Credit from an Acceptable Bank, which shall satisfy the requirements of the Equity Contribution Agreement and shall have the same terms and conditions (including maturity date and drawable amount) as the Equity Letter of Credit being replaced. If such Equity Member fails to provide such new Equity Letter of Credit within such period, the Collateral Agent shall draw the full undrawn amount of such Equity Letter of Credit and deposit the proceeds of such drawing into the Equity Contribution Sub-Account.

In the event that an Equity Letter of Credit issued on behalf of an Equity Member with respect to its obligations expires prior to the Final Equity Contribution Date (or, if earlier, prior to the satisfaction of the obligations of the applicable Equity Member under the Equity Contribution Agreement) such Equity Member shall replace such Equity Letter of Credit with a new Equity Letter of Credit at least twenty (20) days prior to the stated expiry date of the existing Equity Letter of Credit and such new Equity Letter of Credit will be in an amount equal to at least the amount of such Equity Member's unfunded equity commitment. In the event that such Equity Member fails to provide such new Equity Letter of Credit by the date required, the Collateral Agent shall draw on the existing Equity Letter of Credit of such Equity Member in the amount equal to the amount of such Equity Member's unfunded equity commitment and deposit the proceeds of such drawing into the Equity Contribution Sub-Account.

Nature of Obligations

The obligation of each Equity Member to make Equity Contributions is irrevocable, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any Finance Document

or any other agreement or instrument referred to therein, or any substitution, release or exchange of any other guarantee of or security for the Equity Contributions or any Secured Obligation, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense (other than payment) of a surety or guarantor.

Defaulting Equity Member

If (i) an Equity Member fails to make a payment due by it in accordance with the provisions of the Equity Contribution Agreement; and (ii) payment is not available to be drawn from the Equity Contribution Sub-Account or made by the issuer of such Equity Member's relevant Equity Letter of Credit, if any, following a demand by the Collateral Agent pursuant to the Equity Contribution Agreement, such Equity Member will be a Defaulting Equity Member for the purposes of the Equity Contribution Agreement.

If an Equity Member is a Defaulting Equity Member, each other Equity Member shall have the right, but not the obligation, to provide payment of the relevant Equity Contribution on behalf of the Defaulting Equity Member, provided that they exercise such option by providing notice to the Collateral Agent accompanied by payment into the Equity Contribution Sub-Account of the applicable defaulted payment within three (3) Business Days of the relevant Equity Member.

Restriction on Successors and Assigns

Neither the Company nor any Equity Member may assign or otherwise transfer its rights or obligations under the Equity Contribution Agreement except that an Equity Member may assign its rights and obligations under the Equity Contribution Agreement, including all or a portion of its total equity commitment, to any person if (A) such transfer is permitted under the Project Agreement and the other Finance Documents, (B) such transferee satisfies the requirements of the Equity Contribution Agreement with respect to all or the portion of its total equity commitment assigned to, and assumed by, such person and (C) such transferee shall have executed a counterpart to the Equity Contribution Agreement and such other documentation as the parties determine necessary to evidence such transferee's assumption of any portion of a transferor's total equity commitment.

Milestone Payments and Availability Payments

The Company is compensated by MDOT pursuant to the Project Agreement through the Milestone Payments and Availability Payments. The availability of such funds is subject to annual appropriation by the State. See "SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2018 BONDS—Sources of Payment Generally."

Milestone Payments

Generally, Milestone Payments can be characterized as progress payments for the Company's performance of certain segments of the D&C Work and will, subject to annual appropriation of sufficient amounts, be paid to the Company as partial consideration for D&C Work and all obligations relating thereto that have been carried out by the Company in accordance with the Project Agreement. The amounts of potential Milestone Payments and the dates for payment are set out in the table below.

Milestone Payment	Milestone Completion	Maximum Amount (\$)
Milestone Payment 1	Tunnel Boring Machine delivered and accepted. The Company has submitted and MDOT has approved the final geotechnical report and design for the Storage and Drainage Tunnel; a subsurface methods plan describing the Company's approach to the tunneling activities; the Final Construction Impact Assessment; and Final Construction Impact Assessment Report. The Milestone Completion Certificate from MDOT is expected May 2020 and receipt of Milestone Payment 1 is expected July 2020.	20,000,000
Milestone Payment 2	Storage and Drainage Tunnel and Pump Station in Service. The Milestone Completion Certificate is expected June 2023 and receipt of Milestone Payment 2 is expected August 2023.	40,000,000
Milestone Payment 3	Substantial Completion has occurred. The Substantial Completion Certificate is expected August 2023 and receipt of Milestone Payment 3 is expected October 2023.	40,000,000
Milestone Payment 4	Final Acceptance. Completion of Final Acceptance and Punch List Items is expected February 2024 and receipt of Milestone Payment 4 is expected April 2024.	1,000,000

Milestone Payments are made within 30 days following the satisfaction by the Company of the conditions applicable to the relevant Milestone and submission of an invoice in the required form together with required supporting documentation. Each Milestone Payment, other than Milestone Payment 4, will be reduced to the extent the Company's invoice does not provide evidence of incorporating D&C Work into the Relevant Infrastructure or supplying equipment to the Site with a value at least equal to the applicable Milestone Payment. The amount of the deduction, if any, shall be equal to the difference between the maximum amount of the Milestone Payment less the value of the D&C Work or equipment evidenced in the invoice. Milestone Payments will also be reduced by the amount of any D&C Deductions and Unavailability Adjustments. D&C Deductions are assessed by MDOT with respect to certain Noncompliance Events which occur prior to the Substantial Completion Date and relate to the Interim Maintenance Work or the Long Term Maintenance Work for the Tunnel and Pump Station to be performed prior to the Substantial Completion Date. Unavailability Adjustments are made with respect to lane closures or blockage of ingress to or egress from a lane which goes beyond the approved duration or otherwise does not comply with the Project Agreement.

Availability Payments

Subject to annual appropriation of sufficient amounts, Availability Payments are payable by MDOT to the Company each quarter from the later of the Substantial Completion Date and August 31, 2023, being the Original Substantial Completion Deadline, until the Expiration Date for maintaining I-75 Segment 3. The Availability Payments are subject to a prescribed MAP for each payment year, which is divided by four to produce the Quarterly Total Maximum Availability Payment for each quarter in such payment year. Each Quarterly Total Maximum Availability Payment is then subject to reduction by amounts calculated pursuant to Schedule 4 of the Project Agreement for Unavailability Adjustments described above and Noncompliance Adjustments, which are financial Deductions assessed by MDOT for Noncompliance Points incurred by the Company.

The Quarterly Availability Payment is calculated using the following formula:

$$AP_{q,y} = \text{QTMAP}_{q,y} - \text{QUA}_{q,y} - \text{QNCA}_{q,y}$$

$$QTMAP_{q,y} = QMAP_{q,y} + QRWP_{q,y}$$

Where:

APq,y = the Availability Payment for Quarter "q" in Contract Year "y";

QTMAPq,y = the Quarterly Total Maximum Availability Payment for the applicable Quarter "q" in Contract Year "y".

QMAPq,y = the Quarterly Maximum Availability Payment for Quarter "q" in Contract Year "y". QMAPq,y is equal to ¹/₄ x MAPy, however if the later of the Substantial Completion Date and the Original Substantial Completion Deadline does not occur on a Quarterly Date, the first and last Quarterly Maximum Availability Payments will be pro-rated according to the number of days of Maintenance Work operations in that Quarter;

MAPy = Maximum Availability Payment for that Contract Year indexed for inflation;

QRWPq, y = the Quarterly Renewal Work Payment, or the relevant Base Renewal Work Payment set out in the related payment schedule applicable to Quarter "q" in Contract Year "y" indexed for inflation using the factor Iy / Ibase;

QUAq,y = to the extent not deducted from Milestone Payments, Quarterly Unavailability Adjustment for Quarter "q" in Contract Year "y"; and

QNCAq,y = to the extent not deducted from Milestone Payments, Quarterly Noncompliance Adjustment equal to the monetary deduction for the total cumulative Noncompliance Points awarded in Quarter "q" in Contract Year "y".

The MAP for any given contract year following Substantial Completion will be calculated as follows:

$$MAP_{y} = BaseMAP \times k \times \frac{I_{y}}{I_{Base}} + BaseMAP \times (1-k)$$

Where:

BaseMAP = \$50,621,793.41

Iy = the MAP Index as of the month of the later of the Substantial Completion Date and the Substantial Completion Deadline in the year that is immediately prior to the commencement of Contract Year "y" (Iy shall apply to all calculations relating to Contract Year "y");

IBase = the MAP Index as of 1 August, 2018; and

k = 10%, representing the indexed payment portion of the BaseMAP (per Contract Year) that is subject to the MAP Index (expressed as a percentage).

The total Availability Payments in any quarter will never be less than zero or greater than the Quarterly Total Maximum Availability Payment for the applicable quarter.

For more details on the Availability Payments and related payment deductions, see APPENDIX B— "SUMMARY OF CERTAIN PROVISIONS OF THE PROJECT AGREEMENT."

RISK FACTORS

THE PURCHASE OF THE SERIES 2018 BONDS IS SUBJECT TO CERTAIN RISKS. EACH PROSPECTIVE INVESTOR IN THE SERIES 2018 BONDS IS ENCOURAGED TO READ THIS OFFICIAL STATEMENT IN ITS ENTIRETY, INCLUDING ALL APPENDICES HERETO. PARTICULAR ATTENTION SHOULD BE GIVEN TO THE FACTORS DESCRIBED BELOW, WHICH, AMONG OTHERS, COULD AFFECT THE PAYMENT OF PRINCIPAL OF AND INTEREST ON THE SERIES 2018 BONDS AND WHICH COULD ALSO AFFECT THE MARKET PRICE OF THE SERIES 2018 BONDS TO AN EXTENT THAT CANNOT BE PRESENTLY DETERMINED.

The following discussion is not meant to be an exhaustive list of the risks and other factors that should be considered in connection with the purchase of the Series 2018 Bonds and does not necessarily reflect the relative importance of the various risks and other factors. Any one or more of the risks described, and others, could adversely affect the Issuer, the Company and/or MDOT, and could lead to substantial decreases in the market value and/or the liquidity of the Series 2018 Bonds. There can be no assurance that other risk factors will not become material in the future.

Risks Relating to the Issuer, the Company and MDOT

The Series 2018 Bonds Are Limited Obligations

The Series 2018 Bonds are limited obligations of the Issuer as described in this Official Statement. The Issuer is not generally liable on the Series 2018 Bonds or on any other obligation incurred by the Issuer under the Indenture or the Senior Loan Agreement. The Series 2018 Bonds are not general obligations and do not constitute debts or pledges against the credit of the Issuer or the credit or taxing power of the State or any political subdivision thereof. The Series 2018 Bonds are limited obligations of the Issuer, which will, if and when issued, be payable solely through revenues, properties or other funds as described in this Official Statement, the Indenture and the Senior Loan Agreement. No owner of any Series 2018 Bond shall have the right to demand payment of the principal of, premium, if any, or interest on such Series 2018 Bond out of any funds to be raised by taxation. The Issuer has no taxing power.

The Company Is a Single Purpose Entity

The Company was formed for the purpose of entering into the Project Agreement and undertaking the Project and performing the activities related thereto, including the activities contemplated by the Transaction Documents. Substantially all of the Company's rights under the Project Agreement and the other Material Project Contracts will be pledged and assigned as security for the Company's financial obligations in connection with the Project. No assurance can be given, however, that the funds available to the Trustee will be sufficient to make payments to be paid from the Trust Estate, including payments to be made of principal of, interest or premium, if any, on or costs incident to the Series 2018 Bonds.

Appropriation Risk

The source of funds for payment of the Milestone Payments, the Availability Payments and other amounts due to the Company under the Project Agreement is subject to and dependent on annual appropriations by the Legislature sufficient to make such payments. See "SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2018 BONDS—Sources of Payment Generally."

Federal Highway Trust Fund

Certain reports have suggested that the Federal Highway Trust Fund is not sufficiently funded on a longterm basis and the levels of Federal Highway Funding and the methods by which it is allocated to the State may be adversely affected. In August 2014, the Congressional Budget Office estimated that \$157 billion in additional revenues would be required to maintain current highway and transit program spending levels plus inflation between 2015 and 2024. This is in part the result of federal motor fuel tax rates having not been increased since their enactment in 1993. In February 2015, the U.S. Government Accountability Office recommended that Congress consider a fundamental reexamination of transportation funding programs to clarify federal goals and roles, establish performance links, and improve investment decision-making. In June 2018, the United States Government Accountability Office in a June 2018 Report to Congress entitled "The Nation's Fiscal Health – Actions is Needed to Address the Federal Government's Fiscal Future (GAO-18-299SP)" (the "June 2018 GAO Report") cited *GAO*, *High Risk Series: Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others, GAO-17-317* (*Washington, D.C.: Feb. 15, 2017*) and noted that the Federal Highway Trust Fund, the principal source of federal surface transportation funding, is increasingly unable to maintain current spending levels for highway and transit programs. The June 2018 GAO Report also noted that in April 2018, the Congressional Budget Office estimated that \$119 billion in additional funding would be required to maintain current spending levels plus inflation from 2021 through 2028. Federal Highway Appropriations are a significant source of funding to MDOT and a reduction in the level of funding to the State or the methods by which such federal funds are appropriated could have an adverse effect on the funds available to MDOT for appropriation to its Milestone Payments, Availability Payments and other required payments under the Project Agreement.

Economic Conditions Affecting the State Trunk Line Fund

The availability of revenues in the State Line Trunk Fund is dependent on a number of economic factors. The revenues of the State Trunk Line Fund include a portion of the motor vehicle fuel taxes, vehicle registration taxes, and interest and miscellaneous fees deposited into the Michigan Transportation Fund established pursuant to PA 51 of 1951, which may fluctuate based on, among other things, the condition of the State and national economies, population growth, income and employment levels, levels of tourism, weather conditions, fuel prices, vehicle fuel efficiency, road conditions, and the availability of alternate modes of transportation. There can be no assurance that downturns in any of the numerous factors affecting these revenues will not significantly affect the availability of revenues in the State Line Trunk Fund to MDOT to make the MDOT Payments if tax collections and other elements of the State Line Trunk Fund are not available therefor. The availability of revenues in the State Line Trunk Fund State Legislature. See "SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2018 BONDS—Sources of Payment Generally."

Conflicting Interests of the Parties

As in any commercial arrangement, parties may disagree about the appropriate course of action to be taken, particularly if adverse events occur. MDOT, the Company, the Design-Build Contractor and within the Design-Build Contractor, the Contractor Members, have different priorities and interests and may have difficulty in resolving disputes should their interests diverge. Certain provisions of the Transaction Documents mitigate this risk, including the requirement that each Design-Build Contractor Member be a Design-Build Guarantor on a joint and several basis in order to align their individual interests towards a mutual one of achieving Substantial Completion and Final Acceptance. In addition, decisions of the Company relating to the Design-Build Contract, the Design-Build Guarantee and/or a Design-Build Guarantor, pursuant to the operating agreement between the Equity Members, may be made by John Laing HoldCo and AECOM HoldCo independently from the Equity Members that are affiliated with the Design-Build Contractor Members to keep determinations on the exercise of rights and remedies relating to Project issues isolated from those entities directly implicated in the issue.

Similarly, MDOT and the Trustee, on behalf of the Owners of the Series 2018 Bonds and other Secured Parties, and the Collateral Agent, on behalf of the Secured Parties, may have different interests and priorities following a default or other Adverse Event under the Project Agreement, and no assurance can be given that the State will be willing or able to take into account the interests of the Owners of the Series 2018 Bonds if an event occurs that would entitle MDOT to terminate or to take other remedial action under the Project Agreement.

Equity Contributions

The Equity Contributions required to be made by the Equity Members are not required to be made prior to the issuance of the Series 2018 Bonds, but the obligation of each Equity Member to make its Equity Contributions will be supported by Equity Letters of Credit (See "FINANCING FOR THE PROJECT—Equity Contributions" and "PROJECT PARTICIPANTS—The Equity Members' Parent Companies"). While the obligations of each of the Equity Members to make Equity Contributions will be supported by an Equity Letter of Credit, the Equity Members may be unable or unwilling to make Equity Contributions and the Equity Letters of Credit may not be honored. See "FINANCING FOR THE PROJECT—Equity Contributions" and "RISK FACTORS—Risks Relating to the Series 2018 Bonds—Letter of Credit Dishonor or Non-Renewal."

Risks Relating to the Project

The Design-Build Contract is structured to pass through, for fixed compensation, to the Design-Build Contractor substantially all of the Company's obligations and risks under the Project Agreement with respect to the design and construction of the Project, the Interim Maintenance Work and the Long Term Maintenance Work to be performed prior to the Substantial Completion Date, except certain express Excluded Obligations retained by the

Company. There can be no assurance that in all cases all of such responsibilities and risks have been passed through or that events will not occur that would result in increases in the amounts payable to the Design-Build Contractor that may not be reimbursed or are otherwise not provided for under the Project Agreement. Reductions in payments by MDOT to the Company because of non-performance by the Design-Build Contractor may be (i) offset against amounts payable from the Company to the Design-Build Contractor, (ii) offset from the D&C Performance Security and/or the DB Performance Support provided by the Design-Build Contractor and held by the Company, and/or (iii) claimed under the Design-Build Guarantee, all subject to the overall liability cap of the Design-Build Contractor of 40% of the Design-Build Contract Price (which liability cap shall not apply to certain specified exclusions under the Design-Build Contract). See "THE PRINCIPAL PROJECT DOCUMENTS—The Design-Build Contract—D&C Performance Security and DB Performance Support" and "—Limitations on Liability."

Construction Risks

General. As with any major construction effort, the construction of the Project involves risks that could result in cost overruns, delays or failure to complete the Project. Some of the risks to completing the Project on time and within budget include shortages of materials and labor, work stoppages, labor disputes, bad weather, floods, and other casualties, unforeseen engineering, environmental or geological problems, changes in law, discovery of unidentified geologic or hazardous materials or unidentified utilities, third-party litigation, difficulties in obtaining or renewing permits or other federal, state or local government approvals, changes in federal and state or local design or building requirements and permit conditions, any of which could increase the cost and delay of the construction and start-up of the Project. The Design-Build Contract passes down to the Design-Build Contractor all risk associated with the design and construction of the Project, subject to the Company's indemnities for performance of its obligations under the Design-Build Contract and its acts and omissions. The Design-Build Contract is a fixed price contract and cost overruns relating to the Contractor Obligations are solely for the account of the Design-Build Contractor and excluded from the Design-Build Contractor's overall liability cap. Increased construction costs (including as a result of delays or overruns) could adversely impact the Design-Build Contractor's cash flow and its ability to comply with the Design-Build Contract. Subject to the mitigation effected through the pass down of obligations to the Design-Build Contractor and the remedies available under the Design-Build Contract, including for Liquidated Damages, the Company's ability to make timely payments of amounts due under the Senior Loan Agreement and of the principal of, or interest or premium, if any, on the Series 2018 Bonds could be impacted by the construction risks mentioned above.

Some, but not all, of these events may be covered by the builders' risk insurance procured for the Project or by MDOT pursuant to provisions of the Project Agreement that require payment of additional amounts for Compensable Delay Events and Compensable Relief Events, but these payments may be subject to deductibles and no assurance can be given that if such events occur, including events of force majeure or other uncontrollable events, the Company would receive compensatory funds to make timely payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds.

Failure to meet any of the construction milestones under the Project Agreement may result in delayed payment of the Milestone Payments and a delay in the commencement of Availability Payments that could impact the Company's ability to make timely payments of amounts due under the Senior Loan Agreement and the ability to make timely payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds.

Subject to the liability caps provided therein, the Design-Build Contract contains a number of provisions to mitigate the Company's risk related to delay in receipt of Milestone Payments and/or Availability Payments. The Design-Build Contract requires the Design-Build Contractor to achieve certain construction milestones or face the potential for (i) a standstill on payments to the Design-Build Contractor until such milestones are achieved and the related milestone payments are received by the Company (provided that payments for work certified completed and for which the Company has budgeted and available funds for such payments will continue to be made) and/or (ii) payment of Milestone Liquidated Damages to compensate the Company for the delay in receipt of related Milestone Payments from MDOT. In addition, the Design-Build Contractor is liable to pay Delay Liquidated Damages to compensate the Company for, among other amounts, delayed receipt of Availability Payments occasioned by any delay in achieving Substantial Completion by the Original Substantial Completion Date, subject to a cap on such amounts. The Design-Build Contractor is also responsible for the achievement of Substantial Completion six (6) months in advance of the Longstop Date under the Project Agreement (as that date may be extended under certain circumstances), failing which a Contractor Default arises and compensation on termination from the Design-Build Contractor would be payable if the Company terminated the Design-Build Contract at such time, subject to the

Design-Build Contractor's overall liability cap and the exclusions from such liability cap. See "RISK FACTORS— Risks Relating to the Project—Construction Risks—Insurance and Liquidated Damages."

Even though the Design-Build Contract is secured by the Design-Build Guarantee, the Design-Build Guarantee, the Design-Build Guarantee, the same rights, duties, obligations and defenses as the Design-Build Contractor, including the overall limitation of liability, but subject to the same exclusions from such liability cap. See "THE PRINCIPAL PROJECT DOCUMENTS—The Design-Build Contract—D&C Performance Security and DB Performance Support."

<u>Contractors and Utility Owners</u>. In addition, the Company or the Design-Build Contractor may outsource to other contract counterparties certain obligations under the Project Agreement and the Design-Build Contract. Each of the four Design-Build Contractor Members is not only a Design-Build Guarantor of the Design-Build Contractor on a joint and several basis, but also a subcontractor of the Design-Build Contractor, which effectively makes each Design-Build Contractor Member a joint and several guarantor for each other Design-Build Contractor Member as a subcontractor. However, there can be no assurances that any contract counterparties will perform their obligations under the relevant agreements. Further, despite the fact that the Design-Build Contractor under the Design-Build Contract or to MDOT under the Project Agreement, not all of these risks have been shifted to such counterparties or can be insured and there can be no assurance that the Project will be completed on the projected timetable or in line with the budget and other assumptions described in this Official Statement. Lack of coordination among the Company, MDOT, the Design-Build Contractor, the Design-Build Contractor Members, other subcontractors, the Utility Owners or other third parties with respect to completion of the Project Work on schedule or completion of their inspections on schedule could also result in delays or cost overruns or both.

In particular, the D&C Work under the Project Agreement will require relocation of certain utilities, which work will either be performed by the Company or the relevant Utility Owner. In either case, performance of this work will require negotiation with the applicable Utility Owner in connection with required works, work schedules and compensation (if the Utility Owner is performing such work). The Design-Build Contract passes down to the Design-Build Contractor all risk associated with Utility Work, subject to the Company's indemnities for performance of its obligations under the Design-Build Contract and its acts and omissions. Furthermore, the Design-Build Contractor's liability for Delay Liquidated Damages does not require the Design-Build Contractor to have caused or contributed to any relevant delay. The Company has two utility-specific Delay Events available to it under the Project Agreement, one for delay in performance by Utility Owners and the other for the scope of known versus unknown utilities for which the Company is responsible. Although the Company may be entitled to construction schedule relief and/or compensation for certain costs suffered or incurred as a result of any such Delay Event or Relief Event, no assurance can be given that any of the above will not result in increased costs and delays to the Project. See "RISK FACTORS—Risks Relating to the Project Agreement—Limited Insurance Coverage; Relevant Events."

<u>Tunnel Design and Construction</u>. The Project requires construction of a 4-mile Storage and Drainage Tunnel, four tunnel shafts and six drop shafts. Jay Dee is a Design-Build Contractor Member, a Design-Build Guarantor and the subcontractor responsible for the tunnel. Jay Dee is an experienced contractor in constructing tunnels in Michigan with a track record working with similar soils and levels of gas in the tunnel. However, this portion of the Project is subject to geotechnical risks, not all of which may be identified prior to commencement of tunneling. Construction methods in place to mitigate geotechnical risks, including the construction of drop shafts, raising the tunnel profile out of the layers of sand, and using a non-pressurized TBM may not be sufficient to mitigate all of the geotechnical risks. In addition, the procurement of the TBM may be subject to delays in delivery despite the construction schedule incorporating headway for delivery. TBM equipment maintenance, including potential delays in obtaining replacement parts, may result in unscheduled downtime resulting in schedule delays.

Interim Maintenance Work. As part of the Interim Maintenance Work, the Company is to perform routine maintenance for repair from normal wear and tear on the Roadway, underdrains and roadside, existing facilities that are to be later replaced or reconstructed as part of the D&C Work, existing facilities that are to remain in place but are within the D&C Limits, and Elements within the D&C Limits damaged by normal wear, forces of nature, or acts of third parties.

As a condition to receiving NTP, the Company will record a video of the Elements within the D&C Limits as a record of the existing conditions and prepare and submit the Video Inspection Report to MDOT.

During the period from NTP to the commencement of the fall Seasonal Suspension date following NTP, the Company is required to repair and/or maintain Elements within the D&C Limits to meet specific performance requirements set forth in the Technical Requirements of the Project Agreement. After that period, the Company is required to maintain all Elements within the D&C Limits in accordance with such performance requirements.

Aside from more general circumstances relating to MDOT Fault, Vehicle Damage and interference by MDOT Contractors, there is no Compensable Delay Event applicable to the condition of the Elements over which the Interim Maintenance Work is to be performed by the Company. The Video Inspection Report is evidence of asset condition when the Company commences the Interim Maintenance Work but it does not establish a baseline condition below which MDOT provides schedule and/or compensatory relief. It may nonetheless assist the Company in discussions with MDOT for a Change, but determinations to proceed with a Change are ultimately in MDOT's discretion. Deterioration of the condition of Elements on which the Interim Maintenance Work is to be performed (i) from the date on which the Company priced its performance of the Interim Maintenance Work or (ii) from the date of the Video Inspection Report will be for the Company's account, including related Noncompliance Points and D&C Deductions that will reduce the amounts of the Milestone Payments.

The Design-Build Contract passes down to the Design-Build Contractor the performance of, and all risk associated with, the Interim Maintenance Work, including responsibility for related D&C Deductions and reductions in the Milestone Payments. During the period from NTP to the commencement of the fall Seasonal Suspension date following NTP, the Company (and the Design-Build Contractor) will not be assessed for Noncompliance Events if Noncompliance Events occur in relation to Interim Maintenance Work on the Roadway, specified Structures, Pavement Markings, specified Fences, Walls and Sound Abatement, and Earthworks, Embankments and Cuttings.

Insurance and Liquidated Damages. Not all risks are insured, and it is not possible to obtain insurance for every Force Majeure Event and other contingencies described in the Design-Build Contract and the Project Agreement. See "RISK FACTORS-Risks Relating to the Project Agreement-Limited Insurance Coverage; Relevant Events." The amount of Delay Liquidated Damages that the Design-Build Contractor could be required to pay under the Design-Build Contract for delay is limited by the terms of the Design-Build Contract and may not be sufficient to cover all of the Company's losses in the event of a delay or a failure to complete the required Project Work in accordance with the Project Agreement. The amount of Delay Event Liquidated Damages and Milestone Liquidated Damages that that the Design-Build Contractor could be required to pay under the Design-Build Contract for delay associated with Delay Events and delay in the achievement of milestones, respectively, is limited by the overall liability cap in the Design-Build Contract, subject to the exclusions from that cap. The Design-Build Contractor has not waived its right to contest Liquidated Damages, and the issuer of the Design-Build Contractor's D&C Performance Security may assert as a defense to payment any defenses the Design-Build Contractor claims or has. The payment obligation of the issuer of the Design-Build Contractor's DB Liquidity Bond is unconditional. No assurance can be given that available contingency funds, insurance or other funds will be sufficient should delays occur or should the Company have payment obligations that are not satisfied by or included in the responsibility of the Design-Build Contractor under the Design-Build Contract.

Changes in Law

The Design-Build Contract passes down to the Design-Build Contractor all change in law risk related to the design and construction of the Project and performance of the Interim Maintenance Work and the Long Term Maintenance Work to be performed prior to the Substantial Completion Date. Although the change in law provisions in the Project Agreement are intended to protect the Company from certain changes in law, changes in the laws related to the Project may nonetheless impact the ability to complete construction of the Project, receive Milestone Payments, Availability Payments, compensation for Compensable Delay Events, Compensable Relief Events and Termination Amounts, and, subject to the mitigation effected through the pass down of obligations to the Design-Build Contractor and the remedies available under the Design-Build Contract, to make timely payments of amounts due under the Senior Loan Agreement and, in turn, the ability to make timely payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds. In addition, both the Company and the Project are subject to various laws, policies and regulations, including, among others, laws governing environmental protections and tax policies. The Project and the Company's business, financial condition and results of operations may be adversely affected by changes in such laws, policies or regulations. To the extent that the Company or any other parties that are involved in the Project require expenditures of additional funds not budgeted-for in order to be in compliance with any new or amended policies, regulations or laws, and assuming that no compensation or other relief is provided pursuant to the terms and conditions of the Project Agreement, such unanticipated expenditures could

negatively impact the Company's cash flow and thus its ability to satisfy its payment obligations under the Senior Loan Agreement and, thus, the ability to satisfy its payment obligations under the Series 2018 Bonds. See APPENDIX B — "SUMMARY OF CERTAIN PROVISIONS OF THE PROJECT AGREEMENT-Relevant Events" Furthermore, to the extent that the Company, the Design-Build Contractor, or any other third party that contracts with the Company requires additional time in order to be in compliance with any new or amended policies, regulations or laws, and as a result, completion of construction of the Project is delayed, the Company may suffer a delay in the commencement of the payment of Availability Payments from MDOT under the Project Agreement and, subject to the Design-Build Contractor's Liquidated Damages obligations, may have less revenues for servicing its debt obligations, including its payment obligations under the Senior Loan Agreement (and, in turn, the obligation to make timely payments of principal of, or interest or premium, if any, on the Series 2018 Bonds). Depending on the extent of the delay and assuming that no compensation or construction schedule relief is provided pursuant to the terms and conditions of the Project Agreement, this delay may result in a breach of the Company's obligations under the Project Agreement, which could give rise to the assessment of Noncompliance Points and corresponding reductions in the Milestone Payments or Availability Payments, as applicable, otherwise owed to the Company under the Project Agreement, and potentially, could give rise to a right of MDOT to terminate the Project Agreement. Noncompliance Points and related reductions to the Milestone Payments and Availability Payments are the responsibility of the Design-Build Contractor except to the extent that the Company itself caused or contributed to the relevant Noncompliance Events. Breaches of the Design-Build Contract and the ability to terminate the Design-Build Contract in relation to same and obtain compensation on termination from the Design-Build Contractor are structured so as to occur prior to a related termination of the Project Agreement. See "RISK FACTORS-Risks Relating to the Project Agreement-Failure to Comply with Project Agreement; Termination of the Project Agreement." Subject to the mitigating factors described above in the Design-Build Contract, to the extent that any of the foregoing occurs, the Company may have a limited ability, or no ability, to continue making payments pursuant to the Senior Loan Agreement, and, in turn, the ability to make timely payments of principal of, or interest or premium, if any, on the Series 2018 Bonds would be adversely affected.

Environmental and Permitting Risks

Environmental Contamination or Conditions. Environmental Laws, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended impose Liability on owners or operators for the clean-up costs associated with remediating contaminated property. Subject to the provisions of the Project Agreement relating to Relevant Events, the Company could become liable for certain claims for remediation of pre-existing contamination existing on or under the Project area or with respect to Additional Properties, as well as future contamination associated with the Project. See APPENDIX B—"SUMMARY OF CERTAIN PROVISIONS OF THE PROJECT AGREEMENT—Hazardous Materials" and "—Project Management—Environmental Compliance."

Under the Project Agreement, subject to the provisions of the Project Agreement relating to Relevant Events, the Company is obligated to assume all of MDOT's obligations with respect to Environmental Approvals for the Project and generally complying with all Environmental Laws, including remediation and management of environmental conditions. The presence of hazardous material contamination at or near the Project could cause construction delays in order to enable investigation and remediation of such conditions. Under the Design-Build Contract, the Design-Build Contractor is assuming all obligations of the Company under the Project Agreement with respect to compliance with all Environmental Laws and the performance of any remediation and the management of the Project in response to any such remediation, subject to the Company's indemnity to the Design-Build Contractor under the Design-Build Contract where the Company has caused or contributed to the environmental matter. See APPENDIX B—"SUMMARY OF CERTAIN PROVISIONS OF THE PROJECT AGREEMENT—Hazardous Materials" and "—Relevant Events."

Subject to the mitigation effected through the pass down of obligations to the Design-Build Contractor and the remedies available under the Design-Build Contract, including for Liquidated Damages, any of the above risks could require substantial expenditures or delay Project completion or both, which could adversely impact the Company's cash flow, its ability to comply with the Project Agreement and adversely affect the Company's ability to make timely payments of amounts due under the Senior Loan Agreement and, in turn, affect the ability to make timely payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds.

<u>Changes in Environmental Laws</u>. The laws and regulations governing environmental protection have changed significantly over recent years and are expected to continue to change. Regulations governing, among

other things, air pollution, noise abatement and control, wetlands mitigation, hazardous waste, solid waste, water quality and threatened and endangered species may become more stringent in the future, possibly requiring additional compliance and conceivably having a material and adverse effect on the design, construction or operation of the Project. The Project Agreement provides relief from adverse cost or construction schedule effects of certain Changes in Law that are Relief Events or Delay Events. See APPENDIX B—"SUMMARY OF CERTAIN PROVISIONS OF THE PROJECT AGREEMENT—Relevant Events." However, certain other changes in Environmental Law may result in uncompensated increased construction costs and delays in construction or increased compliance costs, which, subject to the mitigation effected through the pass down of change in law risk to the Design-Build Contractor and the remedies available under the Design-Build Contract, could adversely impact the Company's cash flow, its ability to comply with the Project Agreement and to make timely payments of amounts due under the Senior Loan Agreement, which could, in turn, affect the ability to make timely payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds.

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

MDOT has obtained the NEPA Approval (as defined in the Project Agreement) pursuant to the Project Agreement, and the Company is to obtain all of the other Governmental Approvals (and modifications, renewals or extensions) required for the Project other than in relation to the NEPA Approval arising solely from a Delay Event or a Relief Event. Under the Design-Build Contract, the Design-Build Contractor is assuming the Company's responsibility under the Project Agreement for obtaining, furnishing, paying the cost of and maintaining in full force and effect all Governmental Approvals required for the timely construction of the Project, performance of the Interim Maintenance Work and the Long Term Maintenance Work to be performed prior to Substantial Completion, and performance of the Contractor Obligations generally during the Design-Build Term under the Design-Build Contract, as well as for complying with and paying the cost of compliance with all Governmental Approvals and Applicable Law (including Environmental Law) applicable to the construction of the Project, performance of the Interim Maintenance Work and the Long Term Maintenance Work to be performed prior to Substantial Completion, and performance of the Contractor Obligations generally during the Design-Build Term. The Company retains all responsibility for obtaining and complying with Governmental Approvals required for maintenance of the I-75 Segment 3 following the Substantial Completion Date. The obligation to obtain all required Governmental Approvals extends to third-party consents or other required approvals arising under agreements between MDOT and other persons, including municipalities, railroads, and utilities.

The design of the Project is not complete and the terms of existing and expected Governmental Approvals could change as the Project specifications or environmental or species conditions change during the design process, and delays could ensue particularly if any required Governmental Approvals would require public hearings or are otherwise challenged. The Company expects that all Governmental Approvals required for the Project that are not yet obtained will be obtained by the Design-Build Contractor as required for timely construction of the Project. However, in some cases, the issuance of these Governmental Approvals, including any terms and conditions, is subject to the discretion of the issuer thereof, and such Governmental Approvals are subject to administrative and judicial appeal. Currently, the Company or the Design-Build Contractor has obtained all required Governmental Approvals necessary for the Project other than Governmental Approvals that will be applied for by the Design-Build Contractor as required over the course of the Project. No assurance can be given that the Company or the Design-Build Contractor will be able to obtain all required Governmental Approvals by the time they are necessary for construction or operation (as applicable) of the Project. If not timely obtained, or if issued with restrictive terms and conditions, the need for these Governmental Approvals or for satisfying any conditions thereunder could cause delays in the construction of the Project.

The construction schedule for the Project assumes that Governmental Approvals will be obtained in accordance with a schedule that anticipates a conventional permitting process without significant appeals, delays, imposition of unexpected conditions, unexpected changes in environmental or species conditions, finalization of or modifications to the Project design. Any material delay in obtaining or renewing Governmental Approvals, imposition of an unexpected material condition on a Governmental Approval, unexpected changes in environmental conditions relating to threatened and endangered species or modification of Project design required as

a result of the Governmental Approvals process could increase the costs of constructing the Project or delay its completion. Except to the extent that the Company itself is responsible for the required change in or delay in obtaining a Governmental Approval, the risk of these costs and delays is allocated to the Design-Build Contractor under the Design-Build Contract, which would limit the impact on the Company of such increased costs and delays. However, there are procedural and other limitations on the liability of the Design-Build Contractor (including the Maximum Liability Cap) under the Design-Build Contract, and, if the Design-Build Contractor is not liable or does not pay for such costs or delays, such costs would be borne by the Company, affecting its cash flows and its ability to make timely payments of amounts due under the Senior Loan Agreement and, in turn, the ability to make timely payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds.

Operating Risks

Increasing operating costs, including maintenance costs, may adversely impact the Company's results of operations and, therefore, subject to the mitigation effected through the pass down of applicable portions of such risk (design, construction, Interim Maintenance Work and Long Term Maintenance Work prior to the Substantial Completion Date) to the Design-Build Contractor and the remedies available under the Design-Build Contract, the Company's ability to make timely payments of amounts due under the Senior Loan Agreement and, in turn, the ability to make timely payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds.

As with any infrastructure project of the size and complexity of I-75 Segment 3, operations could be affected by many factors, including breakdown or failure of equipment or processes, performance below expected levels of availability, higher than expected traffic levels, failure to operate to design specifications and in accordance with then-applicable permit requirements, labor disputes, changes in law, inability to obtain necessary Governmental Approvals and catastrophic events of force majeure. Some but not all of these events can be covered by general liability, business interruption and other Maintenance Term insurance. MDOT has agreed to bear the risk of some, but not all, of these events under the Relief Event and the Delay Event regimes set forth in the Project Agreement (which include implementing MDOT Changes) under which MDOT is required to pay compensation for Compensable Relief Events and/or Compensable Delay Events. However, the Company is not entitled to compensation for Changes, other than MDOT Changes, including Changes proposed by the Company and accepted See APPENDIX B-"SUMMARY OF CERTAIN PROVISIONS OF THE PROJECT by MDOT. AGREEMENT-Relevant Events." The occurrence of any of these types of events could significantly increase Maintenance Expenditures. The Collateral Agency Agreement provides that Maintenance Expenditures will be paid from time to time before any payments are made on the Series 2018 Bonds and before any required deposits to the Senior Debt Service Reserve Account are made. There will be a Maintenance Reserve Account which will be funded in accordance with the Collateral Agency Agreement which will be applied to pay any amounts as may be necessary to ensure the Company's performance of its obligations under the Project Agreement in respect of the Long Term Maintenance Work. However, significant increases in the Maintenance Expenditures over amounts currently projected by the Company could adversely affect the Company's ability to make payments under the Senior Loan Agreement, and, in turn, the ability to make payment of principal of, or interest or premium, if any, on the Series 2018 Bonds. Further, to the extent Renewal Work is not performed when scheduled or required, general CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT." In addition, the costs of maintaining the Project (including the payment of certain taxes) will be paid before other expenses of the Company, including payments with respect to the Series 2018 Bonds and the funding and replenishment from time to time of the Senior Debt Service Reserve Account for such payments. If the actual maintenance costs significantly exceed the costs assumed in the base case financial projections for the Project, the Company may not have sufficient cash flow to make payments pursuant to the Senior Loan Agreement, thereby adversely impacting payments of principal of, or interest or premium, if any, on the Series 2018 Bonds.

The accumulation of Unavailability Adjustments and Noncompliance Adjustments for failure to achieve required levels of performance and availability of the Project to the traveling public, as specified in the Project Agreement, may result in a reduction in the amount of Availability Payments paid by MDOT to the Company under the Project Agreement. See "THE PRINCIPAL PROJECT DOCUMENTS—The Project Agreement" and APPENDIX B—"SUMMARY OF CERTAIN PROVISIONS OF THE PROJECT AGREEMENT—Payments to the Company—Availability Payments." Any such reduction in Availability Payments would reduce the amount available to pay Project Costs, Maintenance Expenditures and other expenses and to make any payments on the Series 2018 Bonds. Because the Company is self-performing the maintenance obligations under the Project Agreement, following the Substantial Completion Date, there will not be any performance security provided by a

separate maintenance company, and, thus, any such reduction in the Availability Payments payable to the Company will directly impact the Company and could directly impact the Company's ability to make timely payments of amounts due under the Senior Loan Agreement and the ability to make timely payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds.

In addition, at the expiry of the Term of or earlier termination of the Project Agreement, the Company is required to hand over the infrastructure comprising the Project in a state and condition that complies with the requirements of the Project Agreement at the relevant time. At least 42 months prior to Handback at the expiry of the Term, the Company will produce and deliver to MDOT a report on the condition of the infrastructure in relation to the Handback Requirements and the Company's plan related to capital replacement and identifying works required to ensure the infrastructure will meet the Handback Requirements under the Project Agreement. Such report is subject to review and approval by MDOT. Following delivery of such report, the Company will provide to MDOT an amount equal to the estimated costs of the Handback Work to be deposited with the State Treasurer in a separate PA Handback Account. MDOT will pay from the PA Handback Account the amounts necessary to reimburse the Company for completed Handback Work. However, there can be no assurance that the amounts on deposit in the PA Handback Account will be sufficient to cover any Maintenance Expenditures or Renewal Work in connection with major maintenance, the Company will be required to bear the additional costs and expenditures, which could limit the funds available for the payment of amounts due under the Senior Loan Agreement and the ability to make timely payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds.

Judicial Challenge

The Project is to be designed, constructed, financed and maintained in accordance with the Project Agreement, including in compliance with certain Governmental Approvals. While no legal proceedings are currently pending in relation to the Project or the Series 2018 Bonds, there is no assurance that any judicial, administrative or other legal actions or investigations into or challenging the construction or financing of the Project, the maintenance of I-75 Segment 3 within the Maintenance Limits, the granting of any permits and approvals required in connection therewith or any of the other transactions contemplated by this Official Statement, including the issuance of the Series 2018 Bonds, will not be filed or commenced in the future or, if they are filed or commenced, that they will not adversely affect the commencement or timely completion of the construction of the Project, or the ability to pay principal and interest on the Series 2018 Bonds.

Risks Relating to the Project Agreement

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

The Company's principal asset is the provision under the Project Agreement that directs the Company to receive Milestone Payments, Availability Payments, Extra Work Costs and Financing Delay Costs related to the design, construction, financing, and maintenance of the Project for a term of approximately 25 years from the later of the Substantial Completion Date and the Substantial Completion Deadline (the Project has a construction period of approximately 59 months). The Company also has assets in the provisions of, and the Design-Build Contractor's deliverables under, the Design-Build Contract in support of the passed down Project Agreement obligations of the Company to the Design-Build Contractor in such agreement. The Company's failure to comply with the terms and conditions of the Project Agreement may result in the reduction or the forgoing of Milestone Payments, Availability Payments, Extra Work Costs or Financing Delay Costs payable to the Company or in the early termination of the Project Agreement, any of which would, subject to corresponding rights and recoveries by the Company under the Design-Build Contract, limit the Company's ability to make timely payments of amounts due under the Senior Loan Agreement and, in turn, the ability to make timely payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds. In addition, certain failures by the Company in the performance of its obligations under the Project Agreement will result in the assessment of Noncompliance Points against the Company in accordance with the Project Agreement. The accumulation of specified amounts of assessed Noncompliance Points or non-material breaches or failures can lead, if not properly remedied, to a default. In the case of certain material or continuing defaults, MDOT will have the right to terminate the Project Agreement, and subject to the rights that the Collateral Agent (acting on behalf of the Secured Parties) may have under the PA Direct Agreement, take possession and assume operational control of the Project and take such other action as it may deem appropriate in accordance with the Project Agreement and the PA Direct Agreement. In the event of termination of the Project Agreement other than as a result of a Termination for Convenience, the Termination Amount payments as termination compensation payable by MDOT to the Company are subject to annual appropriation by the Michigan legislature and the amount

payable to the Company under the Project Agreement could be insufficient to make timely payments of amounts due under the Senior Loan Agreement, which could, in turn, affect the ability to make timely payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds. The availability of funds for payments by MDOT to the Company, and therefore for payment of the principal of, or interest or premium, if any, on the Series 2018 Bonds, is subject to annual appropriation by the State. "SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2018 BONDS—Sources of Payment Generally," "THE PRINCIPAL PROJECT DOCUMENTS—The Project Agreement" and APPENDIX B—"SUMMARY OF CERTAIN PROVISIONS OF THE PROJECT AGREEMENT."

In addition, since the Company's principal asset is its rights under the Project Agreement, there are practical limitations on the exercise of remedies in respect thereof and the Company's creditors (including the Owners of the Series 2018 Bonds) will have limitations on their ability to replace the Company as the developer under the Project Agreement as set forth in the PA Direct Agreement. See "THE PRINCIPAL PROJECT DOCUMENTS—The Project Agreement."

Changes in Technical Requirements

The Company must respond to changes in federal, state or other requirements mandating changes in the Project's facilities or Technical Requirements. For example, changes in applicable federal design and construction requirements for facilities on the National Highway System, of which the Project is a component part, could impact the Project and result in delays or increased costs in relation to the construction of the Project, which may or may not be compensated under the Project Agreement. In general, it is not possible to predict the kind or cost of changes that could be mandated over the term of the Project Agreement, and no assurance can be given that the Company and/or MDOT will be able to respond adequately to mitigate the impact of any such changes. The Design-Build Contract passes down to the Design-Build Contractor the performance of the design, construction, Interim Maintenance Work and Long Term Maintenance Work prior to the Substantial Completion Date, along with the risk associated with changes in technical requirements associated with each of them. Subject to the mitigation effected through the pass down of obligations to the Design-Build Contractor and the remedies available under the Design-Build Contract, any such changes may impact the Company's ability to make timely payments of amounts due under the Senior Loan Agreement and, in turn, affect the ability to make timely payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds. See APPENDIX B—"SUMMARY OF CERTAIN PROVISIONS OF THE PROJECT AGREEMENT—Relevant Events."

Non-Performance or Delay Under Project Agreement

Pursuant to the terms and conditions of the Project Agreement, the Company is obligated to complete the Project by the Substantial Completion Deadline, being August 31, 2023, subject to extension for Delay Events, and to achieve Final Acceptance by the Final Acceptance Deadline, defined as six (6) months after the Substantial Completion Date, subject to adjustment in accordance with the terms of the Project Agreement. Pursuant to the Design-Build Contract, the Design-Build Contractor has agreed to comply with such deadlines as they relate to the work required to be undertaken by the Design-Build Contractor under the Design-Build Contract. However, subject to the mitigation effected through the pass down of obligations to the Design-Build Contractor and the remedies available under the Design-Build Contract, including for Liquidated Damages, a delay in the completion of the construction of the Project may cause a delay by, or in certain circumstances, the inability of, the Company to receive the Milestone Payments and Availability Payments, thereby adversely impacting the Company's ability to make timely payments of amounts due under the Senior Loan Agreement and, in turn, affect the ability to make timely payments of principal of, or interest or premium, if any, on the Series 2018 Bonds.

In addition, even though the DB Longstop Date agreed under the Design-Build Contract has been established at a date which is six (6) months prior to the Longstop Date set forth in the Project Agreement, if the Design-Build Contractor does not meet the applicable construction deadlines set forth in the Design-Build Contract, the Company may not achieve Substantial Completion by the Longstop Date under the Project Agreement, in which event MDOT may terminate the Project Agreement. The applicable Termination Amount payable by MDOT under such circumstance is subject to appropriations and may not be sufficient to pay in full all obligations under the Series 2018 Bonds. See "RISK FACTORS—Risks Relating to the Project Agreement—Failure to Comply with Project Agreement; Termination of the Project Agreement."

In addition, although the Company may be entitled to receive amounts from the Design-Build Contractor through payments of termination compensation and/or Liquidated Damages that the Company could use for

payments on the Series 2018 Bonds, either (i) the Design-Build Contractor could fail to pay such termination compensation or Liquidated Damages and the Company could be unable to recover such amounts through set-off against amounts otherwise payable to the Design-Build Contractor and/or through recourse to D&C Performance Security and/or the DB Performance Support, or (ii) the amounts actually paid by the Design-Build Contractor and/or recovered by the Company in the exercise of available remedies could be insufficient. To the extent that any of the foregoing occurs, the Company may have a limited ability, or no ability, to make payments pursuant to the Senior Loan Agreement, which in turn, may adversely impact the ability to make payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds.

Limited Insurance Coverage; Relevant Events

Construction of the Project and performance of the Maintenance Work are at risk of events of force majeure, such as tornadoes, landslides, floods, seismic events, fires and explosions, strikes (not specific to the Company), sabotage, wars, acts of terrorism, armed blockades, riots, nuclear explosions and radioactive contamination, among other events. Also, construction and maintenance may be stopped or delayed by non-casualty events, including Delay Events in the case of construction and Relief Events following the Substantial Completion Date, such as discovery of archaeological artifacts or of threatened or endangered species at, near or on the Planned ROW Limits, certain changes in law, delays in obtaining and renewing certain Governmental Approvals, revocation or revision of certain Governmental Approvals and litigation, among other things. Although the Company is entitled to schedule and/or payment relief and/or relief from the performance of Project Agreement obligations and related penalties (including termination) for non-performance in the case of certain events, including Delay Events and Relief Events (subject to certain time and monetary deductibles), such protection does not cover all events that potentially could interrupt construction of the Project Agreement.

In addition, although the Design-Build Contractor and the Company are required to obtain and maintain certain insurance, the required policies do not cover damage and delay from all events that potentially could interrupt construction of the Project or the performance of the Maintenance Work. Insurance policies may not be maintained or be obtainable in amounts that would be sufficient or be paid on time, in all events, to cover all of the costs required to be paid under the Project Agreement and under the Indenture, including payment of the principal of, or interest or premium, if any, on the Series 2018 Bonds. Risks that may not be insurable include a nuclear event, war, known and pre-existing environmental or geological conditions, criminal or intentional acts by the insured, bankruptcy, longshoremen's strikes and insurer insolvency. In addition, changes in federal, state or local design, building and environmental requirements and other changes in law are not risks that are generally insurable. While it is a newly-established entity, there also can be no assurance that any use by the Design-Build Contractor of its insurance proceeds would not be challenged by other creditors of the Design-Build Contractor, that the Company could repair any damage if insurance proceeds were not available or that insurance proceeds could be used to pay amounts owed with respect to the Series 2018 Bonds if damaged facilities cannot be repaired or restored.

The Company's claim for the existence or occurrence of a Delay Event or a Relief Event may be disputed by MDOT, resulting in delays in receiving, or complete failure to receive, Extra Work Costs, Delay Costs, Financing Delay Costs and/or construction schedule relief. (See "THE PRINCIPAL PROJECT DOCUMENTS— The Project Agreement" and "SUMMARY OF CERTAIN PROVISIONS OF THE PROJECT AGREEMENT— Relevant Events"). In cases where the Company may be entitled to receive compensation from the Design-Build Contractor for certain delays or defects, the Design-Build Contractor could fail to compensate the Company for such delays or defects or the issuers of any bonds, guarantees or letters of credit made or given as security pursuant to the Design-Build Contract could fail or refuse to honor their payment obligations under their respective bonds, guarantees or letters of credit. In either case, this would result in a delay in the Company's ability to collect the same or otherwise prevent the recovery of any such amounts altogether. In particular, collection efforts against the issuers of any bonds, guarantees or letters of credit made pursuant to the Design-Build Contract could entail substantial delay and expense, and might not be successful. Any such failure or delay may adversely impact the Company's cash flow, its ability to comply with the Project Agreement and its ability to pay the principal of, or interest or premium, if any, on the Series 2018 Bonds.

Inflation Risk

The Availability Payments are the primary source of revenue expected to be available to pay principal of, or interest or premium, if any, on the Series 2018 Bonds during the Maintenance Term following the Substantial Completion Date. The BaseMAP is adjusted on the Substantial Completion Date and for each payment year

thereafter using an adjustment formula that adjusts 10% of the BaseMAP based on the change in the MAP Index from the MAP Index on August 31, 2018. The MAP Index is a weighted index which includes the CPI - CPI-U, US City Average, All Items Not Seasonally Adjusted Index, a Labor Index and Materials Index - Series ID WPU00000000 (PPI Commodity Data) not seasonally adjusted as published by the US Department of Labor, Bureau of Labor Statistics.² While the adjustment formula is intended to reflect the cost structure of the Company, including certain Maintenance Expenditures, there can be no guarantee that this will adequately match the fixed and variable costs of the Company. To the extent that the Company's variable costs grow at a greater rate than the CPI-based indexing, or the cost structure is not adequately reflected in the adjustment formula, there may be insufficient funds available to the Company to satisfy its obligations under the Senior Loan Agreement, which in turn may adversely impact the ability to make payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds.

Risks Relating to the Series 2018 Bonds

Bankruptcy and Insolvency Risks

General. The enforceability of the rights and remedies of the Owners of the Series 2018 Bonds under the Indenture, of the Collateral Agent under the Senior Loan Agreement or the Collateral Agency Agreement and of the Company under the Material Project Contracts, the enforceability of obligations of the Company, the Design-Build Contractor, MDOT and the issuers or obligors under the letters of credit and performance bonds and the enforceability of the liens, security interests and pledges created by the Indenture, Collateral Agency Agreement, Security Agreements and other documents may be subject to the United States Bankruptcy Code (the "Bankruptcy Code"), to other bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and to equitable principles that may limit enforcement of certain remedies. Risks associated with a bankruptcy of the Company include the risks of delay in payment or of nonpayment under the Senior Loan Agreement and the risk that the Collateral Agent or MDOT may be unable for an extended time, or at all, to substitute a new developer for the Company. Certain of these risks are risks that are incurred whenever one enters into a contract with an entity that could become a debtor under the Bankruptcy Code, while others are risks that result from the treatment under the Bankruptcy Code of secured financings. Potential purchasers of the Series 2018 Bonds should consult their own attorneys and advisors in assessing the risks and the likelihood of recovery in the event the Company or any other party to a document described herein becomes a debtor in a bankruptcy case prior to the time the Series 2018 Bonds are paid in full.

<u>Company Bankruptcy Risk</u>. Most of the assets that comprise the Trust Estate are derived from the Project Agreement. If the Company became the subject of federal bankruptcy proceedings, operation of the automatic stay provisions of the Bankruptcy Code under certain circumstances may require the State, the Trustee and the Collateral Agent, as applicable, to obtain bankruptcy court approval prior to taking any action to enforce the Project Agreement (or to enforce the Senior Loan Agreement, the Collateral Agency Agreement, the Security Agreements or any other agreement that creates a Security Interest in favor of the Collateral Agent for the benefit of the Trustee on behalf of the Owners of the Series 2018 Bonds), including declaring the Project Agreement (or such other documents) to be in default, recovering amounts due but unpaid, terminating the Project Agreement, accelerating the due dates of any payments due from the Company, evicting the Company and taking possession of the Project Agreement, the Senior Loan Agreement and the other Security Documents or enforcing any other remedies provided by the Company as security for its payment obligations under the Project Agreement or in the other documents. In addition, the commencement of a bankruptcy or similar proceeding seeking the Company's liquidation, reorganization or similar relief, or the Company's admission that it is unable to pay its debts, each constitutes a termination event under the Project Agreement.

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MAP Index means a weighted index with the following components:

⁽a) CPI - CPI-U, US City Average, All Items Not Seasonally Adjusted, as reported by the Bureau of Labor Statistics of the United States Department of Labor (weight 25.0%);

⁽b) Labor Index - the Employment Cost Index for Total Compensation, Seasonally Adjusted, Civilian Workers, All Workers as reported by the Bureau of Labor Statistics of the United States Department of Labor (weight 50%); and

⁽c) Materials Index - Series ID WPU00000000 (PPI Commodity Data) not seasonally adjusted as published by the US Department of Labor, Bureau of Labor Statistics (weight 25.0%).

MDOT will enter into the PA Direct Agreement with the Company and the Collateral Agent, and the Design-Build Contractor and each Design-Build Guarantor will enter into the Design-Build Lenders' Direct Agreement with the Company and the Collateral Agent. Each such Direct Agreement is intended to provide the Collateral Agent with notice and time to take action following the occurrence of an event that would entitle a party to terminate or to suspend its agreement with the Company, including, under certain circumstances the right of the Collateral Agent to demand a new agreement with MDOT if the Project Agreement is terminated. Each of these agreements, however, imposes certain terms and conditions with respect to the ability of the Collateral Agent or any designee or assignee to succeed to the interests of the Company under the agreement project agreement or Design-Build Contract (as applicable). Therefore, as a practical matter, the Secured Parties will have processes to follow that may limit their ability to replace the Company as the developer under the Project Agreement and under the Design-Build Contract immediately upon the occurrence of the relevant Developer Default.

<u>Michigan Bankruptcy Risk</u>. Under the Bankruptcy Code, the State, like any state, cannot file for bankruptcy protection under Chapter 9. There can be no assurance, however, that the Bankruptcy Code will not be amended in the future to permit the State to file for bankruptcy protection, which could, under certain circumstances, adversely affect payments of principal of and interest on the Series 2018 Bonds.

<u>Other Parties</u>. The Design-Build Contractor, the Design-Build Contractor Members, the surety issuing the D&C Performance Security and the DB Liquidity Bond and the Design-Build Guarantors are involved, or are affiliates of companies that are involved, in many businesses and are entities that can become debtors under the Bankruptcy Code. If any of such persons became a debtor under the Bankruptcy Code, the Company's or the Collateral Agent's ability to substitute a new contractor, to obtain funds under any payment or performance security or to exercise other remedies may be delayed or not available at all.

Letter of Credit Dishonor or Non-Renewal

Each Equity Member is required to provide an Equity Letter of Credit to support its obligations to make Equity Contributions (if it does not cash collateralize such obligation). There can be no assurance that the issuer of any Equity Letter of Credit or any other letter of credit to be provided for the benefit of the Equity Members or the Company will honor its letter of credit in accordance with its terms, or that such issuers would not become subject to a bankruptcy or that other circumstances might arise that prevent such issuers from honoring their obligations under such Equity Letters of Credit. In addition, there is a risk that the party obligated to provide any letter of credit will not timely seek replacement of any letter of credit that is expiring, that such party will not have the credit quality or other financial resources sufficiently available at the time renewal is required to obtain a replacement letter of credit or that the issuer may default in its obligation to renew a letter of credit upon its expiry as required in accordance with the Transaction Documents.

Limitations on Enforceability

Upon a default under the Project Agreement, the Senior Loan Agreement, the Indenture, the Collateral Agency Agreement, any of the Material Project Contracts or any of the Security Documents, the remedies available to the Issuer, MDOT, the Company, the Trustee and the Collateral Agent may depend upon judicial actions that may be subject to substantial discretion and delay. Some of these remedies may not be enforceable at all. The rights of the Owners of the Series 2018 Bonds and the enforceability of the Company's, the Issuer's and the other parties' obligations will be subject to the exercise of judicial discretion under a variety of circumstances. The enforceability of governmental obligations is also subject to constitutional, statutory and public policy limitations, such as sovereign immunity, statutes of limitations and to other considerations that do not limit enforcement of similar obligations of private parties. MDOT is obligated to make Milestone Payments and Availability Payments, and to pay Compensation Amounts under the provisions relating to Relevant Events and the applicable Termination Amount pursuant to the Project Agreement. These agreements and others are for the benefit of the Company, which will grant a Security Interest over its rights in the Project Agreement to the Owners of the Series 2018 Bonds, but no assurances can be given that a court exercising its judicial discretion will always enforce such agreements by MDOT in favor of the Company and, indirectly, the Owners of the Series 2018 Bonds. The opinion of Bond Counsel as to the enforceability of the Indenture and the Series 2018 Bonds and the opinions of other parties' counsel will be qualified as to bankruptcy, insolvency and other legal events. Remedies provided in the Indenture and in the other documents to the Trustee, in the Collateral Agency Agreement and in the other documents to the Collateral Agent and the Owners of the Series 2018 Bonds and to the Issuer or MDOT may be limited or may not be available readily or at all.

The enforceability of the Design-Build Contractor's payment bonds and performance bonds may be limited not only by the legal matters described above, but also by various provisions of suretyship and insurance law. The surety or insurance company providing the payment bonds and performance bonds is not waiving its right to assert the Design-Build Contractor's defenses to payment, nor is the surety or insurance company waiving its suretyship defenses. The obligations of the surety or insurance company under the payment bonds and performance bonds to complete construction or to pay damages thus are limited, and no assurances can be given that the surety or insurance company will honor a claim under the payment bonds or performance bonds.

Insufficient Collateral

It may be difficult to realize the value of the Collateral to be pledged as part of the Trust Estate, and the proceeds received from a sale of such Collateral may be insufficient to repay the Series 2018 Bonds. Foreclosure on such Collateral on the Owners' behalf may be subject to perfection and priority issues and to practical problems associated with the realization of the Owners' security interest in such Collateral. The enforcement of the security interest with respect to any such Collateral may not provide sufficient funds to repay all amounts due on the Series 2018 Bonds. Any such Collateral will be shared with the holders of Additional Parity Bonds and other senior debt that the Company incurs in the future, including Other Permitted Senior Secured Indebtedness, which increases the risk that the proceeds of foreclosure on such Collateral will not be sufficient to make principal of, or interest or premium, if any, on the Series 2018 Bonds.

In addition, since the Company's principal asset is its rights under the Project Agreement, there are practical limitations on the exercise of remedies in respect thereof. Under the Project Agreement, certain transfers of the Company's rights are subject to the prior approval of MDOT. Moreover, any transferee must meet certain requirements established by the Project Agreement. Thus, as a practical matter, the Company's creditors (including the Owners of the Series 2018 Bonds) will have limitations on their ability to replace the Company as the developer under the Project Agreement. Furthermore, upon a default by the Company under the Project Agreement, MDOT will have the right to make demand upon and enforce any performance security.

Furthermore, in addition to the risks presented by the letters of credit (See "—Letter of Credit Dishonor or Non-Renewal"), the Senior Debt Service Reserve Account will be funded not later than three (3) Business Days after receipt of Milestone Payment 3 following Substantial Completion in an amount equal to the Senior Debt Service Reserve Required Balance. If the Company is unable to achieve Substantial Completion by the Original Substantial Completion Deadline the amounts available to the Company may be insufficient to cover the risk of payment of the Series 2018 Bonds during the period in which the Company is seeking to achieve Substantial Completion Date by the Longstop Date, the amounts available from any Equity Letters of Credit and the payment bonds and performance bonds provided by the Design-Build Contractor, plus any Termination Amount, may be insufficient to satisfy the Company's obligations under the Senior Loan Agreement, which in turn may adversely impact the ability to make payments of the principal of, interest or premium, if any, on the Series 2018 Bonds.

Uncertainties of Forecasts and Assumptions

The information in this Official Statement includes certain assumptions, forecasts and projections. Demonstration of compliance with certain of the covenants contained in the Indenture and in the Project Agreement may also be based upon assumptions and projections. Such assumptions, forecasts and projections and any forecasts and projections that may be contained in any future certificate required under the Project Agreement, the Senior Loan Agreement, the Indenture or the Collateral Agency Agreement are not necessarily indicative of future performance, and actual results are likely to differ, even materially, from those projected. None of the Company, the Issuer, the State, MDOT, the Sponsors or their Affiliates or any other party (including, but not limited to, the Underwriters) assumes any responsibility for the accuracy of such projections. In addition, certain assumptions with respect to future business and financing decisions are subject to change. No representation is made or intended, nor should any representation be inferred, with respect to the likely existence of any particular future set of facts or circumstances, and prospective purchasers of the Series 2018 Bonds are cautioned not to place undue reliance upon the projections contained in this Official Statement or upon requirements for future projections. If actual results are less favorable than the results projected or if the assumptions used in preparing the projections prove to be incorrect, MDOT's ability to make the payments required by the Project Agreement, the Company's ability to make timely payments of amounts due under the Senior Loan Agreement and the ability to make timely payments of the principal of, interest or premium, if any, on the Series 2018 Bonds may be materially and adversely affected.

Ratings of Series 2018 Bonds

Moody's and KBRA have assigned credit ratings to the Series 2018 Bonds and Moody's and S&P are expected to assign credit ratings of "A2" and "AA", respectively, to the Insured Series 2018 Bonds. With respect to the Insured Series 2018 Bonds, the rating is dependent on the ratings of the Insurer (see "-Risks Relating to the Insurer"). The ratings of the Series 2018 Bonds and the Insured Series 2018 Bonds are not a recommendation to purchase, hold or sell the Series 2018 Bonds and the Insured Series 2018 Bonds, and the ratings do not comment on the market price or suitability of the Series 2018 Bonds and the Insured Series 2018 Bonds for a particular investor. The ratings of the Series 2018 Bonds and the Insured Series 2018 Bonds may not remain for any given period of time and may be lowered or withdrawn depending on, among other things, each rating agency's assessment of the Company's and the Insurer's financial strength respectively. The credit rating assigned to the Series 2018 Bonds reflect the rating agencies' assessments of the Company's ability to make payments under the Senior Loan Agreement when due, thus reflecting on the ability to make payments on the Series 2018 Bonds when due. Likewise, the credit ratings assigned to the Insured Series 2018 Bonds reflect the rating agencies' assessments of the Company's ability to make payments under the Senior Loan Agreement when due, thus reflecting on the ability of the Issuer to make payments on the Insured Series 2018 Bonds when due. Consequently, real or anticipated changes in these credit ratings will generally affect the market value of the Series 2018 Bonds and the Insured Series 2018 Bonds. These credit ratings, however, may not reflect the potential impact of risks relating to structure, market or other factors related to the value of the Series 2018 Bonds and the Insured Series 2018 Bonds.

Market Liquidity

The Series 2018 Bonds constitute a new issue with no established trading market. Although the Underwriters have informed the Issuer and the Company that the Underwriters currently intend to make a market for the Series 2018 Bonds, the Underwriters are not obligated to do so, and they may discontinue any such market-making at any time without prior notice. No assurance can be given as to the development or liquidity of any market for the Series 2018 Bonds. If an active public market does not develop, the market price and liquidity of the Series 2018 Bonds may be adversely affected.

Furthermore, even if a market were to develop, the Series 2018 Bonds could trade at prices that may be lower than the initial issue price depending on many factors, including prevailing interest rates, markets for similar securities, general economic conditions and financial condition and performance and prospects of the Company and the Project. Owners may not be able to sell their Series 2018 Bonds in the future or such sales may not be at prices equal to or greater than the initial offering price of the Series 2018 Bonds. As a result, Owners may not be able to liquidate their investment in the Series 2018 Bonds quickly, at an attractive price or at all.

Additional Senior Debt and Additional Parity Bonds

The Company will be permitted, in certain circumstances, to incur Other Permitted Senior Secured Indebtedness, which may adversely impact the payment of the principal of, or interest or premium, if any, on the Series 2018 Bonds. The Senior Loan Agreement permits the Company to incur, in specific circumstances and subject to certain requirements, Other Permitted Senior Secured Indebtedness. See "FINANCING FOR THE PROJECT-Senior Loan Agreement." The Indenture permits the issuance, in specific circumstances and subject to certain requirements, of Additional Parity Bonds to be ratably and equally secured by the Trust Estate. See "THE SERIES 2018 BONDS-Additional Parity Bonds." Any Other Permitted Senior Secured Indebtedness incurred, including Additional Parity Bonds, or issued would be payable from the Company's revenues on a pari passu basis with the Series 2018 Bonds and would, with certain limited exceptions, also share on an equal basis in the Collateral, including Termination Amount (which would be subject to appropriation) payable by MDOT, if any, pursuant to the Project Agreement following a termination thereof. Therefore, to the extent that the Company's revenues are insufficient to make payments on all of the Company's outstanding senior debt, including any Other Permitted Senior Secured Indebtedness, such insufficiency may negatively impact the payment of principal of, or interest or premium, if any, on the Series 2018 Bonds. During any foreclosure action with respect to the Collateral, or in the case of an early termination of the Project Agreement, to the extent that the Company has incurred Other Permitted Senior Secured Indebtedness, including Additional Parity Bonds, Owners of the Series 2018 Bonds will be required to share the proceeds of the Collateral, and no Secured Parties other than the applicable other Secured Parties will have a Security Interest in similar accounts established with respect to Other Permitted Senior Secured Indebtedness. Any Termination Amount payable by MDOT, as applicable, with a larger group of senior debt holders, may reduce proportionally any claim that the Owners of the Series 2018 Bonds may have to such proceeds or Termination Amount. In the case of any voting required to be undertaken among the Secured Parties, to the

extent that the Company has incurred Other Permitted Senior Secured Indebtedness, the voting power of Owners of the Series 2018 Bonds will be diluted among a larger group of Secured Parties, reducing the votes that the Owners of the Series 2018 Bonds may have in such situation, and the holders of Other Permitted Senior Secured Indebtedness might not vote in a manner consistent with the desires or best interests of the Owners of the Series 2018 Bonds.

Risks Relating to the Insurer

In the event the Company fails to make regularly scheduled payments of the principal of and interest on any Insured Series 2018 Bonds when the same become due, the Trustee on behalf of owners of such Insured Series 2018 Bonds shall have the right to make a claim under the Insurance Policy for such payments. There can be no assurance that the Insurer will have sufficient claims paying resources to enable it to make timely payments on such Insured Series 2018 Bonds. Moreover, the Insurance Policy does not insure the principal of or interest on the Insured Series 2018 Bonds coming due by reason of acceleration, optional redemption or mandatory/extraordinary redemption, nor does it insure the payment of any redemption premium payable upon the optional redemption of the Insured Series 2018 Bonds.

So long as the Insured Series 2018 Bonds are outstanding and the Insurer is not in default under the Policy, the Insurer shall be deemed the owner of the Insured Series 2018 Bonds for purposes of all actions relating to the Insured Series 2018 Bonds which require or permit the consent, direction or request of the owners of the Insured Series 2018 Bonds.

In the event that the Insurer does not make scheduled payments of principal and interest on the Insured Series 2018 Bonds as such payments become due, such Insured Series 2018 Bonds will be payable solely from moneys received by the Trustee pursuant to the Indenture. See "BOND INSURANCE" for further information concerning the Insurer and the Insurance Policy.

The ratings on the Insured Series 2018 Bonds are dependent on the ratings of the Insurer. The Insurer's current ratings are predicated upon, among other things, a level of reserves in excess of the levels required by the various state agencies regulating insurance companies and an assessment by the rating agencies of potential future claims against these reserves. The level of reserves maintained by the Insurer and the assessment by rating agencies of potential future claims and the adequacy of reserves to meet these claims could change over time and this could result in a downgrading of the ratings on the Insured Series 2018 Bonds. The Insurer is not contractually bound to maintain its present level of reserves in the future or to increase them in order to maintain its present ratings.

Risks Relating to Tax Matters

The Indenture, the Senior Loan Agreement, and the Non-Arbitrage Certificate contain various covenants and agreements on the part of the Company and the MSF that are intended to establish and maintain the excludability of interest on the Series 2018 Bonds from gross income for federal income tax purposes. A failure by the MSF or the Company to comply with such covenants and agreements could, directly or indirectly, cause the interest on the Series 2018 Bonds to be included in gross income for federal income tax purposes retroactively to the date of issuance of the Series 2018 Bonds. See "TAX MATTERS—General." Neither the MSF nor the Company is required to redeem the Series 2018 Bonds should interest thereon no longer be excludable from gross income for federal income tax purposes.

Current and future legislative proposals, if enacted into law, clarification of the Code, or court decisions may cause interest on the Series 2018 Bonds to be subject, directly or indirectly, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent Owners from realizing the full current benefit of the tax status of such interest. Proposals have been made that could significantly reduce the benefit of, or otherwise affect, the excludability from gross income of interest on obligations like the Series 2018 Bonds. The introduction or enactment of any such legislative proposals, clarification of the Code, or court decisions may also affect, perhaps significantly, the market price for, or marketability of, the Series 2018 Bonds. Prospective purchasers of the Series 2018 Bonds should consult their own tax advisors regarding any pending or proposed federal or state tax legislation, regulations, or litigation, and regarding the impact of future legislation, regulations, or litigation, as to which Attorney General and Bond Counsel express no opinion. See "TAX MATTERS."

PROJECT ACCOUNTS AND FLOW OF FUNDS

General

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

Each of the Operating Account, the Construction Account, the Revenue Account, the Senior Debt Service Account, the PA Handback Account, the Loss Proceeds Account, the Maintenance Reserve Account and the Equity Lock-Up Account will constitute a "Project Account" (and collectively, the "Project Accounts").

Project Accounts

The following Project Accounts will be established and created under the Collateral Agency Agreement in the name of the Company subject to, at all times, the security interest of the Collateral Agent and under its control:

a. the Construction Account, including: the Bond Proceeds Sub-Account, the Project Proceeds Sub-Account, the Equity Contribution Sub-Account, the Milestone Payment Sub-Account and the DB Security Sub-Account;

b. the Revenue Account;

c. the Senior Debt Service Account, including: the Senior Interest Payment Sub-Account and the Senior Principal Payment Sub-Account;

- d. the Senior Debt Service Reserve Account;
- e. the Maintenance Reserve Account;
- f. the Voluntary Prepayment Account;
- g. the Equity Lock-Up Account;
- h. the Loss Proceeds Account; and
- i. the Mandatory Prepayment Account.

Operating Account

In addition to these Project Accounts, the Company will establish an operating account (the "Operating Account") with the Collateral Agent, and such account shall be maintained in the name of the Company. The Operating Account shall also constitute a Project Account and shall be subject to the Security Interest of the Collateral Agent; provided that the Operating Account may be, at the Company's discretion, instead maintained with a Deposit Account Bank subject to a Control Agreement.

Distribution Account

The Company will also establish a Distribution Account with the Collateral Agent for the purposes of receiving funds to be distributed to the Company, which account will not be subject to the Security Interest of the Collateral Agent, and from which the Company will have the exclusive right (subject to the rights of MDOT under the Project Agreement) to withdraw or otherwise dispose of funds without any restriction or condition for purposes contemplated in the Project Agreement.

PA Handback Account

The Company will also provide to MDOT an amount equal to the Handback Work Costs for deposit with the State Treasurer in a separate account (the "PA Handback Account") for the purpose of making payment to the Company in accordance with Section 18.3 of the Project Agreement. The Company may satisfy the obligation to provide the Handback Work Costs to MDOT by directing the Collateral Agent to transfer to the PA Handback Account the amount of Handback Work Costs out of Availability Payments. To the extent that MDOT determines that the amount standing to the credit of the PA Handback Account at any time exceeds the value of the Handback Work yet to be performed and pays such excess to the Company, such amounts shall be deposited by the Company to the Revenue Account. The PA Handback Account may be replaced with one or more Handback Letters of Credit

at the option of Company, the primary beneficiary of which shall be MDOT, and the cash, if any, being replaced shall be transferred directly to the Distribution Account or as otherwise directed by the Company. The PA Handback Account will constitute a Project Account but will not be subject to the Security Interest of the Collateral Agent. The requirements for PA Handback Account are further detailed in the Project Agreement.

Description of Project Accounts

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

Construction Account

Prior to the date the Company has made all payments of Project Costs in connection with Final Acceptance, except for amounts to be deposited in other Project Accounts as described under "—Project Accounts", all (i) proceeds of the Series 2018 Loan, (ii) proceeds of all Equity Contributions, (iii) Project Proceeds, (iv) MDOT Pass-Through Payments, and (v) other amounts received by the Company from any source whatsoever, will be deposited into the Construction Account (including the appropriate sub-accounts according to the Collateral Agency Agreement). Pending each such deposit, the Company will hold all such amounts coming into its possession in trust for the benefit of the Secured Parties. During such period, the Collateral Agent will transfer funds from the Construction Account as instructed by the Company as described under "—Construction Account".

(a) <u>Bond Proceeds Sub-Account</u>

All proceeds from the issuance of the Series 2018 Bonds, including any original issue premium, net of any original issue discount, underwriting discount or similar fee, and Insurance Policy premium in respect thereof, received by the Company pursuant to the terms of the Senior Loan Agreement will be deposited in the Bond Proceeds Sub-Account.

Moneys in the Bond Proceeds Sub-Account on the Closing Date will be invested in the Series 2018 GIC. Interest earned on the Series 2018 GIC together with the Scheduled Withdrawal Amount shall be automatically, without further direction, deposited on each payment date specified in the Collateral Agency Agreement in the Bond Proceeds Sub-Account. The Scheduled Withdrawal Amount will be established based on the Base Case Model delivered on the Closing Date. The Series 2018 GIC is provided by SMBC and would not qualify as a "permitted investment" of funds by the Issuer without an exemption from its current investment policy. SMBC's unsecured long-term debt is currently rated "A1" by Moody's, "A" by S&P and "A" by Fitch and SMBC has \$1.61 Trillion (USD) in assets as of March 2018. Moneys in the Bond Proceeds Sub-Account shall be deposited into the Operating Account and will be applied to pay, or reimburse for a prior payment of, Project Costs prior to the Substantial Completion Date in compliance with the Collateral Agency Agreement, the Senior Loan Agreement, the Code and the Non-Arbitrage Certificate.

Upon a date that is no earlier than five (5) years after the date of issuance of the Series 2018 Bonds and no later than the date that is five (5) years and forty-five (45) days after the date of issuance of the Series 2018 Bonds, the remaining unspent proceeds of the Series 2018 Bonds from any remaining unspent Series 2018 Bonds proceeds on deposit in the Bond Proceeds Sub-Account on such date (with respect to which, for the avoidance of doubt, no Secured Party shall have any right) shall be applied as follows:

- (i) <u>First</u>, any applicable amount thereof shall be transferred to the Series 2018 Rebate Fund; and
- (ii) Second, any remaining amounts shall be transferred to the Mandatory Prepayment Account for redemption of the Series 2018 Bonds; provided that no such transfer to the Mandatory Prepayment Account and redemption of the Series 2018 Bonds will be required if the Company has obtained an opinion of Bond Counsel stating that the failure to redeem any such Series 2018 Bonds will not adversely affect the exclusion of interest on such Series 2018 Bonds from gross income for federal or State income tax purposes and that such redemption is not required by State law.

(b) <u>Project Proceeds Sub-Account</u>

Any Project Proceeds and Account Interest received prior to the End of Funding Date will be deposited in the Project Proceeds Sub-Account, except to the extent expressly provided in the Collateral Agency Agreement. Moneys in the Project Proceeds Sub-Account will be applied at the direction of the Company to pay or reimburse for a prior payment of Project Costs incurred prior to the Substantial Completion Date.

(c) Equity Contribution Sub-Account

The proceeds of any Equity Contributions made in accordance with the Equity Contribution Agreement and the proceeds of any drawing on any Equity Letter of Credit in accordance with the Equity Contribution Agreement will in each case be deposited in the Equity Contribution Sub-Account. Moneys in the Equity Contribution Sub-Account will be applied at the direction of the Company to pay, or reimburse for a prior payment of, Project Costs prior to the Final Acceptance Date.

(d) <u>Milestone Payment Sub-Account</u>

Any payments of Milestone Payments received from MDOT prior to the Substantial Completion Date will be deposited in the Milestone Payment Sub-Account. Moneys in the Milestone Payment Sub-Account from Milestone Payment 1 and Milestone Payment 2 will be, at the direction of the Company, applied to pay, or reimbursed for a prior payment of, Project Costs prior to the Substantial Completion Date. The proceeds of Milestone Payment 3 shall be transferred in the following order of priority:

- (i) <u>First</u>, to fund the Senior Debt Service Reserve Account in accordance with the Collateral Agency Agreement;
- (ii) <u>Second</u>, to the payment of the remaining Project Costs in connection with Final Acceptance; and
- (iii) <u>Third</u>, to the Revenue Account to be applied in accordance with the Collateral Agency Agreement as described under "—Revenue Account".

The proceeds of Milestone Payment 4 shall be paid to the Design-Build Contractor on the Final Acceptance Date.

(e) <u>DB Security Sub-Account</u>

The proceeds of draws on any DB Liquidity Bond or Acceptable Replacement Support will be deposited in the DB Security Sub-Account in accordance with the Design-Build Contract. Moneys in the DB Security Sub-Account will be applied, at the direction of the Company, in accordance with the Design-Build Contract. In the event the Design-Build Contractor delivers an Acceptable Replacement Support in replacement of any amount deposited in the DB Security Sub-Account, at the direction of the Company any such excess funds (taking into account the drawing amount of such Acceptable Replacement Support) in the DB Security Sub-Account will be paid to the Design-Build Contractor.

Revenue Account

On and after the Substantial Completion Date, except for Milestone Payments to be deposited in the Milestone Payment Sub-Account of the Construction Account as described under "- Construction Account - Milestone Payment Sub-Account" and amounts received by the Company which are subject to deposit in the Bond Proceeds Sub-Account, all (i) Project Revenues, (ii) Project Proceeds and (iii) any other amounts received by the Company, from any source whatsoever, will be deposited into the Revenue Account. Pending such deposit, the Company will hold all such amounts coming into its possession in trust for the benefit of the Secured Parties.

Upon the Company's delivery of a Funds Transfer Certificate (as described under "—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default") and subject to requirements described under "—Application of Proceeds", beginning with the first quarterly Transfer Date after the Substantial Completion Date the Collateral Agent will make the withdrawals, transfers and payments from the Revenue Account as described under "—Flow of Funds—Revenue Account—Upon the Substantial Completion Date".

Senior Debt Service Account

The Senior Debt Service Account will contain two sub-accounts: the Senior Interest Payment Sub-Account and the Senior Principal Payment Sub-Account.

The Senior Interest Payment Sub-Account will be funded in accordance with and subject to the Collateral Agency Agreement, as described in clause "Fourth" under "—Flow of Funds—Revenue Account—Upon the Substantial Completion Date". Funds on deposit in the Senior Interest Payment Sub-Account will be applied to pay accrued and unpaid interest due and payable on all Senior Secured Obligations.

The Senior Principal Payment Sub-Account will be funded in accordance with the Collateral Agency Agreement, as described in clause "Fifth" under "-Flow of Funds-Revenue Account-Upon the Substantial

Completion Date". Funds on deposit in the Senior Principal Payment Sub-Account will be applied to pay principal that is due and payable on all Senior Secured Obligations.

Senior Debt Service Reserve Account

The Senior Debt Service Reserve Account will be established solely for the benefit of the relevant Secured Parties and will be held by the Collateral Agent, and, except as described under "—Application of Proceeds", the Security Interest thereon maintained, for the exclusive benefit of only such Secured Parties.

The Collateral Agent will create a new sub-account relating to the Series 2018 Bonds under the Senior Debt Service Reserve Account, in the name of the Trustee and titled the "Series 2018 Debt Service Reserve Sub-Account". The Series 2018 Debt Service Reserve Sub-Account will be funded not later than three Business Days after receipt of Milestone Payment 3 in an amount equal to the Senior Debt Service Reserve Required Balance as then calculated, and thereafter as described in clause "Sixth" under "—Flow of Funds—Revenue Account—Upon the Substantial Completion Date". Any amounts on deposit in the Series 2018 Debt Service Reserve Sub-Account in excess of the Senior Debt Service Reserve Required Balance other than as a result of funding the Senior Debt Service Reserve Account and any amounts on deposit in the Service Reserve Sub-Account in excess of the Senior Debt in the Series 2018 Debt Service Reserve Account with an Acceptable Letter of Credit will be deposited into the Equity Lock-Up Account and any amounts on deposit in the Service Reserve Sub-Account in excess of the Senior Debt Service Reserve Required Balance as a result of funding the Senior Debt Service Reserve Account with an Acceptable Letter of Credit will be deposited into the Equity Lock-Up Account and any amounts on deposit in the Service Reserve Sub-Account in excess of the Senior Debt Service Reserve Required Balance as a result of funding the Senior Debt Service Reserve Account with an Acceptable Letter of Credit will be deposited into the Distribution Account.

Funds on deposit in any sub-account of the Senior Debt Service Reserve Account will be used by the Collateral Agent (without the requirement of a Funds Transfer Certificate) as follows:

(a) If on any Transfer Date immediately preceding or occurring on an Interest Payment Date or Principal Payment Date for the Senior Secured Obligations, the funds on deposit in the applicable interest or principal sub-account of the Senior Debt Service Account, the Revenue Account and the Equity Lock-Up Account (in each case, after giving effect to the transfers as described in clauses "Fourth" and "Fifth" under "—Flow of Funds—Revenue Account—Upon the Substantial Completion Date", solely with respect to the relevant Senior Secured Obligations) are insufficient to pay the principal, redemption price or interest on the Senior Secured Obligations, as applicable, on the applicable Interest Payment Date or Principal Payment Date funds on deposit in the relevant sub-account of the Senior Debt Service Reserve Account will be transferred to the Senior Interest Payment Sub-Account or the Senior Principal Payment Sub-Account or the relevant interest or principal, as applicable, which will become due and payable on the Senior Secured Obligations as of such Interest Payment Date or Principal Payment of interest Payment sub-account or the Senior Principal Payment Sub-Account or the relevant interest or principal payment sub-account relating to such other Senior Secured Obligations, as applicable, which will become due and payable on the Senior Secured Obligations as of such Interest Payment Date or Principal Payment Date or Principal Payment of interest or principal payment sub-account relating to such other Senior Secured Obligations, as applicable, for payment of interest or principal, as applicable, which will become due and payable on the Senior Secured Obligations as of such Interest Payment Date or Principal Payment Date; and

(b) Following the taking of an Enforcement Action, moneys in such sub-account of the Senior Debt Service Reserve Account will be applied as described under "—Application of Proceeds".

The Company may, upon notice to the Collateral Agent and relevant Senior Secured Party, substitute all or any portion of the cash or Permitted Investments on deposit in the Series 2018 Debt Service Reserve Sub-Account with an Acceptable Letter of Credit in favor of the Collateral Agent for purposes of the Senior Debt Service Reserve Required Balance; provided, however, that if any proceeds of the Bonds are on deposit in the Series 2018 Debt Service Reserve Sub-Account, an opinion of Bond Counsel that such substitution will not adversely affect the taxexempt status of the Bonds shall be required.

If, at any time the balance in the Senior Debt Service Reserve Account is less than the Senior Debt Service Reserve Required Balance, such event shall not constitute a Default or an Event of Default but shall constitute a failure to comply with the Restricted Payment Conditions.

Maintenance Reserve Account

The Maintenance Reserve Account will be funded on each Transfer Date described in clause "Eighth" under "—Flow of Funds—Revenue Account—Upon the Substantial Completion Date" to maintain the funds in the Maintenance Reserve Account in an amount equal to the Maintenance Reserve Account Required Balance. The Maintenance Reserve Account is scheduled to be funded with the initial Availability Payment after Substantial Completion. Any amounts on deposit in the Maintenance Reserve Account in excess of the Maintenance Reserve Account Required Balance (including as a result of funding of the Maintenance Reserve Account with an Acceptable Letter of Credit) shall be transferred directly to the Distribution Account or as otherwise directed by the Company without being subject to the funds flow described in "First" through "Twelfth" under "Flow of Funds—

Revenue Account-Upon the Substantial Completion Date" or requiring satisfaction of Restricted Payment Conditions.

Subject to requirements described under "—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default" (including the delivery of a Funds Transfer Certificate, as applicable, by the Company), the Collateral Agent will make withdrawals, transfers and payments from the Maintenance Reserve Account for the payment of Maintenance Work.

If, at any time the balance in the Maintenance Reserve Account is less than the Maintenance Reserve Account Required Balance, such event shall not constitute a Default or an Event of Default but shall constitute a failure to comply with the Restricted Payment Conditions.

Voluntary Prepayment Account

The Voluntary Prepayment Account will be funded as described in clause "Tenth" under "—Flow of Funds—Revenue Account—Upon the Substantial Completion Date". Funds in the Voluntary Prepayment Account will be applied to prepay the Senior Secured Obligations at the direction of the Company in accordance with the terms of the Finance Documents, including the limitations set forth in the Collateral Agency Agreement.

Equity Lock-Up Account

The Equity Lock-Up Account will be funded as described in clause "Twelfth" under "—Flow of Funds— Revenue Account—Upon the Substantial Completion Date". Funds on deposit in the Equity Lock-Up Account may be transferred to the Distribution Account upon satisfaction of the Restricted Payment Conditions on any Restricted Payment Date; provided that the amount of funds available to be paid to the Distribution Account from the Equity Lock-Up Account in respect of any Restricted Payment Date will be not greater than the amount of funds in the Equity Lock-Up Account on the Calculation Date immediately preceding such Restricted Payment Date. Amounts on deposit in the Equity Lock-Up Account will be transferred to the Distribution Account concurrently with the transfer of funds from the Revenue Account to the Distribution Account on any Transfer Date as described under "Thirteenth" under "—Flow of Funds—Revenue Account—Upon the Substantial Completion Date".

Loss Proceeds Account

All insurance proceeds and condemnation proceeds received by the Company with respect to physical property damage to the Project will be deposited directly into the Loss Proceeds Account. Amounts on deposit in the Loss Proceeds Account will be withdrawn and paid to the Company to be applied to the costs of repair, reconstruction, rehabilitation, restoration, renewal, reinstatement and replacement of the Project or any portion thereof in accordance with the requirements of the Project Agreement, except that, to the extent that (A) such proceeds exceed the amount required to restore the Project or any portion thereof to the condition required by the Project Agreement by more than \$5,000,000 or, if the Project Agreement requires restoration of the Project but does not specify the required condition for such restoration, to the condition existing prior to the event of loss or (B) the affected property cannot be restored or is not required to be restored pursuant to the terms of the Project Agreement and the Finance Documents and the Company elects not to do so, or the Finance Documents otherwise require prepayment of the Secured Obligations with such amounts, such proceeds in excess of \$5,000,000 will be transferred to the Mandatory Prepayment Account to cause the extraordinary mandatory redemption of the Secured Obligations (on a pro rata basis) and otherwise to the Revenue Account.

Mandatory Prepayment Account

The Mandatory Prepayment Account shall be funded as follows:

(a) from insurance and condemnation proceeds transferred to the Mandatory Prepayment Account in accordance with "—Loss Proceeds Account";

(b) from proceeds of any Termination Amount received from MDOT under the Project Agreement; and

(c) from amounts transferred from the Bond Proceeds Sub-Account in accordance with the second paragraph in "—Construction Account—Bond Proceeds Sub-Account".

Funds deposited into the Mandatory Prepayment Account will be transferred into the Bond Mandatory Prepayment Sub-Account and/or any other sub-account established for any other Secured Obligation in accordance with the provisions of "—Mandatory Prepayment Account" for prepayment and redemption of the Bonds and any

other Secured Obligations required to be repaid thereby (on a pro rata basis based on the then outstanding principal amounts of the Bonds and such other Senior Secured Obligations) in accordance with the terms of the Finance Documents at such redemption prices as contemplated therein; provided that, notwithstanding anything to the contrary contained therein, the amounts described in the preceding paragraph shall be applied solely to the Series 2018 Redemption Account of the Series 2018 Debt Service Fund established pursuant to the terms of the Indenture to cause the extraordinary mandatory redemption of the Series 2018 Bonds.

Notwithstanding anything to the contrary under the Collateral Agency Agreement and anything described under "—Application of Proceeds", the Bonds Mandatory Prepayment Sub-Account will be pledged solely as collateral to secure the Series 2018 Bonds and will be established solely for the benefit of the Bondholders and held by the Collateral Agent, and the lien thereon will be maintained for the exclusive benefit of solely the Bondholders.

Operating Account

The Operating Account will be funded as described in clause "First" under "—Flow of Funds—Revenue Account—Upon the Substantial Completion Date". Withdrawals from the Operating Account will not require compliance with any conditions other than (i) no Specified Default or Event of Default shall have occurred and be continuing (or if a Specified Default or Event of Default has occurred and is continuing, such draw is necessary to, and will, cure such Specified Default or Event of Default), and (ii) amounts withdrawn must be applied for the purposes, as applicable, required with respect to the Bond Proceeds Sub-Account or set forth in clause "First", under "—Flow of Funds—Revenue Account—Upon the Substantial Completion Date".

Distribution Account

The Distribution Account will be funded as described in clause "Thirteenth" under "—Flow of Funds— Revenue Account—Upon the Substantial Completion Date" and the Collateral Agency Agreement. The Distribution Account shall not be a Project Account and shall not be subject to a Security Interest in favor of the Collateral Agent. Funds on deposit in the Distribution Account may be distributed to an account (or to such Person) as directed by and in the sole discretion of the Company.

Reserve Accounts and Reserve Letters of Credit

The Applicable Reserve Requirement of any Reserve Account may be funded from time to time by any Applicable Reserve Letter of Credit. On any date that the Collateral Agent is required or permitted to withdraw funds from any Reserve Account, the Collateral Agent will, subject to the terms of the Collateral Agency Agreement, make a pro rata drawing under each Applicable Reserve Letter of Credit in respect of such Reserve Account.

Upon request from the Company, the Collateral Agent will release funds from any Reserve Account in the event that the Company has provided the Collateral Agent with an Applicable Reserve Letter of Credit in a stated amount equal to the amount of funds to be released from such Reserve Account. Any amounts so released will be transferred directly to the Distribution Account or otherwise as may be specified by the Company. See APPENDIX D—"SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT—The Project Accounts—Reserve Accounts; Reserve Letters of Credit" for further detail.

Funds as Collateral

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

Investment

Funds in the Project Accounts may be invested and reinvested only in Permitted Investments in accordance with written instructions given to the Collateral Agent by the Company (prior to the occurrence of an Event of Default and, thereafter (so long as such Event of Default will be continuing), as directed by the Trustee and in accordance with the written instructions of the Trustee) and, unless an Event of Default has occurred and is continuing, the Company is entitled to instruct the Collateral Agent to liquidate Permitted Investments for purposes of effecting any such investment or reinvestment, upon permitted withdrawals from the respective accounts, or for

any other purpose permitted under the Collateral Agency Agreement; provided that, absent such instruction, such amounts held in the Project Accounts will be invested and reinvested in Permitted Investments as selected by the Company in advance (which may be in the form of a standing instruction).

The Collateral Agent will not be required to take any action with respect to investing the funds in any Project Account in the absence of written instructions by the Company or the Trustee (to the extent provided in accordance with the terms of the Collateral Agency Agreement).

The Collateral Agent will not be liable for any loss resulting from any Permitted Investment or the sale or redemption thereof made in accordance with the terms of the Collateral Agency Agreement. If and when cash is required for disbursement in accordance with the Collateral Agency Agreement, the Collateral Agent is authorized, in the event the Company fails to direct the Collateral Agency Agreement, the Collateral Agent is authorized to make payments required pursuant to the Collateral Agency Agreement, to cause Permitted Investments to be sold or otherwise liquidated into cash (without regard to maturity) in such manner as the Collateral Agent will deem reasonable and prudent under the circumstances.

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

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

Each withdrawal or transfer of funds from the Project Accounts (other than from the Construction Account and sub-accounts thereof or the Operating Account) by the Collateral Agent on behalf of the Company will be made pursuant to an executed Funds Transfer Certificate, which certificate (except as provided in the Collateral Agency Agreement) will be provided and prepared by the Company and will contain a certification by the Company that such withdrawal or transfer complies with the requirements of the Collateral Agency Agreement.

Unless a shorter period is acceptable to the Collateral Agent, such Funds Transfer Certificate relating to each applicable Project Account (other than the Operating Account) will be delivered to the Collateral Agent no later than three (3) Business Days prior to each date on which funds are proposed to be withdrawn or transferred. In the event that a certificate does not comply with the requirements of the Collateral Agency Agreement and the other Finance Documents, the Collateral Agent has the right to reject such certificate and the Company will not be entitled to cause the proposed withdrawal or transfer until it has submitted a revised and compliant certificate.

Notwithstanding anything to the contrary contained in Collateral Agency Agreement, upon receipt of a notice of an Event of Default and during the continuance of the related Event of Default, the Trustee may, following the taking of an Enforcement Action without consent of the Company, instruct the Collateral Agent in writing to apply proceeds of the Project Accounts (other than the PA Handback Account) to the payment of Secured Obligations, in accordance with the terms of the Collateral Agency Agreement and as described under "— Application of Proceeds", so long as such payments are on account of amounts due under the Finance Documents in respect of such Secured Obligations and at any time prior to the taking of an Enforcement Action, proceeds of the Project Accounts will be applied in the order described under "—Flow of Funds—Revenue Account - Upon the Substantial Completion Date"; provided that the Construction Account", "—Senior Debt Service Reserve Account".

Flow of Funds

Construction Account - During the Construction Period

Pursuant to the terms of the Collateral Agency Agreement, amounts will be deposited in the Construction Account and sub-accounts thereof as described under "—Construction Account" above.

Amounts in the Construction Account and sub-accounts thereof (other than payment of Milestone Payment 4 from the Milestone Payment Sub-Account) will be transferred by the Collateral Agent as directed in the applicable Construction Requisition Certificate to pay Project Costs upon receipt by the Trustee and the Collateral Agent of the following documents and satisfaction of the following conditions, as applicable, not later than the third Business Day prior to the proposed Transfer Date:

(a) a duly executed Construction Requisition Certificate from the Company setting forth the amount requested and the applicable accounts or payees to which such funds will be transferred and, if amounts are

requested with respect to MDOT Pass-Through Payments, specifying the amount received from MDOT and providing details as to the nature of such payment from MDOT, the basis of payment of such amount to the applicable payees and such payee information, and certifying that (i) no Specified Default or Event of Default has occurred and is continuing (unless such withdrawal will cure such Specified Default or Event of Default) or will occur as a result of the withdrawal, (ii) certain representations of the Company in the Senior Loan Agreement are true and correct in all material respects on and as of the applicable withdrawal date, except to the extent such representations or warranties specifically refer to an earlier date, in which case such representations shall have been true and correct in all material respects on such date, (iii) no Funding Shortfall exists, (iv) all amounts requisitioned in the withdrawal request relate to Project Costs that have been or are reasonably projected to be incurred within the following thirty (30) days and none have been the basis for a prior requisition that has been paid, (v) that the aggregate amount of Project Costs claimed up to and including that date does not exceed the aggregate amount shown as to be paid by such date in the Base Case Model delivered on the Closing Date, and (vi) all Reserve Accounts are fully funded as required;

(b) a duly executed Technical Advisor Certificate stating that (i) Substantial Completion is reasonably expected to be achieved on or prior to the Lenders' Longstop Date, (ii) the amounts being requested are for the payment of Eligible Project Costs as specified in the Non-Arbitrage Certificate, and (iii) it does not dispute the certification given by the Company that no Funding Shortfall exists; provided, however, that none of the foregoing requirements will apply to Project Costs constituting the payment of interest on the Series 2018 Bonds or any Additional Parity Bonds, the costs of issuance of the Series 2018 Bonds or any Additional Parity Bonds, and administrative expenses of the Company, including without limitation personnel, insurance expenses; and

(c) the Company shall have delivered lien waivers from the Design-Build Contractor and other material third-party contractors or materialmen for work and materials supplied to the Project for costs specified in the withdrawal request.

After (i) confirmation by the Collateral Agent that all transfers related to the Approved Construction Requisitions received by it have been made pursuant to the Collateral Agency Agreement, (ii) receipt by the Collateral Agent of a duly completed Final Acceptance Amount Certificate executed by an Authorized Representative of the Company and the Lenders' Technical Advisor, (iii) the Aggregate Capital Commitment has been fully funded, and (iv) all payments from the Milestone Payment Sub-Account as described under "— Description of Project Accounts—Construction Account—Milestone Payment Sub-Account" have been made, all funds then on deposit in the Construction Account or any sub-accounts other than the Bond Proceeds Sub-Account, net of the certified Final Acceptance Amount, will be transferred to the Revenue Account.

The Company may provide the Collateral Agent and the Trustee with a copy of the Final Acceptance Certificate. Upon receipt of the Final Acceptance Certificate, the Collateral Agent will close the Construction Account (and applicable sub-accounts of the Construction Account) and transfer funds therein as indicated in the Final Acceptance Certificate.

Notwithstanding anything to the contrary in the Collateral Agency Agreement, on the Closing Date, the Collateral Agent will make the transfers and disbursements of funds as specified in a funds flow memorandum, in form and substance satisfactory to the Trustee, the Underwriters, the Company and the Collateral Agent.

Any amounts deposited into the Construction Account pursuant to the Collateral Agency Agreement will be (A) deposited into the applicable sub-accounts as described under "—Description of Project Accounts— Construction Account", (B) any Approved Construction Requisition delivered pursuant to the Collateral Agency Agreement will apply funds on deposit in the sub-accounts of the Construction Account pursuant to the Collateral Agency Agreement and as described under "—Description of Project Accounts—Construction Account", subject to the conditions and limitations set forth in the Collateral Agency Agreement, and (C) any funds on deposit in the sub-accounts as described under "—Description of Project Accounts—Construction Account", will only be applied in accordance with an Approved Construction Requisition delivered pursuant to the Collateral Agency Agreement.

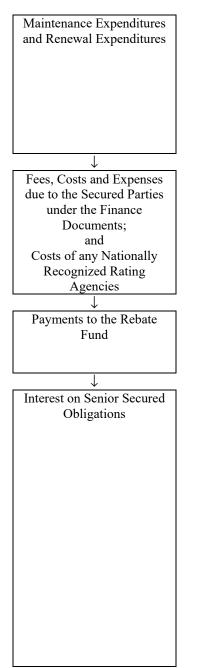
Following the taking of an Enforcement Action, funds on deposit in the Construction Account will be applied as described under "—Application of Proceeds", regarding the application of proceeds.

Revenue Account - Upon the Substantial Completion Date

Pursuant to the terms of the Collateral Agency Agreement, amounts will be deposited in the Revenue Account as described under "—Revenue Account" above. The Collateral Agent is required to make the following

withdrawals, transfers and payments from the Revenue Account in accordance with the flow of funds set forth below, upon the instructions of the Company.

Subject to the delivery of a Funds Transfer Certificate by the Company (to the extent required according to the description provided under "—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default") and subject to the fulfillment of the requirement described under "—Application of Proceeds", regarding application of proceeds, beginning with the first Transfer Date after the Substantial Completion Date, the Collateral Agent will make the following withdrawals, transfers and payments from the Revenue Account in the amounts, at the times and at the request of the Company in the applicable Funds Transfer Certificate at the times and in the following order of priority (it being agreed that no amount will be withdrawn on any Transfer Date pursuant to any clause below until amounts sufficient as of that Transfer Date (to the extent applicable) for all the purposes specified under the prior clauses will have been withdrawn or set aside):

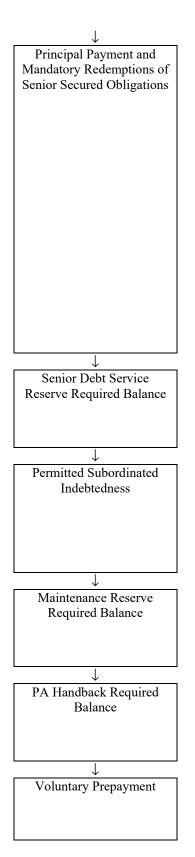


<u>First</u>, on each Transfer Date, to the Operating Account, an amount equal to the projected Maintenance Expenditures and Renewal Expenditures due or to become due and payable prior to the next Transfer Date and not exceeding 115% of the amounts therefor set out in the Annual Operating Budget delivered by the Company pursuant to the Senior Loan Agreement to the extent such expenses are not covered by clause Second below or by funds in the Maintenance Reserve Account or PA Handback Account, as applicable, and without double counting increases in the Annual Operating Budget over amounts in the Base Case Model;

<u>Second</u>, on each Transfer Date, to the payment of indemnities, fees, costs and expenses then due and payable to the Senior Secured Parties under the Finance Documents, if any, and to the payment of any costs of any Nationally Recognized Rating Agencies applicable to the Project then due and payable;

<u>Third</u>, on each Transfer Date, pro rata to any payments then due and payable by the Company to the Series 2018 Rebate Fund established under the Indenture or any similar rebate fund established with respect to any future tax-exempt borrowings comprising Additional Parity Bonds;

Fourth, pro rata, on each Transfer Date, to the Senior Interest Payment Sub-Account of the Senior Debt Service Account, for payment in respect of the interest portion due on the outstanding Senior Secured Obligations on the next Interest Payment Date in an amount equal to (A) in the case of the Series 2018 Bonds, one-half (1/2) of the total aggregate amount of interest to be paid in respect of the Series 2018 Bonds on the next Interest Payment Date and, in the case of any other Senior Secured Obligations, the total aggregate amount of interest to be paid in respect of such Senior Secured Obligations on the next Interest Payment Date divided by the number of quarters in the relevant interest period, plus (B) any deficiency then existing in such transfers required to have been made on any prior Transfer Dates; provided, that the deposit on the Transfer Date occurring on or immediately before an Interest Payment Date will equal the amount required, taking into account the amount then on deposit in the Senior Interest Payment Sub-Account, to pay the Interest Payment due on such Interest Payment Date; provided, further, that on each Interest Payment Date, amounts on deposit in the Senior Interest Payment Sub-Account shall be transferred by the Collateral Agent for the payment of interest then due and payable on the relevant Senior Secured Obligations;



Fifth, pro rata, on each Transfer Date, beginning on the date that is six (6) months prior to the first Principal Payment Date, to the Senior Principal Payment Sub-Account of the Senior Debt Service Account to make payments in respect of scheduled principal payments, applicable to the outstanding Senior Secured Obligations, in an amount equal to (A) in the case of the Series 2018 Bonds, an amount equal to the "Principal Reserve Account Balance" as shown in the Base Case Model for the period ending on or about such Transfer Date, and, in the case of any other Senior Secured Obligations, the total aggregate amount of principal to be paid in respect of such Senior Secured Obligations on the next Principal Payment Date divided by the number of guarters before such Principal Payment Date, plus (B) any deficiency from a prior Transfer Date then existing; provided, that the deposit on the Transfer Date occurring on, or immediately before, a Principal Payment Date will equal the amount required, taking into account the amount then on deposit in the Senior Principal Payment Sub-Account or, as applicable, such other principal payment account, to pay the principal payment due on such Principal Payment Date; provided, further, that on each Principal Payment Date, amounts on deposit in the Senior Principal Payment Sub-Account shall be transferred by the Collateral Agent for the payment of principal then due and payable on the relevant Senior Secured Obligations;

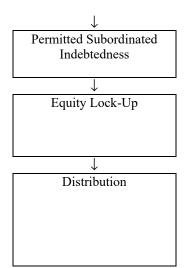
<u>Sixth</u>, on each Transfer Date, to the Senior Debt Service Reserve Account the amount, if any, necessary to fund such account so that the balance therein, taking into account the amount available for drawing under any Acceptable Letter of Credit provided with respect to such reserve account, equals the Senior Debt Service Reserve Required Balance at such time;

<u>Seventh</u>, on each Transfer Date that is a payment date on Permitted Subordinated Indebtedness (or any Transfer Date that is the last Transfer Date before a payment date with respect to any Permitted Subordinated Indebtedness), an amount equal to the amount of principal and interest due and payable on such Permitted Subordinated Indebtedness on such payment date, together with any indemnities, fees, costs and expenses then due in respect thereof; provided that payment of such amount is not a Restricted Payment;

<u>Eighth</u>, on each Transfer Date, to the Maintenance Reserve Account the amount, if any, necessary to fund such account so that the balance therein, taking into account the amount available for drawing under any Acceptable Letter of Credit provided with respect to such reserve account, equals the Maintenance Reserve Account Required Balance at such time;

<u>Ninth</u>, on each Transfer Date during the Handback Period, the PA Handback Account, the amount, if any, necessary to fund such account so that the balance therein, taking into account the amount available for drawing under any Acceptable Letter of Credit provided with respect to such reserve account, equals the PA Handback Required Balance at such time;

<u>Tenth</u>, on each Transfer Date, to the Voluntary Prepayment Account, an amount, if any, determined at the election of the Company as indicated in the applicable Funds Transfer Certificate to prepay the Series 2018 Bonds or any Other Permitted Senior Secured Indebtedness;



<u>Eleventh</u>, on each Transfer Date, to the payment of amounts due and payable under any Permitted Subordinated Indebtedness not otherwise paid at level Seventh above;

<u>Twelfth</u>, on each Restricted Payment Date, if the Restricted Payment Conditions have not been satisfied, to the Equity Lock-Up Account, all funds available, as at the applicable Calculation Date, after the application of funds for the purposes specified in the prior clauses First through Eleventh above; and

<u>Thirteenth</u>, on each Restricted Payment Date, provided that each Restricted Payment Condition was satisfied as of the immediately preceding Calculation Date, to the Distribution Account all funds available, as at the applicable Calculation Date, after the application of funds for the purposes specified in the prior clauses First through Eleventh above, together with all amounts then on deposit in the Equity Lock-Up Account.

For the avoidance of doubt, after application of funds in the Revenue Account on any Transfer Date as described under "—Revenue Account - Upon the Substantial Completion Date", to the extent any funds remain in the Revenue Account, such funds will remain in the Revenue Account for application in accordance with the Collateral Agency Agreement.

To the extent that the balance of funds on deposit in any Project Account with a required balance exceeds such required balance as of any Transfer Date, such excess funds will be transferred to the Revenue Account for application as described under "—Revenue Account - Upon the Substantial Completion Date" provided that such amounts used for such purposes shall not be included in the calculation of the DSCR.

Any funds credited to the balance of a Reserve Account (excluding balances held in the Senior Debt Service Reserve Account or any other reserve account established for the benefit of any holders of Other Permitted Senior Secured Indebtedness or the PA Handback Account) and the Equity Lock-Up Account may be utilized for any purpose which has priority over the funding of such Project Account in accordance with the description provided under "—Flow of Funds—Revenue Account—Upon the Substantial Completion Date", provided that such amounts used for such purposes will not be included in the calculation of the DSCR.

Application of Proceeds

Following the taking of an Enforcement Action, notwithstanding any provision contrary in the Collateral Agency Agreement (other than with respect to application of funds on deposit in the Construction Account or subaccounts thereof following the taking of an Enforcement Action), all proceeds received by the Collateral Agent pursuant to the exercise of any rights or remedies accorded to the Collateral Agent pursuant to, or by the operation of any of the terms of, any of the Security Documents, including insurance proceeds, Termination Amount, asset sale proceeds or proceeds from the sale or disposition of Collateral or other Enforcement Action and amounts available in or otherwise transferred from the Project Accounts will be applied promptly by the Collateral Agent as directed by the Trustee, as follows:

- (i) First, to the pro rata payment of the indemnities, fees, administrative costs and expenses due to the Senior Secured Parties under the Finance Documents, if any;
- (ii) Second, to the pro rata payment of all accrued and unpaid interest, principal and premium (by acceleration or otherwise), if any, due on all Senior Secured Obligations;
- (iii) Third, to the pro rata payment of all other amounts, if any, due and payable under the Finance Documents to the Secured Parties;
- (iv) Fourth, to all accrued and unpaid interest, principal and premium (by acceleration or otherwise) on any Permitted Subordinated Indebtedness;
- (v) Fifth, to unsecured creditors; and

(vi) Sixth, upon the payment in full of all amounts in accordance with clauses "First" through "Fifth" above, to pay to the Company, or as may be directed by the Company, or as a court of competent jurisdiction may direct, any Proceeds then remaining.

If at any time any Secured Party obtains, for any reason, any payment or distribution upon or with respect to the Secured Obligations contrary to the terms of the Collateral Agency Agreement or the Indenture, whether as a result of the Collateral Agent's exercise of any Enforcement Action in respect of the Collateral or otherwise, such Secured Party agrees that it will have received such amounts in trust, and will promptly remit such amount so received in error to the Collateral Agent to be applied in accordance with the terms of the Collateral Agency Agreement.

PROJECT PARTICIPANTS

Oakland Corridor Partners LLC

The Company is a Delaware special purpose limited liability company, formed on September 7, 2018, for the purpose of undertaking the Project, which, among other things, includes entering into the Project Agreement. The Company will not engage in any activity unrelated to the Project. The Company is indirectly owned by John Laing HoldCo (40%), a wholly-owned subsidiary of John Laing, AECOM HoldCo (30%), a wholly-owned subsidiary of AECOM Capital, Dan's HoldCo (10%), a wholly-owned subsidiary of Dan's, Ajax HoldCo (10%), a wholly-owned subsidiary of Jay Dee, through HoldCo, which is the sole member of the Company.

The Equity Members' Parent Companies

John Laing Investments Limited

Overview and Organizational Structure. John Laing HoldCo is a wholly-owned subsidiary of John Laing, whose ultimate parent undertaking is John Laing Group plc. John Laing Group plc and its subsidiaries, including John Laing, comprise the "John Laing Group" or the "Group". The John Laing Group, headquartered in London and with offices in New York, Los Angeles, Toronto, Sydney, Melbourne, Amsterdam, Madrid and Bogota, is an international originator, active investor and manager of greenfield infrastructure projects. Its business is focused on major transport, social and environmental infrastructure projects awarded under governmental public-private partnership (PPP) programs, and renewable energy projects, across a range of international markets including North America, Asia Pacific and Europe, including the UK. By combining its skills in the management of development risk, project financing, asset management and operations with those of their chosen partners and the project supply chain, the John Laing Group has built a strong reputation as a key market leader in the privately financed form of infrastructure renewal and modernization, long recognized as a key element of public sector procurement policy.

In the 2017 fiscal year, the John Laing Group recorded \$265.7 million of operating income. As of its 2017 fiscal year end, the Group had \$1,833.4 million of total assets, \$237.8 million of borrowings, and \$1,518.4 million of net assets.*

Experience. Since making its first PPP infrastructure investment in 1969, the John Laing Group has committed investments to over 130 projects. As of June 30, 2018, the Group held 41 investments in its portfolio, including 14 projects under construction, in three main sectors: transportation, social infrastructure, and environmental.

John Laing Group has had a successful track record in the delivery of infrastructure projects, having been actively involved in the development and management of transportation PPP projects since the early 1990s. The team can draw on a wealth of experience on projects that the Group has had involvement with over the years.

Some of John Laing Group's recent notable investments in transportation projects include:

 MBTA AUTOMATED FARE COLLECTION PROJECT IN BOSTON. In February of 2018, the Group reached financial close on a \$23 million investment for 90% of the equity in the \$275 million MBTA Automated Fare Collection (AFC) project in Boston. The DBFOM concession has an initial

^{*} Figures were converted using the Bank of England's published rate for December 29, 2017, which rate was £1 per \$1.351. These conversions are provided for the convenience of potential investors only and, as such, potential investors should not construe these conversions as a representation that the British Pound amount actually represents true U.S. dollar amounts or could be converted from British Pounds into U.S. dollars at the rates indicated.

term of 13 years (including approximately 3 years of design and installation) plus two five-year extension options.

- I-66 MANAGED LANES IN VIRGINIA. In November of 2017, the Group invested \$155 million for a 10% equity interest in the Transform 66 P3 project (Outside the Beltway) in Northern Virginia. The project involves the development of 22.5 miles of managed lanes along the I-66 corridor, enhancing one of the key commuter routes within the Washington DC metropolitan area over a total concession period of 50 years.
- I-77 MANAGED LANES IN NORTH CAROLINA. In December of 2015, the Group closed its acquisition of a minority equity interest in this \$665 million project, which will develop 25.9 miles of dynamically priced, high-occupancy toll lanes to existing toll-free road capacity in order to alleviate congestion in the rapidly growing Charlotte metropolitan area.
- I-4 ULTIMATE PROJECT IN FLORIDA. In September 2014, the Group achieved financial close for a 50% interest in the equity for this \$2.3 billion project in September 2014. The project will design, build, finance, operate and maintain the new highway in Florida over a contract term of 40 years. The delivery includes: the reconstruction of 15 major interchanges in central Florida; new construction or reconstruction of over 140 bridges; the addition of four dynamic tolled express lanes; and the rebuilding of existing general use lanes along the entire 21 mile corridor.

AECOM Capital, Inc.

<u>Overview</u>: AECOM Capital, the investment arm of AECOM, a premier fully integrated global infrastructure firm, invests in real estate and other large scale development projects across North America. To date, AECOM Capital has invested in projects with a total development investment value in excess of \$4.2 billion.

Some of AECOM Capital's notable investment projects include:

- UNION PLACE. A \$180 million multifamily development in Washington, DC. Union Place is a 50:50 joint venture partnership between AECOM Capital and its partner to develop approximately 525 apartment units, 13,000 SF of retail and 240 parking spaces.
- IVY STATION. A \$380 million hotel, office, retail and multifamily mixed-use development in Culver City, CA. Ivy Station is a joint venture partnership between AECOM Capital and its partner, to develop a 5.5-acre site with an approximately 1,100,000 square foot (including parking) mixed-use development located in an urban infill parcel adjacent to the Culver City expo light rail station. The approximate program includes a 148-key hotel, 200 multifamily residential units, 47,000 square feet of retail, and a 207,000 square-foot creative office building.
- FLUSHING COMMONS (PHASE I & II) A \$325 million mixed-use development in Queens, NY. Flushing Commons Phase 1 consists of two buildings totaling 17 and 13 stories respectively, with 90 prime office condominiums and retail spaces, 148 residential condominium units and a new 982-space parking garage. Completed in August 2017, Flushing Commons Phase 1 is a joint venture partnership between AECOM Capital and its partners, in a master planned mixed-use development in the heart of downtown Flushing, Queens.
- PROVOST SQUARE. A \$180 million multifamily residential development in Jersey City, NJ. Provost Square is a 50:50 joint venture partnership between AECOM Capital and its partner to develop approximately 417 apartment units, 16,446 SF of retail and 371 parking spaces. The project was completed in February 2016.

Jay Dee Contractors, Inc.

<u>Overview</u>. Jay Dee is the largest tunnel contractor in Michigan, with over 52 years of experience constructing and rehabilitating over 224 miles of water, sewer, drainage, and transportation tunnels across North America. Besides being the tunnel construction Key DB Subcontractor and a member of the Design-Build Contractor, Jay Dee is participating in HoldCo with a 10% investment.

Asset Portfolio. This will be Jay Dee's first foray into the development side of a P3 project.

Dan's Excavating, Inc.

Dan's is a 10% equity member of the Company. Since its inception in 1974, Dan's has grown to become one of the largest heavy civil and highway infrastructure construction companies in Michigan. Since 2001 through 2017, Dan's was MDOT's top awarded Prime Contractor for 14 of the 17 fiscal years totaling \$2.83 billion dollars of contract awards. Including total civil construction sales of \$345 million in 2017, Dan's past three-year average annual sales has been \$311 million. Dan's self-performs removals, earthwork, utilities, earth retention, retaining walls, sound walls, bridge structures, permanent barrier wall, pump stations, airport/freeway lighting, ITS and traffic signals.

Ajax Paving Industries, Inc.

Ajax is a 10% equity member of the Company. Ajax was established in 1951 and is in its second generation as a private family-owned construction company based in Troy, Michigan. Ajax has over 300 employees and specializes in asphalt and concrete paving on roadway, airport and race and test track projects. Ajax owns and operates in southeast Michigan six stationary state of the art asphalt production plants and nine portable concrete batch plants that travel all over the US. In 2017, Ajax's annual revenue was \$227 million. Ajax has worked with the MDOT for 60 years, including a number of design-build projects.

The Michigan Department of Transportation

MDOT was established in 1978 by constitutional amendment and replaced the Michigan State Highway Department. MDOT is the State agency with the primary programmatic and regulatory responsibilities for the development and operation of public transportation facilities, port and harbor improvements, railroad facilities, highways and airports in the State.

State Transportation Commission

MDOT's program objectives are established by a six-member Commission appointed to staggered three year terms by the Governor, no more than three of whom may be members of the same political party. The Chairperson of the Commission is appointed by the Governor, and the Commission elects the Vice Chairperson from among its members.

Responsibilities and Organization

MDOT's Director, the executive head of MDOT, is appointed by the Governor and serves at his or her pleasure. In addition to the executive offices, the internal structure of MDOT is comprised of five bureaus responsible for various support or operating functions: (1) Transportation Planning, (2) Finance and Administration, (3) Highway Development, (4) Field Services and (5) Bureau of Bridges and Structures. Several offices support public transportation programs including the Office of Passenger Transportation, Office of Rail and the Office of Aeronautics. As of fiscal year 2019 beginning October 1, 2018, MDOT has 2,813.3 full time employees.

Funding for MDOT Programs

Programs for each of the modes of transportation under MDOT's jurisdiction are independently funded from taxes or other sources of revenues which are distributed pursuant to law for specific purposes.

MDOT's highway programs are funded from the proceeds of bonds and notes and from the State Trunk Line Fund established pursuant to Public Act 51 of 1951 and from moneys provided by the federal government. The revenues of the State Trunk Line Fund include a portion of the motor vehicle fuel taxes, vehicle registration taxes, and interest and miscellaneous fees deposited into the Michigan Transportation Fund established pursuant to Public Act 51 of 1951 ("Act 51"). See APPENDIX L—"SUMMARY OF CERTAIN PROVISIONS OF THE MICHIGAN CONSTITUTION AND ACT 51."

MDOT's comprehensive transportation programs are funded from the Comprehensive Transportation Fund which receives a portion of the sales tax on motor vehicles, motor vehicles parts and accessories, and motor vehicle fuel and a portion of motor fuel taxes, vehicle registration taxes, and interest and miscellaneous fees deposited into the Michigan Transportation Fund. See APPENDIX L— "SUMMARY OF CERTAIN PROVISIONS OF THE MICHIGAN CONSTITUTION AND ACT 51." MDOT's aeronautics program is primarily funded from the State Aeronautics Fund established pursuant to Public Act 327 of 1945. The revenue of the State Aeronautics Fund primarily includes aviation fuel tax and airport parking tax.

MI 75 Constructors, LLC

The Design-Build Contractor, a Michigan limited liability company, has entered into the Design-Build Contract with the Company. The members of the Design-Build Contractor are Dan's, Ajax, Jay Dee and C.A. Hull.

The Design-Build Contractor Member Entities

Dan's Excavating, Inc.

Dan's is a 40% Design-Build Contractor Member of the Design-Build Contractor. Since its inception in 1974, Dan's has grown to become one of the largest heavy civil and highway infrastructure construction companies in Michigan. Since 2001 through 2017, Dan's was MDOT's top awarded Prime Contractor for 14 of the 17 fiscal years totaling \$2.83 billion dollars of contract awards. Including total civil construction sales of \$345 million in 2017, Dan's past three-year average annual sales has been \$311 million. Dan's self-performs removals, earthwork, utilities, earth retention, retaining walls, sound walls, bridge structures, permanent barrier wall, pump stations, airport/freeway lighting, ITS and traffic signals. Dan's brings to the Design-Build Contractor the experience and equipment needed for these diverse elements of the Project. Dan's is a privately held company and its financial statements are not publicly available. Dan's, as the prime contractor, has worked extensively with MDOT on numerous highway and interchange projects, including the following:

Examples of Constructed Highways	Location	Length (miles)	Year Completed	Contract Price (million)
US 23 Reconstruction	Livingston and Washtenaw Counties (MI)	11.16	2018	\$98.20
I75 Design Build - Phase 1	Oakland County (MI)	3.08	2017	\$89.10
I75 South	Monroe County (MI)	5.60	2016	\$118.19
EBI69 - St Clair	St Clair County (MI)	11.04	2016	\$47.36
I69 - I475 to M15	Genesee County (MI)	10.50	2015	\$34.77
196 Reconstruction	Wayne County (MI)	7.09	2014	\$143.93
194 - Port Huron	St Clair County (MI)	2.13	2013	\$88.78
M39 Reconstruction	Wayne and Oakland Counties (MI)	10.25	2012	\$71.33

Examples of Constructed Interchanges/Bridges	Location	Year Completed	Contract Price (million)
I75 & University Design Build	Oakland County (MI)	2016	\$23.89
I75 - Dix/Toledo	Wayne County (MI)	2014	\$17.83
West Grand Boulevard over I94	Wayne County (MI)	2014	\$10.18
Crooks Road over M59 Design Build	Oakland County (MI)	2012	\$9.16
M53 and 26 Mile Road	Macomb County (MI)	2011	\$13.97
Wixom Road Interchange	Oakland County (MI)	2010	\$19.43

Ajax Paving Industries, Inc.

Ajax is a 30% Design-Build Contractor Member of the Design-Build Contractor. Ajax was established in 1951 and is in its second generation as a family owned construction company based in Troy, Michigan. Ajax has over 300 employees and specializes in asphalt and concrete paving on roadway, airport and race and test track projects. Ajax owns and operates in southeast Michigan six stationary state of the art asphalt production plants and nine portable concrete batch plants that travel all over the US. Ajax brings to the Design-Build Contractor the experience and equipment needed for these diverse elements of the Project. In 2017, Ajax's annual revenue was \$227 million. Ajax has worked with the MDOT for 60 years, including a number of design-build projects. Ajax is a privately held company and its financial statements are not publicly available.

Examples of Constructed Highways	<u>Location</u>	<u>Length</u> (Miles)	<u>Year</u> Completed	Contract Price (mill)
I75 Segment 1 Design Build Interchange and Roadway	Oakland Co., MI	4	2017	\$90
I-75 West Branch Design Build	Ogemaw Co., MI	7	2017	\$22
I-75 Dixie Highway to I-275 Reconstruct	Monroe Co., MI	5	2016	\$118
I-75 Dixie to Hess, Reconstruct	Saginaw Co., MI	5	2016	\$49
I-275 SR 60 to Hillsborough River Design Build	Tampa, FL	5	2015	\$215
I-96 Newburgh to Telegraph Reconstruct	Wayne Co., MI	7	2014	\$149

Jay Dee Contractors, Inc.

Jay Dee is a 25% Design-Build Contractor Member of the Design-Build Contractor, and will be tasked with performing the tunnel construction on the Project. Beginning in 1965, Jay Dee has constructed and rehabilitated over 224 miles of water, sewer, drainage, and transit tunnels across North America. Jay Dee is nationally recognized in the tunneling industry and is the largest tunnel contractor in the State with a three year average annual revenue of \$134 million. Jay Dee is an expert in modern day pressurized/non-pressurized tunneling systems and segmental tunnel linings, in all types of soil/rock geologies. In addition, Jay Dee is experienced in the design-build delivery of tunneling projects. Jay Dee brings to the Design-Build Contract team the needed experience, personnel, equipment and knowhow to carry out the significant tunnel portion of the Project. Jay Dee is a privately held company and its financial statements are not publicly available.

Examples of Constructed Tunnels	Owner	Location	Year Complete	Length (ft.)	Contract Price (MM)
Northgate Link TBM Tunnels	Sound Transit	Seattle WA	2018	36,900	\$484.79
Division P - First Street Tunnel	DC Water	Washington DC	2016	2,700	\$154.68
SRF Segment 3 Repair Program Contract No. 4	OMIDD	Sterling Hts MI	2016	23,000	\$50.20
Division A - Blue Plains Tunnel	DC Water	Washington DC	2016	23,954	\$327.39
Brightwater Tunnel, Section 3 Completion	King County WA	Shoreline WA	2013	9,900	\$96.83
Bay Tunnel Pipelines Reliability Upgrade	SFPUC	East Palo Alto CA	2015	26,208	\$217.62
University Link Light Rail (U230)	Sound Transit	Seattle WA	2013	7,600	\$157.31
Eastern & Delta Ave Sewer Separation Phase 1	MSD of Greater Cincinnati	Cincinnati OH	2011	6,077	\$39.09
No Business Creek Tunnel & Lift Station	Gwinnett Co. GA	Snellville GA	2010	15,954	\$56.80
Brightwater Tunnel, Section 4	King County WA	Shoreline WA	2011	21,100	\$105.99
Big Walnut Augmentation Rickenbacker Interceptor	City of Columbus	Columbus OH	2010	20,290	\$96.10
Calumet Tunnel System Little Calumet Leg	MWRD of Greater Chicago	South Holland IL	2006	41,250	\$172.96
Thornton Transitional Reservoir	MWRD of Greater Chicago	Thornton IL	2003	7,900	\$51.32

C. A. Hull Co., Inc.

C.A. Hull is a 5% Design-Build Contractor Member of the Design-Build Contractor. Founded in the 1930s and incorporated in 1954, C.A. Hull has been a leader in the Michigan heavy-highway construction industry for generations. C.A. Hull specializes in bridge construction and rehabilitation, along with concrete and steel coatings, retaining walls and other aesthetic structural concrete. Based in Oakland County, C.A. Hull has extensive local resources and experience to perform the bridge and retaining wall work on the Project. C.A. Hull had contract revenue of \$139 million in 2017 and has had an average contract revenue of \$95.5 million over the last 4 years. C.A. Hull is a privately held company and its financial statements are not publicly available. Below are a few examples of recent C.A. Hull projects with MDOT:

MDOT Project	Location	<u>Year</u> Completed	Contract Price
I-75 over Rouge River - Major Reconstruction	Detroit, MI	2018	\$147.8M
M-3 & Chene over I-94 - Major Reconstruction	Detroit, MI	2018 Est.	\$24.1M
I-75 from Northline to US-24 - Major Reconstruction	Wayne Co, MI	2018 Est.	\$24.7M
I-75 Segment 1 - Major Reconstruction Design-Build	Troy, MI	2017	\$14.8M *sub*
MLK over M-10 - Reconstruction Design-Build	Detroit, MI	2017	\$13.3M
I-75 from Dixie to I-275 - Major Reconstruction	Monroe Co, MI	2016	\$14.1M *sub*
M-14 from I-94 to US-23 - Major Rehabilitation	Ann Arbor, MI	2016	\$10.0M
M-231 over Grand River - New Construction	Grand Haven, MI	2015	\$58.6M
I-94BL over I-94 - Major Reconstruction Design-Build	Battle Creek, MI	2015	\$14.4M
I-96 from I-275 to US-24 - Major Reconstruction	Livonia, MI	2014	\$26.8M *sub*

Design-Build Guarantors

In addition to each of the members of the Design-Build Contractor, each of C.D.M. Leasing and JAJ Holdings are Design-Build Guarantors.

C.D.M. Leasing, L.L.C.

C.D.M. Leasing, a sister company of Dan's, will provide a guaranty of the obligations of the Design-Build Contractor under the Design-Build Contract to the Developer, which guaranty shall be joint and several with that of each other Design-Build Guarantor. C.D.M. Leasing was established in 1995 as a limited liability company in the State of Michigan. C.D.M. Leasing is primarily engaged in the rental of construction equipment to Dan's along with the rental of commercial land and buildings to Dan's and other entities. C.D.M. Leasing is a privately held company and its financial statements are not publicly available.

JAJ Holdings LLC

JAJ Holdings will provide a guaranty of the obligations of the Design-Build Contractor under the Design-Build Contractor to the Developer, which guaranty shall be joint and several with that of each other Design-Build Guarantor. JAJ Holdings is a Michigan limited liability company organized on November 30, 2017. Ajax, a member of the Design-Build Contractor and a Project subcontractor, is a wholly-owned subsidiary of JAJ Holdings. In addition, JAJ Holdings holds interests in Ajax Materials Corporation, Ajax Enterprises of Michigan, LLC, Jay-Cobb Corporation, Great Lakes Petroleum Terminal, LLC and JJC Investments, LLC. These companies provide construction materials, equipment and trucking to support Ajax projects. JAJ Holdings operates purely as a holding company and does not conduct any business operations. JAJ Holdings is a privately held company and its financial statements are not publicly available.

AECOM Great Lakes, Inc.

AECOM Great Lakes, Inc. will act as the Lead Engineering Firm for purposes of the Project Agreement and is the design subcontractor to the Design-Build Contractor. It is a premier transportation design firm with over 100 years of design experience, including I-75 Segment 1 in Michigan, Freeway Lighting P3 Project, M-39 Freeway Reconstruction in Detroit, I-75 over Rouge River in Detroit, Crooks Road over M-59 in Michigan, and M-21 over I-75 in Michigan. AECOM Great Lakes, Inc. has both local and international experience with similar watercontaining tunnels and pump stations and in the last 10 years, AECOM Great Lakes, Inc. and its affiliates have managed more than \$30 billion in construction of large-diameter tunnels globally for water and wastewater, transit, highway and energy related projects, with a long history of bringing innovations and cost-savings ideas to the tunnel community and clients.

THE PRINCIPAL PROJECT DOCUMENTS

The following is a summary of the Principal Project Documents relating to the Project and is not a full statement of the terms of such agreements. Accordingly, the following summaries are qualified in their entirety by reference to such agreements and are subject to the full text of such agreements. A copy of each of the agreements is available, free of charge, upon request from the Company or the Trustee. The following summary should be read in conjunction with the section "RISK FACTORS." For the purposes of the following section, the term "Project" has the meaning provided to such term in the Project Agreement and included in APPENDIX A—"DEFINITIONS OF TERMS." Unless otherwise stated, any reference in this Official Statement to any agreement means such agreement and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof.

The Project Agreement

On October 12, 2018, the Company entered into the Project Agreement with MDOT for the design, construction, financing and maintenance of the Project. The Project Agreement will be amended on or before the Closing Date to reflect updates to the Financial Model and other technical changes.

Principal Rights and Responsibilities of the Company and MDOT

Pursuant to the Project Agreement, the Company has the obligation to perform the Project Work, being (a) the D&C Work, (b) the Maintenance Work, and (c) all other obligations of the Company under the Project Agreement, including to finance the Project.

<u>D&C Work</u>. The D&C Work consists of design of the Project; work to build, manufacture, furnish, install, deliver and equip the Project; design and construction of the Non-Maintained Facilities, which will be turned over to others upon the achievement of Substantial Completion; design and construction of the Non-Maintained Work, which will be turned over to others as set out in the Project Agreement; and all other work necessary for the design, supply, construction and commissioning of the Project.

The Non-Maintained Work is covered by specific Warranty Periods of (a) in the case of the Pump Station Operations, two years from issuance of the Milestone Completion Certificate for Milestone 2 Completion; (b) in the case of other Non-Maintained Work, two years from the Substantial Completion Date; and (c) in the case of warranty work performed on either of the foregoing, a further period of one year from the date of correction of the relevant defect in same.

<u>Maintenance Work</u>. The Maintenance Work consists of: (a) maintenance, rehabilitation and other work to be performed and services to be provided by the Company for the Existing Pump Stations, from issuance of Notice to Proceed until issuance of the Milestone Completion Certificate for Milestone 2 Completion or demolition of the Existing Pump Stations, whichever is earlier; Interim Maintenance Work; and (b) the Long Term Maintenance Work, being any and all management, administration, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement, including Routine Maintenance Term following the Substantial Completion Date, including management, administration, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement work for the Storage and Drainage Tunnel and the Pump Station, which commences on the first day after issuance of the Milestone Completion Certificate for Milestone 2.

Except for specific elements thereof at specific times as part of the Interim Maintenance Work, the Company has no obligation to maintain the Non-Maintained Work during the Maintenance Term following the Substantial Completion Date.

<u>Governmental Approvals</u>. MDOT has obtained the NEPA Approval, and will obtain and maintain any new or modified NEPA Approval necessitated solely by a Relief Event or a Delay Event.

The Company is responsible to obtain and maintain all other Governmental Approvals for the Project, and is responsible to comply with all Governmental Approvals related to the Project.

If a new or modified Governmental Approval becomes necessary for any reason other than any new or modified NEPA Approval necessitated solely by a Relief Event or a Delay Event, the Company is fully responsible for: (i) all risk, cost and schedule impacts of obtaining such Governmental Approval and any related approvals; and (ii) any litigation or other challenge that might arise in connection with such Governmental Approvals.

<u>Hazardous Materials</u>. Subject to the provisions of the Project Agreement relating to Delay Events, Relief Events and a Hazardous Materials Relief Event, the Company is required to manage, treat, handle, store, remediate, remove, transport (where applicable), document and dispose of all Hazardous Materials and Recognized Environmental Conditions, including Contaminated Groundwater, and perform all other aspects of Hazardous Materials Management in accordance with Applicable Law, Governmental Approvals, the approved plans relating to same required under the Project Agreement and the other applicable terms and conditions of the Project Agreement.

Except where management, treatment, handling, storage, remediation, transport, documentation or disposing of Hazardous Materials or Recognized Environmental Conditions constitutes a Hazardous Materials Relief Event, the Company will pay all penalties, expenses (including attorneys' fees and costs), costs, suits, judgments, claims, actions, damages (including damages to natural resources, property or Persons), delays and liability associated with any Hazardous Materials used or encountered in connection with the infrastructure or the Project.

MDOT will be the generator and assume generator responsibility and comply with the applicable standards for generators for Hazardous Materials other than a Developer Release of Hazardous Materials. The Company will be the generator with respect to any Developer Release of Hazardous Materials.

Project Work Completion.

Tunnel Boring Machine and Milestone 1. Achievement of Milestone 1 Completion occurs on satisfaction of all of the following conditions:

- (a) the Company has submitted and MDOT has approved:
 - (i) the final geotechnical report for the Storage and Drainage Tunnel;
 - (ii) the final design of the Storage and Drainage Tunnel alignment, vertical and horizontal;

- (iii) the final design of the Storage and Drainage Tunnel liner design, including the durability report;
- (iv) a preliminary arrangement plan for all Storage and Drainage Tunnel appurtenances;
- (v) the shop drawings for the TBM;
- (vi) a subsurface methods plan describing the Company's approach to the tunneling activities, including soil conditioning, grouting, preparatory works for tunneling activities, and tunnel operations;
- (vii) Final Construction Impact Assessment; and
- (viii) Final Construction Impact Assessment Report;
- (b) the Company has provided a copy of the "Advance Notice of Tunnel Excavation" submitted to the Michigan Department of Licensing and Regularity Affairs, Construction Safety and Health Division;
- (c) the TBM has been operated to indicate its assembly is correct;
- (d) the facilities necessary for liner installation are in place and operational; and
- (e) the facilities necessary for soil modification and grouting are in place and operational.

The Company shall expeditiously and diligently correct all of the Punch List Items specified in MDOT's completion certificate, if any, and complete such work by the Substantial Completion Deadline.

Tunnel and Pump Station (Milestone 2). Achievement of Milestone 2 Completion occurs on satisfaction of all of the following conditions:

- (a) the Company has completed the construction of the Storage and Drainage Tunnel and all appurtenances, and MDOT has inspected and accepted same;
- (b) the Storage and Drainage Tunnel meets the required performance criteria specified in the Technical Requirements;
- (c) all required Submittals to be submitted to MDOT prior to Milestone 2 have been submitted to and approved by MDOT;
- (d) the Company has completed the construction of new surface drainage features and tied them into the tunnel system and any existing surface drainage features to remain have been tied into the tunnel system and MDOT has inspected and accepted same;
- (e) the Company has completed construction of the Pump Station, including all mechanical, electrical, signal and communications systems, and completed all testing and commissioning activities for the operation of the Pump Station, and MDOT has inspected and accepted same;
- (f) there exists no uncured Developer Default that is the subject of a notice from MDOT and no event exists that would be a Developer Default with the giving of notice or the passage of time, unless:
 (i) Milestone 2 will effect its full and complete cure; (ii) the Company has a right to cure and is diligently pursuing cure of a non-monetary default within the applicable cure period; or (iii) the amount of the payment default in question is disputed and the Company has timely submitted such matter for resolution under the Dispute Resolution Procedures of the Project Agreement;
- (g) if any Governmental Entity with jurisdiction requires any form of certification of design, engineering or construction with respect to the Storage and Drainage Tunnel or any portion thereof, including any certifications from the engineer of record and architect of record for the Project, the Company has caused such certificates to be executed and delivered and concurrently issued to MDOT;
- (h) the Company has delivered to MDOT all manufacturer warranties required for the Storage and Drainage Tunnel under the Technical Requirements; and

(i) the Company has done everything which the Project Agreement requires the Company to do as a condition precedent to Milestone 2.

The Company will expeditiously and diligently correct all of the Punch List Items specified in MDOT's completion certificate, if any, and complete such work by the Substantial Completion Deadline.

Freeway Lighting Work. The Company's Freeway Lighting Work is to be handed over to MDOT upon achievement of Substantial Completion. The Company will provide MDOT and the P3 Lighting Contractor with notice when the Company believes it has achieved Freeway Lighting Work Completion. MDOT will determine and notify the Company whether Freeway Lighting Work Completion has been achieved.

Non-Maintained Facilities. Completion of the Non-Maintained Facilities is a condition precedent to achievement of Substantial Completion. The Non-Maintained Facilities are to be handed over to their respective owners upon achievement of Substantial Completion.

Substantial Completion. Achievement of Substantial Completion occurs on satisfaction of all of the following conditions:

- (a) the D&C Work is complete in accordance with the Project Agreement, except for Punch List Items for the full I-75 Segment 3;
- (b) Punch List Items associated with Milestone 1 Completion and Milestone 2 Completion are complete;
- (c) the Project meets the required performance criteria specified in the Technical Requirements;
- (d) all Submittals required to be submitted to MDOT prior to Substantial Completion have been submitted to and approved by MDOT;
- (e) all Insurance Policies required for the Maintenance Term have been obtained and are in full force and effect;
- (f) the Company has delivered the Maintenance Performance Security to MDOT;
- (g) the Company has received, and paid all associated fees for, all applicable Governmental Approvals and other third-party approvals required for use and operation of the Maintenance Work, such Governmental Approvals and other third-party approvals are in full force and effect, and there exists no uncured material violation of the terms and conditions of any such Governmental Approvals or other third-party approvals;
- (h) there exists no uncured Developer Default that is the subject of a notice from MDOT and no event exists that would be a Developer Default with the giving of notice or the passage of time, unless:
 (i) Substantial Completion will effect its full and complete cure; (ii) the Company has a right to cure and is diligently pursuing cure of a non-monetary default within the applicable cure period; or (iii) the amount of the payment default in question is disputed and the Company has timely submitted such matter for resolution under the Dispute Resolution Procedures;
- (i) if any Governmental Entity with 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, the Company has caused such certificates to be executed and delivered and concurrently issued to MDOT;
- (j) the Company has delivered to MDOT all manufacturer warranties required under the Technical Requirements; and
- (k) the Company has done everything which the Project Agreement requires the Company to do as a condition precedent to Substantial Completion.

The Company shall expeditiously and diligently correct all of the Punch List Items specified in MDOT's completion certificate, if any, and complete such work by the Final Acceptance Deadline.

Final Acceptance. Achievement of Final Acceptance occurs on satisfaction of all of the following conditions:

- (a) the balance of the D&C Work not completed as part of Substantial Completion has been completed, including correcting all Punch List Items specified in the Substantial Completion Certificate or notified to the Company by MDOT;
- (b) the Company has acquired and properly stored, or arranged for immediate availability, a reasonable inventory of all spare parts, spare components, spare equipment, special tools, materials, expendables and consumables necessary for operation and maintenance of the Project during the Maintenance Term as identified in the Maintenance Plan;
- (c) all Submittals required to be submitted to MDOT prior to Final Acceptance have been submitted to and approved by MDOT;
- (d) MDOT has received a complete set of the As-Built Drawings and any as-built survey sheets for the Project required by the Technical Requirements;
- (e) MDOT has received the final certifications regarding suspension or debarment required by the Project Agreement;
- (f) there exists no uncured Developer Default that is the subject of a Default Notice from MDOT and no event exists that would be a Developer Default with the giving of a Default Notice or the passage of time, except any Developer Default for which Final Acceptance will effect its full and complete cure; and
- (g) the Company has done everything which the Project Agreement requires the Company to do as a condition precedent to Final Acceptance.

<u>Defects</u>. The Company will rectify all Defects during the Term regardless of whether or not such Defects are the subject of a notice from MDOT under the Project Agreement. If a notice is given, then the Company will rectify the Defect within the time specified in such notice, and if not so rectified within such time period, then MDOT may rectify the Defect itself or engage a third party to rectify the Defect and the cost of any such rectification work will be a debt due and payable by the Company to MDOT.

<u>Utilities</u>. The Company will (w) carry out all Utility Work necessary to accommodate the Project, excluding what the Project Agreement identifies as the responsibility of MDOT or Utility Owners or otherwise specifically excludes from the Project Work; (x) coordinate with, monitor and use commercially reasonable efforts to cause Utility Owners performing Utility Relocation Work to perform such work in a timely manner and in compliance with the Project Agreement; (y) schedule all Utility Relocations so as to meet all applicable Project Agreement deadlines, regardless of whether the Utility Relocation is performed by the Company or a Utility Owner; and (z) be responsible to MDOT for proper and timely completion of all Utility Work required for the Project.

The Project Agreement has allocated responsibility for Utility Relocation cost and for performance of Utility Relocation Work for known Utilities between the Company and relevant Utility Owners. Subject to that allocation and to provisions of the Project Agreement relating to Relevant Events, the Company is responsible for all costs of Utility Relocation Work, including any compensation due to the Utility Owner and all costs and expenses associated with any Utility Relocation. Where a Utility Owner is responsible for a Utility Relocation's cost, the Company must collect directly from the Utility Owner and MDOT shall not be responsible for those amounts.

MDOT's obligations relating to Utilities are limited to: (a) provision of relief under a Utility Delay that is a Delay Event in the Project Agreement; (b) provision of relief under a Utility Relief Event that is a Delay Event in the Project Agreement; and (c) in its discretion, providing assistance to the Company when requested in circumstances where a Utility Owner has not responded within two weeks of the Company's initial notice to it or to multiple communications from the Company.

Each Utility Relocation has an Anticipated Duration for design and construction of same. If a Utility Owner fails to complete design, construction and/or materials procurement for a Relocation on or before the later of the relevant Anticipated Duration and March 1, 2020, then that results in a Utility Delay that is a Delay Event under the Project Agreement.

Subject to the other provisions relating to a Delay Event under the Project Agreement, a Utility Delay is only available if the Company (a) timely complied with the monitoring and notification requirements for Utility performance/non-performance under the Project Agreement, (b) met the conditions for MDOT to provide the assistance described in clause (c) above, and (c) provides evidence that the Company: (x) used available Float early

in the Project Schedule for coordination activities with respect to the Utility Owner to which such Utility Delay relates, (y) has fulfilled its obligation to coordinate with the Utility Owner to prevent or reduce such delays, and (z) otherwise made diligent efforts to obtain timely performance by the Utility Owner but has been unable to obtain such timely performance.

Prior to submission of the Proposal, MDOT provided certain information on the location of Utilities impacting the Project and for which Utility Relocation might be required. During the first 180 days following the issuance of NTP, the Company will conduct additional investigations towards generating a Utility Conflict Matrix that identifies the existence of any and all Utilities likely to be impacted by the Project and verifies or identified inaccuracies in MDOT's pre-Proposal Utility information.

Project Management

<u>Schedule Matters</u>. The D&C Work has the key deadlines of the Substantial Completion Deadline, the Final Acceptance Deadline and the Longstop Date, each of which is subject to change in accordance with the Project Agreement.

The following key dates tie in to Developer Defaults under the Project Agreement: failing to start D&C Work within 30 days following issuance of NTP; failing to start Interim Maintenance Work within 120 days following issuance of NTP; failing to start Long Term Maintenance Work associated with the Tunnel and Pump Station within 30 days following issuance of the Milestone Completion Certificate for Milestone 2; failing to start all other Long Term Maintenance Work within 30 days following issuance of the Substantial Completion Certificate; and failing to achieve Substantial Completion by the Longstop Date.

Performance Security

<u>D&C Performance Security.</u> On or before the Financial Close Date, the Company will deliver or cause the Design-Build Contractor to deliver the D&C Performance Security to MDOT, comprised of D&C Performance Bond 1, D&C Performance Bond 2 and the D&C Payment Bond. The Design-Build Contractor is procuring and responsible for maintaining all D&C Performance Security.

MDOT is the sole obligee under D&C Performance Bond 1, which has a value equal to 25% of the D&C Contract Price, and MDOT may only claim under this bond (i) to the extent that the Company or the Collateral Agent is entitled to make a claim under D&C Performance Bond 2; or (ii) as otherwise permitted under the Project Agreement, which is subject to the rights of the Collateral Agent under the PA Direct Agreement.

The Company is the primary obligee under D&C Performance Bond 2, and each of the Collateral Agent and MDOT is an additional obligee under D&C Performance Bond 2, which has a value equal to 75% of the D&C Contract Price.

The Company is the primary obligee under the D&C Payment Bond, and each of the Collateral Agent and MDOT is an additional obligee under the D&C Payment Bond, which has a value equal to 100% of the D&C Contract Price.

<u>Maintenance Performance Security</u>, On or before the Substantial Completion Date, the Company will deliver the Maintenance Performance Security to MDOT.

<u>Performance Security Generally</u>. Each Performance Security shall be issued by an Eligible Surety or panel of Eligible Sureties. Each D&C Performance Security shall be issued by the same Eligible Surety or panel of Eligible Sureties, and each Maintenance Performance Security for any particular annual period during the Maintenance Term shall be issued by the same Eligible Surety or panel of Eligible Surety or panel of Eligible Surety.

Contracting and Labor Practices

<u>Key Personnel</u>. The Company will appoint or procure the engagement of the individuals listed in Schedule 2 to the Project Agreement to fill the corresponding Key Personnel positions. The Company cannot change, or permit any change in, Key Personnel without the prior written consent of MDOT. MDOT has the right to review the qualifications and character of each individual recommended for a Key Personnel position in giving or withholding its consent.

If MDOT determines that an individual filling a Key Personnel role is not available for, or actively involved in, the performance of the Project Work as required by the Project Agreement, then the Company is liable to pay MDOT the following amount as liquidated damages for each position held by such individual:

Category 1 Key Personnel	\$150,000
(Company's Project Manager, Design-	
Build Contractor's Project and	
Construction Managers, Tunnel	
Construction Manager, Maintenance	
Manager)	
	# 100.000
Category 2 Key Personnel	\$100,000
(Design Manager, Quality Manager,	
Environmental Compliance Manager,	
Tunnel Safety Manager)	
Category 3 Key Personnel	\$75,000

An additional liquidated damages amount for all Key Personnel equal to 50% of the relevant amount listed above is payable for each six-month period where any Key Personnel position is vacant or not being fulfilled in accordance with the Project Agreement.

<u>Prompt Payment.</u> The Company must pay each first-tier Subcontractor (including the Design-Build Contractor) no later than thirty (30) days from Satisfactory Completion of the relevant Project Work by such Subcontractor or from the end of the month in which the relevant Project Work was satisfactorily performed, whichever results in the earliest payment. Delay in or postponement of payment from this requirement may only occur with the written approval of MDOT. The Company will require that each Subcontractor (including the Design-Build Contractor), in turn, incorporates deadlines of ten (10) days for payment of lower-tier Subcontractors from the date such Subcontractor receives payment.

<u>DBE/SBE Requirements.</u> MDOT has established a DBE Goal for the D&C Work and Renewal Work of 3%. The DBE Goal for the Project is calculated and credited in relation to the portion of the total D&C Contract Price and Maintenance Work Value allocated to D&C Work and Renewal Work (as applicable).

MDOT has established a SBE Goal for the D&C Work and Renewal Work of 2%. The SBE Goal for the Project is calculated and credited in relation to the portion of the total D&C Contract Price and Maintenance Work Value, allocated to D&C Work and Renewal Work (as applicable).

Payments to the Company

The Company is compensated by MDOT pursuant to the Project Agreement through the Milestone Payments and Availability Payments.

<u>Milestone Payments.</u> Milestone Payments will be paid to the Company as partial consideration for Construction Work. The maximum amounts of scheduled Milestone Payments and the payment dates are set out in the table below.

Milestone Payment	Payment Date	Maximum Amount (\$)
Milestone 1	Within 30 days after the Company's delivery of an invoice following the issuance of a Milestone Completion Certificate for Milestone 1.	20,000,000
Milestone 2	Within 30 days after the Company's delivery of an invoice following the issuance of a Milestone Completion Certificate for Milestone 2.	40,000,000
Milestone 3	Within 30 days of receipt by MDOT of an invoice following the issuance of the Substantial Completion Certificate.	40,000,000
Milestone 4	Within 30 days of receipt by MDOT of an invoice following the issuance of the Final Acceptance Certificate.	1,000,000

The maximum amount of each Milestone Payment is subject to reduction:

- (a) if the Company's invoice does not provide evidence of incorporating D&C Work into the relevant portion of the Project or supplying equipment to the Site with a value at least equal to the scheduled maximum payment, by the difference between the amount of the scheduled maximum payment minus the value of the D&C Work or equipment evidenced in the invoice;
- (b) D&C Deductions, being the amounts prescribed in the Project Agreement for each Noncompliance Event that occurs prior to the Substantial Completion Date and relates to the Interim Maintenance Work or the Long Term Maintenance Work for the Tunnel and Pump Station; and
- (c) Unavailability Adjustments, being prescribed amounts in the Project Agreement for each circumstance (occurrence and time) where the Company (i) fully or partially closes a Lane for any purpose and such closure is not a Permitted Lane Closure, or (ii) fully or partially blocks ingress to or egress from a Lane for any purpose and such blockage is not a Permitted Lane Closure.

<u>Availability Payments</u>. Availability Payments are payable by MDOT to the Company each Quarter from the later of the Substantial Completion Date and the Original Substantial Completion Deadline. Payments are subject to a MAP for each payment year. Quarterly Availability Payments are calculated pursuant to Schedule 4 of the Project Agreement and are subject to deductions for: (a) Unavailability Adjustments noted above; and (b) Noncompliance Adjustments, being the amounts prescribed in the Project Agreement for Noncompliance Points assessed against the Company for certain Noncompliance Events.

The Quarterly Availability Payment ("AP") for Quarter "q" of Contract Year "y" after the Substantial Completion Date shall be calculated using the following formula:

 $AP_{q,y} = QTMAP_{q,y} - QUA_{q,y} - QNCA_{q,y}$

Where:

 $QTMAP_{q,y}$ = the Quarterly Total MAP for Quarter "q" in Contract Year "y"

=	$QMAP_{q,y} + Q$ Where:	RWP _{q,y}			
	QMAP _{q,y}	=	¹ / ₄ of the MAP for Contract Year "y"		
	QRWP _{q,y}	=	the Quarterly Renewal Work Payment, or the relevant Base Renewal Work Payment set out in the related payment schedule applicable to Quarter "q" in Contract Year "y" indexed for inflation using the factor Iy / Ibase		
=	the Quarterly U	the Quarterly Unavailability Adjustment for Quarter "q" in Contract Year "y"			

QUA_{q,y} = the Quarterly Unavailability Adjustment for Quarter "q" in Contract Year "y" QNCA_{q,y} = the Quarterly Noncompliance Adjustment equal to the monetary deduction for the total cumulative Noncompliance Points awarded in Quarter "q" in Contract Year "y"

The MAP for each Contract Year is determined as follows:

$$MAP_{y} = BaseMAP \times \left(10\% \times \frac{Iy}{IBase}\right) + BaseMAP \times (1 - 10\%)$$

Where:

BaseMAP	=	\$50,621,793.41
10%	=	the indexed payment portion of the BaseMAP per Contract Year that is subject to the MAP Index
Iy	=	the MAP Index as of the month of the later of the Substantial Completion Date and the Substantial Completion Deadline in the year that is immediately prior to the commencement of such Contract Year
IBase	=	the MAP Index as of 1 August, 2018

Refinancing Gain

MDOT is entitled to share in the Company's gain from any Qualifying Refinancing, but not from an Exempt Refinancing.

MDOT is entitled to a 50% share of any Refinancing Gain arising from a Qualifying Refinancing other than a Refinancing utilizing TIFIA. For a Qualifying Refinancing utilizing TIFIA, MDOT is entitled to a 75% share of any Refinancing Gain.

- An "Exempt Refinancing" means:
- (a) any Refinancing identified and taken into account in the Financial Model and calculation of the Availability Payment;
- (b) minor and non-monetary amendments, modifications, supplements or consents to the Finance Documents, and the exercise by a Senior Secured Party of rights, waivers, consents and similar actions;
- (c) movement of monies between the Company's project accounts in accordance with the terms of the Finance Documents;
- (d) syndication by a Senior Secured Party; grant of participation rights by a Senior Secured Party or disposition of its rights as a Senior Secured Party; grant by a Senior Secured Party of any other form of benefit or interest in the Finance Documents or the revenues or assets of the Company; or
- (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.

A Qualifying Refinancing is any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.

Relevant Events

The Project Agreement provides for Delay Events, which occur during the D&C Term, and Relief Events, which occur after the Substantial Completion Date.

Delay Events. A Delay Event is either: (a) a Force Majeure Event; or (b) a Compensable Delay Event.

Force Majeure Events are any of the following events or circumstances that directly cause either the Company or MDOT to be unable to perform all or a material part of its obligations under the Project Agreement:

- (a) war (including civil war or revolution), invasion, violent act of foreign enemy or armed conflict, military or armed blockade, or military or armed takeover of the Project, occurring within the State;
- (b) any act of terrorism, riot, insurrection, civil commotion or sabotage that causes direct physical damage to, or otherwise directly causes interruption to construction or direct losses during maintenance of the Project;
- (c) national strikes not specific to the Company, embargoes, unavailability or shortages of materials, that, in each case, directly causes interruption to construction or direct losses during maintenance of the Project;
- (d) nuclear, radioactive, or biological contamination of the Project unless the source or cause of the contamination is brought to or near the Project by Developer-Related Entities;
- (e) a "flood" (as defined by the Federal Emergency Management Agency) where flood waters at the Site reach two (2) or more acres of normally dry land measured at or in excess of the one percent annual recurrence interval flood event (or its equivalent, successor measurement), for each water crossing of the Project; fire, explosion, a tornado with an enhanced Fujita Score Rating of EF2, sinkhole caused by natural events, or landslide caused by natural events, in each case directly impacting and damaging the physical improvements of the Project or performance of Project Work;

- (f) a seismic event, where such earthquakes, ground shaking, liquefaction, settlement, or ground movements directly impact, and cause damage to, temporary or permanent works of the Project; and
- (g) any governor-declared emergency within the limits of the Project ROW, except one consisting of or arising out of traffic accidents or Vehicle Damage.

Compensable Delay Events are any of the following events or circumstances to the extent, in each case, that it directly and adversely impacts the D&C Work, Interim Maintenance Work or the Long Term Maintenance Work for the Tunnel and Pump Station during the D&C Term:

- (a) the implementation of a MDOT Change, excluding any Change following a Change Request;
- (b) MDOT Fault;
- (c) a Hazardous Materials Relief Event (as described above);
- (d) a (i) Relevant Change in Law or (ii) Change in Law occurring during the D&C Term which interferes directly and adversely with, or causes a failure of, the performance of the Long Term Maintenance Work;
- (e) a NEPA Event;
- (f) compliance by the Company with an order or direction of an Emergency Service Provider in an Emergency;
- (g) the preemption, confiscation, diversion, destruction or other interference in possession or performance of substantial materials or services by a Governmental Entity in connection with an Emergency or any condemnation or other taking by eminent domain of any material portion of the Project ROW or the D&C Work;
- (h) failure of MDOT to provide responses to proposed schedules, plans, design documents, and other Submittals and matters submitted to MDOT after Commercial Close for which response is required under the Project Agreement as an express prerequisite to the Company's right to proceed or act, within the time periods indicated in the Project Agreement, or if no time period is indicated, within a reasonable time, taking into consideration the nature, importance and complexity of the submittal or matter; provided, however, that the foregoing shall apply only following delivery of notice after the expiration of the applicable time period from the Company requesting such action in accordance with the terms and requirements of the Project Agreement;
- discovery at, near or on the Project ROW of any archeological, paleontological or cultural resources (including historic properties), excluding any such substance or resources known or disclosed to the Company as of the Setting Date (or which should have been known to the Company pursuant to a Reasonable Investigation);
- discovery at, near or on the Project ROW of any Threatened or Endangered Species (regardless of when the species was listed as threatened or endangered), excluding any such presence of species known or disclosed to the Company as of the Setting Date (or which should have been known to the Company pursuant to a Reasonable Investigation);
- (k) loss or damage to the Project directly caused by MDOT Fault;
- issuance of a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of, or by complying with such temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction results in prohibiting the prosecution of, any material portion of the D&C Work, Interim Maintenance Work, or Long Term Maintenance Work;
- (m) subject to the Company promptly notifying MDOT in writing upon discovery and before the conditions are disturbed or before the affected Project Work is performed, discovery of:
 - (i) actual subsurface or latent physical conditions within two (2) feet of boring holes identified in the Geotechnical Data Reports that differ materially from the subsurface conditions indicated in such report at such boring holes, excluding any such conditions known or

disclosed to the Company prior to the Setting Date or that could have been reasonably anticipated as potentially present by an experienced global civil works contractor based on the information contained in such Geotechnical Data Reports (for avoidance of doubt, encountering conditions more than two (2) feet away from the actual boring holes that differ from conditions extrapolated from such boring data is not a Compensable Delay Event); or

- (ii) discovery of actual subsurface physical conditions within the Planned ROW Limits of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Project Agreement, excluding any such conditions known or disclosed to the Company prior to the Setting Date or that would become known to the Company by undertaking a Reasonable Investigation;
- (n) any order of MDOT to suspend for convenience exceeding 24 hours in total for a single suspension or 144 cumulative hours in total across multiple suspensions;
- (o) subject to the Company complying with its obligations under the Project Agreement, performance of work, other than snow and ice removal, in the vicinity of the Project Right of Way by MDOT Contractors or the P3 Lighting Contractor that materially and directly disrupts and interferes with the D&C Work or Interim Maintenance Work;
- (p) subject to the Company complying with its obligations under the Project Agreement, performance of work in the vicinity of the Project Right of Way by the Segment 2 Contractor that materially and directly disrupts and interferes with the D&C Work or Interim Maintenance Work;
- (q) subject to limitations provided in the Project Agreement, loss or damage to the Project directly caused by Vehicle Damage;
- (r) a Utility Relief Event; and
- (s) a Utility Delay.

<u>Delay Event Relief</u>. Upon the occurrence of a Delay Event, subject to compliance with the provisions of the Project Agreement relating to claims for a Delay Event, the Company will be entitled to an extension of the Substantial Completion Deadline or the Final Acceptance Deadline, as applicable, arising out of the Delay Event, equal to the delay to the Critical Path directly caused by the Delay Event.

The Company is not entitled to any such extension to the extent the Delay Event is concurrent with any other unrelated delay to a Critical Path for which any Developer-Related Entity is responsible under the Project Agreement.

If the Delay Event is a Compensable Delay Event, then subject to compliance with the provisions of the Project Agreement relating to claims for Delay Events, MDOT will reimburse the Company for:

- (a) directly attributable Extra Work Costs;
- (b) attributable Delay Costs, but only where an extension of time described above is made by MDOT for a MDOT-Caused Delay (see below); and
- (c) Financing Delay Costs, but only where such an extension of time is made by MDOT and provided:
 - (i) in the case of Milestone 3, the Company is unable to achieve Substantial Completion by the Original Substantial Completion Deadline; and
 - (ii) in the case of all other Milestones, the Company is unable to achieve Milestone Completion by the applicable original date for Milestone Completion shown in the Final Interim Schedule.

If the Compensable Delay Event is Vehicle Damage, then the Extra Work Costs payable are subject to the following deductibles for which the Company is responsible in each Contract Year during the D&C Term:

Extra Work Costs for loss or damage to Project in any Contract Year as a result of Vehicle Damage	MDOT Compensation to the Company
Up to and including \$100,000	0% of Extra Work Costs
Greater than \$100,000, up to and including \$200,000	50% of Extra Work Costs
Greater than \$200,000	100% of Extra Work Costs

If the Compensable Delay Event is a Hazardous Materials Relief Event, then compensation for Extra Work Costs shall be limited to Extra Work performed under the approved plans relating to Hazardous Materials Management.

If the Compensable Delay Event is a Utility Relief Event under clause (a) of the definition thereof and the Company did not include an impacted Utility in the Utility Conflict Matrix or provide timely notice of such Utility in accordance with the Delay Event claim process, then the Company is deemed to have waived any right to later claim for alleged inaccuracies in MDOT's pre-Proposal Utility information.

The Company is not entitled to any compensation for a Utility Relief Event for increased costs of the D&C Work attributable to unidentified or misidentified Utilities, to the extent that the existence of the facility was known to the Company as of the Proposal Due Date or could have been inferred from the presence of other facilities visible during a surface inspection of the area conducted prior to the Proposal Due Date.

If a time extension is made for a Delay Event that is a Force Majeure Event that has not been insured against and was not required to be insured against under the Project Agreement, MDOT will reimburse the Company for Financing Delay Costs so long as:

- (a) in the case of Milestone 3, the Company is unable to achieve Substantial Completion by the Original Substantial Completion Deadline; and
- (b) in the case of all other Milestones, the Company is unable to achieve Milestone Completion by the applicable original date for Milestone Completion shown in the Final Interim Schedule.

Extra Work Costs are the incremental increase in the Company's cost of labor, material, equipment and other direct and indirect costs directly attributable to any Project Work in the nature of additional work, altered work or deleted work which is directly attributable to a Change as a result of a Delay Event (or Relief Event) and, absent the Delay Event (or Relief Event), would not be required by the Project Agreement.

Delay Costs are direct costs and Extra Work Costs incurred in relation to Critical Path elements of the D&C Work having the least amount of total Float that result solely and directly from a Delay Event. No payment for delays occurring during the period from November 15 to March 1 will be made unless the Company's approved Project Schedule depicts work on the controlling operation during this period.

Financing Delay Costs are:

- (a) in the case of Delay Events, interest payments on the Company's senior debt accrued and paid, or which became payable, by the Company in accordance with the Finance Documents that accrued during the period of Critical Path delay as a direct result of the Delay Event; and
- (b) in the case of MDOT-Caused Delay only, such other amounts so as to result in the Company achieving the same Equity IRR (with reference to the Base Case Equity IRR) as if such Compensable Delay Event had not occurred.

A MDOT-Caused Delay is any of the events described in clause (a), (b), (c), (e), (h), (k), (m), (n), (o), (p), (q), (r) or (s) of the definition of Compensable Delay Event above.

Extra Work Costs and/or Delay Costs are payable by MDOT within one month after the date of the receipt from the Company of the related Change Order or Work Order, subject to rights of dispute.

Financing Delay Costs are payable by MDOT on the date on which MDOT would have paid the Milestone Payment or Availability Payment relating to those days of delay had the Milestone Completion or Substantial Completion not been delayed by the relevant Compensable Delay Event. <u>Relief Events</u>. A Relief Event is either: (a) a Force Majeure Event (as described above); or (b) a Compensable Relief Event.

Compensable Relief Events are any of the following events or circumstances to the extent that it interferes directly and adversely with, or causes a failure of, the performance of the Punch List or Long Term Maintenance Work after the Substantial Completion Date:

- (a) the implementation of a MDOT Change, excluding any Change following a Change Request;
- (b) MDOT Fault;
- (c) a Hazardous Materials Relief Event (as described above);
- (d) a NEPA Event;
- (e) compliance by the Company with an order or direction of an Emergency Service Provider in an Emergency;
- (f) a change in standards materially impacting the Punch List or Long Term Maintenance Work or the Project with which MDOT directs the Company to comply;
- (g) any Change in Law;
- (h) failure of MDOT to provide responses to proposed schedules, plans, design documents, and other Submittals and matters submitted to MDOT after Commercial Close for which response is required under the Project Agreement as an express prerequisite to the Company's right to proceed or act, within the time periods indicated in the Project Agreement, or if no time period is indicated, within a reasonable time, taking into consideration the nature, importance and complexity of the Submittal or matter; provided, however, that the foregoing shall apply only following delivery of notice after the expiration of the applicable time period from the Company requesting such action in accordance with the terms and requirements of the Project Agreement;
- discovery at, near or on the Planned ROW Limits of any archeological, paleontological or cultural resources (including historic properties), excluding any such substance or resources known or disclosed to the Company as of the Setting Date (or which should have been known to the Company pursuant to a Reasonable Investigation);
- (j) discovery at, near or on the Planned ROW Limits of any Threatened or Endangered Species (regardless of when the species was listed as threatened or endangered), excluding any such presence of species known or disclosed to the Company as of the Setting Date (or which should have been known to the Company pursuant to a Reasonable Investigation);
- (k) loss or damage to the Project directly caused by MDOT Fault;
- (l) issuance of a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of a material portion of the Punch List or Long Term Maintenance Work;
- (m) discovery of actual subsurface or latent physical conditions within two (2) feet of boring holes identified in the Geotechnical Data Reports included among the Reference Information Documents that differ materially from the subsurface conditions indicated in such report at such boring holes, excluding any such conditions known to the Company prior to the Setting Date or that could have been reasonably anticipated as potentially present by an experienced global civil works contractor based on the information contained in such Geotechnical Data Reports (for avoidance of doubt, encountering conditions more than two (2) feet away from the actual boring holes that differ from conditions extrapolated from such boring data is not a Compensable Relief Event); or discovery of actual subsurface physical conditions within the Project ROW, including Additional Properties required due to MDOT Changes, but excluding any other Additional Properties, of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Project Agreement, excluding any such conditions known or disclosed to the Company prior to the Setting Date or that would become known to the Company by undertaking a Reasonable Investigation;

- (n) any order of MDOT to suspend for convenience exceeding 24 hours in total for a single suspension or 144 cumulative hours in total across multiple suspensions;
- (o) subject to the Company complying with its obligations under the Project Agreement, performance of work, other than snow and ice removal, in the vicinity of the Project Right of Way by a MDOT Contractor or the P3 Lighting Contractor that materially and directly disrupts and interferes with the Punch List or Long Term Maintenance Work occurring on the Project Right of Way; and
- (p) subject to limitations provided in the Project Agreement, loss or damage to the Project directly caused by Vehicle Damage.

<u>Relief Event Relief</u>. If a Relief Event is a Compensable Relief Event, then subject to compliance with the provisions of the Project Agreement relating to claims for Relief Events, MDOT will reimburse the Company for all Extra Work Costs incurred as a direct result of the Compensable Relief Event.

If the Compensable Relief Event is Vehicle Damage, then the Extra Work Costs are subject to the following deductibles for which the Company is responsible in each Contract Year during the Maintenance Term:

Extra Work Costs for loss or damage to Project in any Contract Year as a result of Vehicle Damage	MDOT Compensation to the Company
Up to and including \$100,000	0% of Extra Work Costs
Greater than \$100,000, up to and including \$200,000	50% of Extra Work Costs
Greater than \$200,000	100% of Extra Work Costs

If the Compensable Delay Event is a Hazardous Materials Relief Event, then compensation for Extra Work Costs will be limited to Extra Work performed under the approved plans relating to Hazardous Materials Management.

If a Relief Event is a Force Majeure Event that: (y) is not insured against and is not required to be insured against under the Project Agreement, and (z) directly and adversely impacts the Long Term Maintenance Work after Substantial Completion, then MDOT pays no compensation and is entitled to make Deductions, provided that such Deductions shall not exceed, in the aggregate, the amount that would reduce payments to the Company to an amount below the sum of the debt service amount on the senior debt and 75% of the Company's Fixed Maintenance Costs.

<u>Relevant Events Generally</u>. To the extent that the Company does not comply with its mitigation obligations in relation to a Relevant Event, then its entitlement to claim an extension of time, compensation or relief from performance of its obligations under the Project Agreement with respect to such event will be reduced to the extent of such failure.

The Company's entitlement to claim an extension of time, compensation or relief from performance of its obligations under the Project Agreement with respect to a Relevant Event will be reduced to the extent that the Relevant Event was caused or contributed to by any Developer Fault.

Indemnity by the Company

The Company indemnifies MDOT, the State of Michigan, the Cities of Hazel Park, Madison Heights and Royal Oak, Wayne and Oakland Counties, and the Oakland County Water Resources Commissioner, and each of their respective successors, assigns, officeholders, officers, directors, agents and employees (the "Indemnified Parties") against any claim or liability arising out of or in connection with:

- (a) any alleged or actual Developer Fault, if asserted or incurred by or awarded to any Third Party;
- (b) damage to public or private property owned by Third Parties and for injuries to any Person arising out of the Company's performance of the Project Work;
- (c) any alleged Intellectual Property infringement or other allegedly improper appropriation or use of Intellectual Property by any Developer-Related Entity in performance of the Project Work or in connection with the infrastructure (excluding any infringement to the extent resulting from MDOT's failure to comply with specific material written instructions regarding use provided to MDOT by the Company);

- (d) any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, or the use of any property or income of any Developer-Related Entity with respect to any payment for the Project Work made to or earned by any Developer-Related Entity;
- (e) failure or alleged failure by any Developer-Related Entity to pay sums due for the work or services of Subcontractors, laborers, or Suppliers, provided that MDOT has paid all undisputed amounts owing to the Company with respect to such Project Work, if asserted or incurred by or awarded to any Third Party;
- (f) any actual or threatened Release of Hazardous Materials;
- (g) claim or assertion by any Interface Party: (i) that any Developer-Related Entity failed to cooperate reasonably with such Interface Party, so as to cause interference, disruption, delay or loss, except where the Developer-Related Entity was not in any manner engaged in performance of the Project Work; or (ii) that any Developer-Related Entity interfered with or hindered the progress or completion of work being performed by such Interface Party, so as to cause interference, disruption, delay or loss, to the extent such claim arises out of any Developer Fault;
- (h) any Developer-Related Entity's breach of or failure to perform an obligation that MDOT owes to a third person, including Governmental Entities and Utility Owners, under Applicable Law or under any agreement between MDOT and a third person, where MDOT has delegated performance of the obligation to the Company under the Project Agreement or the acts or omissions of any Developer-Related Entity render MDOT unable to perform or abide by an obligation that it owes to a third person, including Governmental Entities and Utility Owners, under any agreement between MDOT and a third person, where, in each case, the agreement was expressly disclosed or known to the Company;
- (i) inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of: (i) the failure of any Developer-Related Entity to comply with Good Industry Practices, requirements of the Project Agreement, the Project Management Plan or Governmental Approvals respecting control and mitigation of construction activities and construction impacts, (ii) the intentional misconduct or negligence of any Developer-Related Entity in connection with performance of the Project Work, or (iii) the actual physical entry onto or encroachment upon another's property by any Developer-Related Entity in connection with performance of the Project Work;
- (j) Errors or other Defects in the design, supply, construction (including installation), operation or maintenance of the Project or of Utility Relocations included in the Project Work, excluding the Interim Maintenance Work; or
- (k) Errors or other Defects in the Interim Maintenance Work resulting from: (i) the Company's breach of its obligations under the Project Agreement with respect to Interim Maintenance Work; or (ii) the negligence, intentional misconduct, or recklessness of any Developer-Related Entity.

The Company's indemnity obligations do not extend, however, to any Liability to the extent directly caused

by:

- (a) a breach by MDOT of the Project Agreement;
- (b) the sole negligent acts, sole negligent omissions, recklessness or willful misconduct, bad faith or fraud of an Indemnified Party; or
- (c) MDOT's violation of any Applicable Law.

Neither MDOT nor the State has any obligation to indemnify the Company.

Unavailability Adjustments and Noncompliance Points

Unavailability Adjustments and Noncompliance Points (and related Noncompliance Adjustments) can be assessed against the Company by MDOT for certain Unavailability Events and Noncompliance Events.

<u>Unavailability Adjustments</u>. Unavailability Adjustments are calculated by multiplying the number of Hour intervals of an Unavailability Event (rounded up to the nearest Hour) by the relevant Unavailability Factor for such Unavailability Event.

Unavailability Adjustments are limited to a daily maximum of \$100,000 (indexed each year on the anniversary of the Financial Close Date).

<u>Noncompliance Points</u>. The Company has the benefit of certain periods within which to mitigate, temporarily repair and/or permanently repair a Noncompliance Event. If a Noncompliance Event occurs for which there is no such period provided, or if the Company fails to take the required action within the available period, subject to limited circumstances for extension, then MDOT may assess prescribed Noncompliance Points. Such period then resets, and Noncompliance Points may be assessed again if the required action is not taken within the reset period.

In additional to Noncompliance Points, MDOT may assess Noncompliance Adjustments at prescribed dollar amounts for each Noncompliance Point assigned to the Company and on the occurrence of certain Noncompliance Events.

<u>Consequences</u>. The total of Deductions and Unavailability Adjustments cannot cause Milestone Payments 1 and 2 or the Quarterly Total Maximum Availability Payment for a Quarter to be less than 65% of the applicable maximum Milestone Payment or Quarterly Total Maximum Availability Payment. However, any Deductions or Unavailability Adjustments that, as a result of the foregoing, are not deducted from the Milestone Payment or Quarterly Total Maximum Availability Payment. This limitation does not apply to the last three Quarterly Total Maximum Availability Payments during the Maintenance Term where there will be no limit on the amount of Deductions and Unavailability Adjustments that may be applied to such Quarterly Total Maximum Availability Payments.

Accumulation of Noncompliance Points can trigger a Persistent Developer Default, which can be the basis for a Developer Default and termination of the Project Agreement.

Rights of MDOT Following a Developer Default

<u>Developer Defaults</u>. The following are Developer Defaults under the Project Agreement, where such event is not solely and directly attributable to a Delay Event or Relief Event:

- (a) the Company fails to begin the D&C Work within 30 days following issuance of NTP;
- (b) the Company fails to begin the Interim Maintenance Work within 120 days following issuance of NTP;
- (c) the Company fails to begin the Long Term Maintenance Work associated with the Tunnel and Pump Station within 30 days following a Milestone Completion Certificate for Milestone 2;
- (d) the Company fails to begin all Long Term Maintenance Work for the remainder of the I-75 (Segment 3) excluding the Tunnel and Pump Station within 30 days following the Substantial Completion Certificate;
- (e) the Company fails to (i) make any payment due to MDOT under the Project Agreement when due, (ii) deposit funds to any custodial account, trust account or other reserve or account in the amount and within the time period required by the Project Agreement, or (iii) deliver the Acceptable Letter of Credit for Handback in accordance with the Project Agreement (if applicable) in the required amount and within the period required;
- (f) the Company ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on the Company's ability to perform its obligations under the Project Agreement;
- (g) the Company abandons the Project or discontinues the performance of a substantial portion of the Project Work for a continuous period of 30 or more days, except in accordance with the approved Project Schedule;

- (h) the Company fails to obtain, provide and maintain the Insurance Policies in accordance with the Project Agreement and such failure is not cured within 5 days after receiving notice from MDOT of such failure;
- (i) the Company breaches the restrictions on a Change in Control set out in the Project Agreement;
- (j) any representation or warranty made by the Company in the Project Agreement or any documents delivered to MDOT under the Project Agreement is false in any material respect or materially misleading or inaccurate in any material respect when made or omits material information when made;
- (k) a Bankruptcy Event arises for:
 - (i) the Company, except to the extent such Bankruptcy Event is caused by a failure by MDOT to pay the Company as required under the Project Agreement; and/or
 - (ii) the Design-Build Contractor (during the D&C Term) unless the Company:
 - (A) enters into a replacement Design-Build Contract or guarantee (as relevant) with a reputable counterparty acceptable to MDOT within 60 days of the relevant Bankruptcy Event; or
 - (B) in the absence of entering into a replacement Design-Build Contract, the Company otherwise demonstrates to the satisfaction of MDOT that the Company possesses the technical and financial capacity to perform all remaining D&C Work in accordance with the Project Agreement;
- (1) the Design-Build Contract is terminated (other than non-default termination on its scheduled termination date) and the Company has not either:
 - (i) entered into a replacement Design-Build Contract with a reputable counterparty acceptable to MDOT within 60 days of the termination of the Design-Build Contract, <u>provided</u>, <u>however</u> that if the Company is required to replace the Lead Tunnel Subcontractor, then the Company has 120 days from the termination of the Design-Build Contract to enter into a replacement Design-Build Contract; or
 - (ii) in the absence of entering into a replacement Maintenance Contract, the Company otherwise demonstrates to the satisfaction of MDOT that the Company possesses the technical and financial capacity to perform all remaining Maintenance Work in accordance with the Project Agreement;
- (m) the Company fails to achieve Substantial Completion by the Longstop Date;
- (n) a Persistent Developer Default occurs, MDOT delivers to the Company a Default Notice, and either (i) the Company fails to deliver to MDOT, within 30 days, a cure plan meeting the requirements of the Project Agreement, or (ii) the Company fails to fully comply with the schedule or specific elements of, or actions required under, the approved cure plan;
- (o) the Company fails to comply with MDOT's suspension of Project Work issued in accordance with the Project Agreement within the time reasonably allowed in such order;
- (p) after exhaustion of all rights of appeal, any disqualification, suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, from bidding, proposing or contracting with any United States or State department or agency of (i) the Company, (ii) any affiliate of the Company (as "affiliate" is defined in 29 CFR § 16.105 or successor regulation of similar import), (iii) any Equity Member or (iv) any Key Subcontractor whose work is not completed;
- (q) the Company fails to replace and maintain the Maintenance Performance Security in accordance with the Project Agreement; and
- (r) the Company fails to timely observe or perform or cause to be observed or performed any other covenant, agreement, obligation, term or condition required to be observed or performed by the Company under the Project Agreement, including failure to pay for or perform the D&C Work,

Maintenance Work or any portion thereof in accordance with the Project Agreement, to cure any such failure identified in notice from MDOT relating to same (but excluding any Noncompliance Event unless the number of points accumulated with respect to such Noncompliance Event constitutes a Developer Default described in clause (n) above).

<u>Company Cure Periods</u>. The Company has the benefit of the following cure periods:

- (a) for the Developer Default described in clause (a) above, 20 days after MDOT's delivery of a Default Notice;
- (b) for a Developer Default described in clause (f) or (k) above, 15 days after MDOT's delivery of a Default Notice;
- (c) for a Developer Default described in clause (e), (g) or (r) above, 30 days after MDOT's delivery of a Default Notice, provided that, if the Developer Default is of such a nature that the cure cannot with diligence be completed within such time period and the Company has commenced meaningful steps to cure promptly after receiving the Default Notice, the Company will have such additional period of time, up to a maximum cure period of 60 days after MDOT's delivery of a Default Notice; and
- (d) no cure period for any other Developer Default.

<u>Company Cure Plans</u>. If MDOT delivers a Default Notice to the Company, then except in the case of the Developer Defaults described in clauses (g), (i), (k), (l), (m) and (n) above and Developer Defaults for which there is no cure period, the Company will give MDOT a plan to cure the Developer Default and comply with any requirements of MDOT in accordance with the terms of the Default Notice. MDOT and the Company will develop and seek to agree on such plan, and following agreement or determination of the plan, the Company shall implement and comply with it. Any failure to implement the cure plan or comply with the agreed cure plan will result in a Developer Default which is not subject to any cure period.

In the case of a Persistent Developer Default, within 30 days, the Company will submit a cure plan to MDOT, including specific actions (including timeframes) to be taken by the Company to improve its performance and reduce (i) the cumulative number of Noncompliance Points assessed and cumulative number of breaches and failures to perform to the point that a Persistent Developer Default no longer applies, and (ii) the cumulative number of Noncompliance Points outstanding with respect to the Developer Default by at least 50%. MDOT and the Company will develop and seek to agree on such plan, and following agreement or determination of the plan, the Company shall implement and comply with it. Any failure to implement the cure plan or comply with the agreed cure plan will result in a Developer Default which is not subject to any cure period.

Compliance by the Company with a Persistent Developer Default cure plan in all material respects and achievement of the requirements set out in it will result in a reduction by MDOT of the number of cured Noncompliance Points that would otherwise then be counted toward a Persistent Developer Default by 25%, so long as there are no other uncured Developer Defaults at such time for which a Default Notice was given.

<u>MDOT Rights on Developer Default.</u> Upon occurrence of a Developer Default that has not been cured within the applicable cure period, if any, MDOT will be entitled to:

- (a) exercise its Step-In Rights under the Project Agreement;
- (b) terminate the Project Agreement in accordance with its terms;
- (c) recover any liability on account of the occurrence of a Developer Default, regardless of when the Default Notice is given, whether the liability accrues after the occurrence of the Developer Default or whether the Developer Default is subsequently cured;
- (d) make demand upon and enforce any Performance Security, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security (including the PA Handback Account and MDOT's rights to withhold payment) available to MDOT under the Project Agreement with respect to the Developer Default without notice to the Company, applying the proceeds of any such action to the satisfaction of the Company's obligations under the Project Agreement;
- (e) suspend the Project Work in whole or part in accordance with the Project Agreement; or

(f) exercise any other remedies available under the Project Agreement or at law or in equity.

<u>MDOT Termination Right</u>. Subject to the PA Direct Agreement, if (a) a Developer Default occurs and has not been cured within the relevant cure period, if any, set out in the related Default Notice or in accordance with any cure plan accepted by MDOT, or (b) a Developer Default occurs for which there is no cure period under the Project Agreement, then MDOT, by notice to the Company, may terminate the Project Agreement.

Developer Default Termination Compensation.

(1) Termination Before Substantial Completion Deadline

If the Project Agreement is terminated due to a Developer Default <u>before</u> the Substantial Completion Deadline, then MDOT will pay the Company, calculated at MDOT's date of termination of the Project Agreement, an amount equal to <u>the lesser of</u> (a) and (b) below:

- (a) an amount equal to the D&C Contract Price <u>minus</u> the aggregate of:
 - (i) the Cost to Complete;

<u>plus</u>

(ii) the Milestone Payments that became payable prior to the termination date;

<u>plus</u>

- (iii) any Availability Payments that became payable prior to the termination date;
- <u>plus</u>
- (iv) any Deduction or Unavailability Adjustment or other reductions to the Availability Payment or Milestone Payment accrued prior to the termination date that has, in each case, not been deducted from any Milestone Payments or Availability Payment (as applicable);
- (b) the amount equal to:
 - (i) one-hundred percent (100%) of the Lenders' Liabilities, being the aggregate, without double counting, of all principal, interest, banking fees and premiums on financial insurance policies, costs and expenses and other amounts properly incurred owing or outstanding to the Senior Secured Parties by the Company under the Finance Documents on the termination date of the Project Agreement, including any prepayment costs, makewhole amounts or breakage costs;

<u>minus</u>

(ii) Cash Account Balances;

<u>minus</u>

(iii) Insurance Proceeds (excluding proceeds of personal injury, property damage or other Third Party liability insurance payable to or for the account of a Third Party);

<u>minus</u>

- (iv) any D&C Deductions and Unavailability Adjustments to the extent not deducted in full from the Milestone Payment.
- (2) Termination After Substantial Completion Deadline

If the Project Agreement is terminated due to a Developer Default after the Substantial Completion Deadline, then MDOT will pay the Company, calculated at MDOT's date of termination of the Project Agreement, an amount equal to:

(a) 80% of Lenders' Liabilities;

<u>minus</u>

(b) Maintenance Rectification Costs, being all liability that MDOT determines, in its good faith discretion, that it has incurred or may incur as a result of the termination of the Project Agreement;

<u>minus</u>

(c) Cash Account Balances;

<u>minus</u>

(d) Deferred Equity Amounts;

<u>minus</u>

(e) Insurance Proceeds to the extent that such proceeds were not used to repair or replace any portion of the infrastructure or to satisfy a third party claim;

<u>minus</u>

(f) any Deduction and Unavailability Adjustment accrued prior to the termination date of the Project Agreement that has, in each case, not been deducted from any Milestone Payment or Availability Payment (as applicable).

Rights of Company Following a MDOT Default

MDOT Defaults. The following are MDOT Defaults under the Project Agreement:

- (a) MDOT fails to make any payment due to the Company under the Project Agreement when due, to the extent such payment is not subject to a good faith dispute;
- (b) any representation made by MDOT under the Project Agreement is false or materially misleading or inaccurate when made in each case in any material respect or omits material information when made; and
- (c) MDOT commits a material breach of its obligations under the Project Agreement (other than as a consequence of any Developer Fault), which breach materially adversely affects the ability of the Company to perform its obligations under the Project Agreement for a continuous period of not less than 60 days after notice is received from the Company.

<u>MDOT Cure Periods.</u> In the case of a MDOT Default described in clause (a) above, MDOT has a 30-day cure period after receipt of notice from the Company. In the case of a MDOT Default described in clause (b) or (c) above, MDOT has a 60-day cure period after receipt of notice from the Company, provided that, if the MDOT Default is of such a nature that the cure cannot with diligence be completed within such time period and MDOT has commenced meaningful steps to cure immediately after receiving the Company's notice, then MDOT shall have up to a maximum 180-day cure period.

<u>Company Suspension Right.</u> For so long as a MDOT Default has occurred and remains uncured after the expiration of any applicable cure period, the Company may suspend performance of the Project Work.

<u>Company Termination Right</u>. The Company has the right to terminate the Project Agreement upon the occurrence of a MDOT Default following notice and expiration of the applicable cure period. The Company must provide MDOT not less than 30 days' notice of termination, and such termination of the Project Agreement is effective on the date stated in the Company's notice of termination.

<u>Compensation for Termination for MDOT Default</u>. If the Project Agreement is terminated for a MDOT Default, MDOT will pay compensation to the Company calculated in the same manner as the compensation on Termination for Convenience as described below.

Other Project Agreement Termination and Compensation

<u>Termination for Convenience and Related Compensation.</u> At any time after the Financial Close Date, in its sole discretion and for any reason, MDOT may terminate the Project Agreement upon not less than 60 days' notice to the Company. Such termination of the Project Agreement will be effective on the date specified in MDOT's notice of termination.

If MDOT terminates the Project Agreement for convenience, then MDOT will pay the Company an amount equal to:

(a) all amounts shown in the Financial Model as payable by the Company to the Equity Members from the termination date of the Project Agreement, either in dividends or other distributions on the capital of the Company or as payments of interest or repayments of principal made by the Company under the Equity Members' funding agreements, each amount discounted back at the Base Case Equity IRR from the date on which it is shown to be payable in the Financial Model to the termination date of the Project Agreement, less the Deferred Equity Amounts at the termination date of the Project Agreement;

<u>plus</u>

(b)	Lenders'	Liabilities

<u>plus</u>

(c) Developer Employee and Contractor Breakage Costs;

<u>plus</u>

(d) Cash Account Balances;

<u>minus</u>

(e) Insurance Proceeds to the extent that such proceeds were not used to repair or replace any portion of the infrastructure or to satisfy a third party claim;

<u>minus</u>

(f) any Deduction accrued prior to the termination date of the Project Agreement that has, in each case, not been deducted from any Milestone Payment or Availability Payment (as applicable).

<u>Termination for Extended Force Majeure Event and Related Compensation.</u> Subject to the following paragraph, if a Force Majeure Event is continuing and prevents or is likely to continue to prevent the Company from undertaking all or substantially all of its obligations in accordance with the Project Agreement for a continuous period exceeding 180 days, then either MDOT or the Company may terminate the Project Agreement by giving notice to the other. Such termination of the Project Agreement will be effective on the date stated in such notice of termination.

The Company may not terminate the Project Agreement in the period when the Company is able to recover under any Insurance Policy for any liability suffered as a consequence of the relevant Force Majeure Event or would have been able to recover had it effected and maintained such insurances in accordance with the Project Agreement.

If the Project Agreement terminates for such a Force Majeure Event, then MDOT will pay the Company, calculated at the termination date of the Project Agreement, an amount equal to:

(a) the amount of (i) any form of direct cash investment by Equity Members in the Company and (ii) any cash draws by or on behalf of the Company under Deferred Equity Amounts in the form of letters of credit, less the distributions paid to the Equity Members, which amount will never be less than zero;

<u>plus</u>

(b) Lenders' Liabilities;

<u>plus</u>

(c) Developer Employee and Contractor Breakage Costs;

<u>minus</u>

(d) Cash Account Balances;

<u>minus</u>

(e) Insurance Proceeds to the extent that such proceeds were not used to repair or replace any portion of the infrastructure or to satisfy a third party claim;

minus

(f) any Deduction and Unavailability Adjustment accrued prior to the termination date of the Project Agreement that has, in each case, not been deducted from any Milestone Payment or Availability Payment (as applicable).

<u>Termination for Unobtainable Coverage Event and Related Compensation</u>. MDOT may terminate the Project Agreement in connection with an Unobtainable Coverage Event on notice to the Company. Such termination will take effect on the date stated in MDOT's notice of termination.

If MDOT terminates the Project Agreement in connection with an Unobtainable Coverage Event, then MDOT will pay the Company an amount calculated according to the same formula provided above for a Force Majeure Event termination.

<u>Termination for Failure to Reach Financial Close and Related Compensation</u>. MDOT may terminate the Project Agreement without fault or penalty on notice to the Company if Financial Close does not occur by the Financial Close Deadline and all conditions to Financial Close have been achieved.

MDOT or the Company may terminate the Project Agreement without fault or penalty on notice to the other if Financial Close does not occur by the Financial Close Deadline, an Adverse Event or another similar event described in the Project Agreement has occurred, or if MDOT and the Company have negotiated in good faith for 30 days to agree on mitigation actions and no agreement has been reached.

If the Project Agreement terminates in any of the foregoing circumstances, then MDOT will return the Financial Close Security to the Company on the termination date of the Project Agreement and pay the Company an amount equal to: (a) the Company's documented costs for Project Work performed during the time period between Commercial Close and Financial Close up to a maximum amount of \$1,000,000, calculated at the termination date of the Project Agreement; <u>plus</u> (b) up to \$1,000,000.

If the Company fails to achieve Financial Close by the Financial Close Deadline and such failure is not directly attributable to any of the excusing events for same in the Project Agreement, then MDOT may terminate the Project Agreement upon notice to the Company and such termination of the Project Agreement will take effect on the date stated in such notice.

If MDOT terminates the Project Agreement for the Company's failure to achieve Financial Close, then MDOT may draw upon or retain the full amount of the Financial Close Security and no amount shall be payable by MDOT to the Company in such circumstances.

Other MDOT Remedies

<u>Step-In Rights.</u> If (i) an Emergency occurs, (ii) MDOT is required by Applicable Law to discharge a statutory power or duty, or (iii) a Developer Default occurs and any applicable cure period expires without full and complete cure of same by the Company, subject to the terms of the PA Direct Agreement, MDOT may: (1) temporarily assume total or partial management and control of the whole or any part of the infrastructure, (2) access the Project Right of Way, (3) perform the Project Work, and (4) take such other steps as are necessary in the opinion of MDOT to perform the Project and minimize the effect of the such event.

If MDOT has exercised its Step-In Rights, then the Company's obligations that are directly affected by the Step-In Rights will be suspended for the period and to the extent necessary to enable MDOT to exercise those Step-In Rights.

Except as set out in clause (n) of the definition of Compensable Delay Event and Compensable Relief Event, MDOT has no liability to the Company for, and the Company is not entitled to make any claim against MDOT or any MDOT Person for any liability in connection with, MDOT exercising its Step-In Rights.

<u>Suspension Right</u>. Subject to the Direct Agreement, MDOT may suspend, in whole or in part, the Project Work due to any of the following, regardless of whether a Developer Default has been declared or any cure period (other than the cure period below) has not yet lapsed:

- (a) for MDOT's convenience, provided that the same may result in a Compensable Delay Event or a Compensable Relief Event;
- (b) failure to perform the Project Work in compliance with, or other breach of, the Project Agreement where such failure is not cured within 15 days after MDOT delivers notice to the Company, except Noncompliance Events where no Persistent Developer Default exists;

- (c) failure to comply with any Applicable Law or Governmental Approval, including any failure to handle, preserve and protect archeological, paleontological, cultural or historic resources, or failure to handle Hazardous Materials, in accordance with Applicable Law and Governmental Approvals;
- (d) the Company has failed to pay in full, when due, sums owing to any Subcontractor for services, materials or equipment, except only for retainage provided in the relevant Subcontract and amounts in dispute, where such failure is not substantially cured within 15 days after MDOT delivers notice to the Company;
- (e) failure to provide proof of the required Insurance Policy coverage;
- (f) failure to deliver or maintain any Performance Security in accordance with the Project Agreement;
- (g) the existence, in MDOT's good faith determination, of conditions unsafe for workers, other Project personnel, MDOT Persons, Interface Parties or the general public, including failures to comply with safety standards or traffic management procedures or perform safety compliance in accordance with the Technical Requirements; and
- (h) failure to carry out and comply with Work Orders or where the failure is not substantially cured within 15 days after MDOT delivers notice to the Company.

Except as set out in clause (n) of the definitions of Compensable Delay Event and Compensable Relief Event, MDOT has no liability to the Company for, and the Company is not entitled to make any claim against MDOT or any MDOT Person for any liability in connection with, MDOT exercising its suspension rights.

Handback Requirements

The Company is required to comply with the Handback Requirements, which will vary in terms of the required condition of the infrastructure depending on the time that Handback occurs during the Maintenance Term.

MDOT and the Company will conduct inspections of the Project and deliver a Preliminary Project Handback Condition Report not less than 42 months prior to the Scheduled Expiration Date identifying the Handback Work and estimating the Handback Work Costs. The Company will produce a Prefinal Project Handback Condition Report on the first anniversary of the original Prefinal Project Handback Condition Report.

Within 30 days after the delivery of the Prefinal Project Handback Condition Report, the Company will deliver an amount equal to the Handback Work Costs to MDOT per deposit with the State Treasurer in the PA Handback Account. MDOT will have a first priority perfected security interest in the PA Handback Account and is not obliged to pay the Company interest on the PA Handback Account. MDOT will pay from the PA Handback Account the amounts necessary to reimburse the Company upon submittal of (i) certified requisitions with full supporting receipts or other evidence of payment for work actually expended in the performance of the Handback Work; and (ii) confirmation that the applicable Handback Work has been completed in accordance with the terms of the Project Agreement.

In lieu of funding the PA Handback Account, the Company may deliver one or more Acceptable Letters of Credit under the Project Agreement to cover all or any portion of the amounts required to be on deposit in the PA Handback Account.

Restrictions on Assignment

Except for in certain prescribed circumstances in the Project Agreement, the Company cannot voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber any portion of its rights or obligations under the Project Agreement without MDOT's prior written approval, in MDOT's sole discretion. Any purported voluntary or involuntary sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, grant of right of entry, or grant of other special use, management or control in violation of the Project Agreement shall be null and void *ab initio* and MDOT, at its option, may declare any such attempted action to be a material Developer Default.

Restrictions on Changes in Control and Equity Transfers

No Change in Control of the Company, or Equity Transfer that results in an Equity Member ceasing to own (directly or indirectly) the same percentage of the issued share capital, partnership or membership interests, as applicable, in the Company that it owned (directly or indirectly) as of the Financial Close Date, is permitted:

- (a) prior to 2 years after the Substantial Completion Date, without MDOT's prior written approval, in its sole discretion; or
- (b) after 2 years after the Substantial Completion Date, without MDOT's prior written approval, not to be unreasonably withheld or delayed, based on the financial resources, qualifications and experience necessary to perform the Project Work and potential conflicts of interest.

Certain situations described in the Project Agreement will not constitute a Change in Control, and such transfers are allowed at any time without necessity for MDOT's approval.

Any Change in Control in violation of the provisions of the Project Agreement shall be null and void *ab initio* and MDOT, at its option, may declare any such attempted action to be a material Developer Default.

The Design- Build Contract

On October 12, 2018, the Company and the Design-Build Contractor entered into the Design-Build Contract. The Design-Build Contract will be amended on or before the Closing Date to reflect updates to the Financial Model and other technical changes. This Official Statement reflects the terms of the Design-Build Contract.

Principal Rights and Responsibilities of the Company and the Design-Build Contractor

<u>Contractor Obligations</u>. Subject to the Excluded Obligations, the Design-Build Contractor is responsible for performing all Contractor Obligations, being: (a) the D&C Work, (b) the Interim Maintenance Work, (c) the Long Term Maintenance Work for the Tunnel and Pump Station prior to the Substantial Completion Date, and (d) all other obligations of the Design-Build Contractor under the Design-Build Contract, all in accordance with the Design-Build Contract, the Technical Requirements and the Developer Requirements.

Excluded Obligations. The Design-Build Contractor is not responsible for the Excluded Obligations, being (a) financing the Project, including financial modeling, and excepting the Design-Build Contractor's responsibility for the D&C Performance Security required by the Project Agreement and the DB Performance Support required by the Design-Build Contract, (b) the Maintenance Work (other than the Interim Maintenance Work and the Long Term Maintenance Work for the Tunnel and Pump Station prior to the Substantial Completion Date), and excepting the Design-Build Contractor's obligation to remediate Defects and Latent Defects as set out in the Design-Build Contract, (c) the costs, fees and charges of the Company's own personnel, consultants and professional advisors, except as specifically provided in the Design-Build Contract, (d) cost, fees and charges of a mediator or arbitrator acting under the DB Dispute Resolution Procedures to the extent required to be paid by the Company, and (e) any other obligation which is expressly stated to be the obligation of the Company under the Design-Build Contract and which is not an obligation of MDOT under the Project Agreement.

Key DB Personnel. The Design-Build Contractor will provide certain individuals to fill certain of the Key Personnel roles under the Project Agreement. Such individuals will be Key DB Personnel, and the Design-Build Contractor will be responsible to pay any related liquidated damages under the Project Agreement applicable to such individuals' ceasing to fill such roles.

<u>Hazardous Materials Management</u>. Prior to the Substantial Completion Date, the Design-Build Contractor is responsible for all Hazardous Materials Management for which the Company is responsible under the Project Agreement. A Developer Release of Hazardous Materials (as defined in the Design-Build Contract) prior to the Substantial Completion Date is a matter for which the Design-Build Contractor is responsible to perform the related Hazardous Material Management and a Developer Act for which the Developer Act indemnity is applicable.

<u>DBE/SBE Requirements</u>. Prior to the Substantial Completion Date, the Design-Build Contractor is responsible for achieving the DBE Goal and the SBE Goal.

Company Obligations and Indemnities

Enforcement of Rights. To the extent directed to do so by the Design-Build Contractor, subject to agreement on a budget, the Company will enforce its rights against MDOT under the Project Agreement that relate to the D&C Work and the Contractor Obligations.

The Company has the discretion not to follow the Design-Build Contractor's direction on the basis that the Design-Build Contractor's claim is false, fraudulent, frivolous, illegal or impermissible under the Project Agreement or the Finance Documents. The Design-Build Contractor can dispute that determination by the Company. The Company also has absolute discretion not to pursue a matter with MDOT as directed by the Design-Build Contractor.

If the Company exercises its absolute discretion not to pursue or if the DB Dispute Resolution Procedures determines that the Company's conclusion of a false, fraudulent or frivolous claim or illegal or impermissible circumstances under the Project Agreement or the Finance Documents was wrong and the Company either continues not to pursue the claim or the time to pursue the claim under the Project Agreement has lapsed, then the Design-Build Contractor is entitled to receive from the Contractor the full benefit of the claim that would have otherwise been afforded to the Design-Build Contractor if the relevant matter had been pursued against MDOT and substantiated in accordance with the Project Agreement.

Equivalent Project Relief. To the extent that any entitlement or right of the Company to relief under the Project Agreement is related to the Contractor Obligations or the rights of the Design-Build Contractor under the Design-Build Contract, then if the Company receives a written direction from the Design-Build Contractor in accordance with the terms of the Design-Build Contract, the Company will pursue, at the Design-Build Contractor's expense, such relief diligently, in good faith and in accordance with the Design-Build Contractor's direction. The Design-Build Contractor shall be entitled to receive the benefit of such relief (to the extent attributable to the Contractor Obligations and to the extent that the Company has received the corresponding relief from MDOT under the Project Agreement).

If MDOT apportions the amounts to be received by the Design-Build Contractor with respect to Equivalent Project Relief, then the Company will pay the Design-Build Contractor in accordance with such apportionment, subject to the Company's set-off rights.

Where any award relates to a matter that involves the Design-Build Contractor and the Company, but does not separately identify the amount, nature or extent of the Design-Build Contractor's entitlement to Equivalent Project Relief, such indemnity, payment, extension or relief shall be apportioned by the Company:

- (a) first, to the Senior Secured Parties in respect of any portion of the relevant indemnity, payment, extension or relief in respect of the relevant matter to which they are entitled pursuant to the Finance Documents;
- (b) second, to the Company in satisfaction of all unpaid costs incurred by the Company to take the relevant action(s) as directed by the Design-Build Contractor; and
- (c) third, to the extent of the relevant indemnity, payment, extension or relief remaining, proportionally to all persons claiming an entitlement to such indemnity, payment, extension or relief according to the amount thereof that is claimed by each of them and is then unsatisfied (subject to the rights of the Design-Build Contractor pursuant to the DB Dispute Resolution Procedures).

Company's Conduit Indemnity. If any event would have constituted a Delay Event under the Project Agreement or the Company would have had other rights or remedies under the Project Agreement but, solely as a result of an act or failure to act by the Company following receipt of a Design-Build Contractor direction relating to same such event is not so constituted or such rights and remedies are not available or enforceable, then:

- (a) if the event would have constituted a Delay Event under the Project Agreement and an extension of time is what has been lost, then a "Developer Delay Event" has occurred for which the Design-Build Contractor can make a claim as it would with any other claim for a Delay Event under the Design-Build Contract; and
- (b) the Company will indemnify the Design-Build Contractor for all liability arising from such event of unavailability or unenforceability of Project Agreement rights and/or remedies, solely to the

extent of the compensation that the Company would have been entitled to receive under the Project Agreement in the absence of such act or failure to act on the part of the Company.

If a Developer Delay Event has occurred as described above, then:

- (a) to the extent permitted pursuant to the Project Agreement, all Float in the Project Schedule must be utilized before a delay to the Critical Path may be determined to exist for purposes of the Design-Build Contract;
- (b) the Design-Build Contractor will certify whether the Design-Build Contractor can accelerate the D&C Work, at the Company's cost, so as to eliminate the delay to the Critical Path associated with the Developer Delay Event, and:
 - (i) if the Design-Build Contractor can accelerate the D&C Work, then:
 - (A) the Design-Build Contractor will provide a *bona fide* fixed price estimate to accelerate;
 - (B) unless the Company determines not to pay such acceleration costs, the Company will issue a DB Change Order under Attachment 9 to the Design-Build Contract and the Design-Build Contractor will commit to complete the D&C Work in accordance with the original schedule; and
 - (C) the Design-Build Contractor will be fully responsible for achieving: (I) Substantial Completion by the Original Substantial Completion Deadline; and (II) the remaining Milestone(s) by the relevant Milestone Due Date(s), in each case without adjustment for the related delay that would have been compensated under the Project Agreement in the absence of such act or failure to act by the Company; or
 - (ii) if the Design-Build Contractor is unable to accelerate the D&C Work or the Design-Build Contractor is able to accelerate the D&C Work but the Company has determined not to pay the costs thereof, then:
 - (A) the Design-Build Contractor continues to be responsible for the obligation to pay Liquidated Damages as a result of the failure to achieve: (I) Substantial Completion by the Original Substantial Completion Deadline; or (II) a Milestone by the relevant Milestone Due Date, in each case in connection with the related delay that would have been compensated under the Project Agreement in the absence of such act or failure to act by the Company; and
 - (B) the Company will indemnify the Design-Build Contractor for all such Liquidated Damages that are paid by the Design-Build Contractor in such circumstances.

Developer Act Indemnity. The Developer Act indemnity is separate from the conduit indemnity described above as it relates to a separate act or omission of the Company.

A "Developer Act" occurs when:

- (a) the Company breaches the Design-Build Contract and does not remedy same within: (i) five Business Days, in respect of any matter that has a material financial impact on the Design-Build Contractor; or (ii) 20 Business Days, in respect of any matter that does not have a material financial impact on the Design-Build Contractor, in each case after notice from the Design-Build Contractor; or
- (b) a negligent act or omission on the part of the Company occurs.

Neither circumstance described in (a) or (b) above is a Developer Act if it results, directly or indirectly, from any breach, act or omission of MDOT, the Design-Build Contractor or any Contractor-Related Entity.

If there is a Developer Act in the nature of a breach (which does not include a failure to pay breach) or a negligent Developer Act is determined or agreed by the Parties, then:

- (a) if the Design-Build Contractor believes that there is a delay in the Critical Path directly attributable to such Developer Act, then:
 - (i) the Company and the Design-Build Contractor will agree upon, or have the DB Dispute Resolution Procedures determine, the period of delay;
 - (ii) the Design-Build Contractor will certify whether the Design-Build Contractor can accelerate the D&C Work, at the Company's cost, so as to eliminate such delay; and
 - (A) if the Design-Build Contractor can accelerate the D&C Work, then:
 - i. the Design-Build Contractor will provide a *bona fide* fixed price estimate for the cost to accelerate;
 - ii. unless the Company determines not to pay such acceleration costs, the Company will issue a DB Change Order under Attachment 9 to the Design-Build Contract and the Design-Build Contractor will commit to complete the D&C Works in accordance with the accelerated program; and
 - iii. the Design-Build Contractor will be fully responsible for achieving: (1)
 Substantial Completion by the Original Substantial Completion Deadline;
 and (2) the remaining Milestone(s) by the relevant Milestone Due Date(s),
 in each case without adjustment for the related delay; or
 - (B) if the Design-Build Contractor is unable to accelerate the D&C Work or the Design-Build Contractor is able to accelerate the D&C Work but the Company has determined not to pay the costs thereof, then:
 - the Design-Build Contractor continues to be responsible for the obligation to pay Liquidated Damages as a result of the failure to achieve: (1) Substantial Completion by the Original Substantial Completion Deadline; or (2) a Milestone by the relevant Milestone Due Date, in each case in connection with the related delay; and
 - ii. the Company will indemnify the Design-Build Contractor for all such Liquidated Damages that are paid by the Design-Build Contractor in such circumstances; and
- (b) without duplication of amounts payable as described above, the Company will indemnify the Design-Build Contractor for all Liability arising from such Developer Act, where such liability is directly attributable to same and if in relation to a Contractor Obligation that was priced in the Proposal, supported by evidence as to the difference between that pricing and the current liability.

The Design-Build Contractor may not claim under both the conduit indemnity and the Developer Act indemnity in connection with the same act or omission of the Company. If the Design-Build Contractor exercises its rights under the conduit indemnity or the Developer Act indemnity, then the Design-Build Contractor is deemed to have waived any right to terminate the Design-Build Contract with respect to the relevant act or omission of the Company.

Deductions and Unavailability Adjustments

If MDOT assesses any Deduction and/or Unavailability Adjustment during the Term (whether against a Milestone Payment or an Availability Payment), the Company will allocate that Deduction and/or Unavailability Adjustment against and in reduction of amounts otherwise payable to the Design-Build Contractor under the Design-Build Contract on a back-to-back, dollar-for-dollar basis except to the extent that such Deduction and/or Unavailability Adjustment results from a Developer Act (in which case the Company shall be responsible for such Deduction and/or Unavailability Adjustment solely to such extent).

The Company will first set off the Deduction and/or Unavailability Adjustment allocated to the Design-Build Contractor, and if it is greater than the aggregate amount able to be set off by the Company, the Design-Build Contractor shall reimburse the Company for the amount of such deficiency within five (5) Business Days of receipt of demand from the Company, failing which the Company can have recourse to the DB Performance Support and/or the D&C Performance Security.

Liquidated Damages

<u>Delay Liquidated Damages</u>. If the Design-Build Contractor has not achieved Substantial Completion by the Original Substantial Completion Deadline, then the Design-Build Contractor is responsible to pay the Company "Delay Liquidated Damages" at a per diem rate of \$124,779.26 calculated from and including the first day following the Original Substantial Completion Deadline until the earliest of (a) the Substantial Completion Date, (b) the termination date of the Design-Build Contract, and (c) the date on which the aggregate amount of Delay Liquidated Damages Cap.

<u>Delay Event Liquidated Damages</u>. Without limiting or duplicating the obligations relating to Delay Liquidated Damages, if the Design-Build Contractor has not achieved Substantial Completion by the Original Substantial Completion Deadline by reason of an event that is determined to be a Delay Event under the Project Agreement, then the Design-Build Contractor shall pay the Company "Delay Event Liquidated Damages" at a per diem rate of \$115,170.70 for the period commencing on the Original Substantial Completion Deadline and ending on the earlier to occur of (a) the Substantial Completion Date, and (b) the termination date of the Design-Build Contract.

<u>Milestone Liquidated Damages</u>. If the Design-Build Contractor has not performed the Contractor Obligations necessary for a Milestone Payment to be paid by the Milestone Due Date and as a result the Company has not received such Milestone Payment from MDOT by the Milestone Due Date, then the Design-Build Contractor shall pay the Company Milestone Liquidated Damages in an amount equal to the aggregate of the Non-Refundable Costs plus the Refundable Costs, for the period commencing on the relevant Milestone Due Date and ending on the earlier to occur of (a) the date on which the relevant Milestone Payment is received by the Company, and (b) the termination date of the Design-Build Contract.

Defects and Latent Defects

<u>Completion Warranty Period</u>. The Design-Build Contractor will correct promptly, at its expense, any Defect which appears on or after the Substantial Completion Date and prior to the expiry of the Completion Warranty Period, which runs until the second anniversary of the Substantial Completion Date.

If the Design-Build Contractor is obliged to carry out work to correct and remedy any Defect described above, the Completion Warranty Period will be extended to cover the work carried out to correct and remedy the relevant Defect from the date on which the relevant corrective or remedial work is completed in accordance with the Design-Build Contract for an additional 12-month period.

Latent Defect Warranty Period. The Design-Build Contractor will correct promptly, at its expense, any Latent Defect which appears after the Completion Warranty Period and prior to the expiry of the Latent Defect Warranty Period, which runs from the expiration of the Completion Warranty Period until the tenth anniversary of the Substantial Completion Date.

<u>Defect Losses</u>. Subject to the Maximum Liability Cap of the Design-Build Contractor and the exclusions therefrom, the Design-Build Contractor will be liable to the Company for all Defect Losses and other liabilities incurred by the Company as a result of, or in connection with, any Defect or Latent Defect.

Limitations on Liability

<u>Delay Liquidated Damages Cap</u>. The maximum liability of the Design-Build Contractor for Delay Liquidated Damages is the Delay Liquidated Damages Cap of \$45,557,363.74. The Delay Liquidated Damages Cap excludes (a) any Delay Event Liquidated Damages, (b) any Milestone Liquidated Damages, and (c) any Delay Liquidated Damages paid by the Design-Build Contractor that are subsequently recovered by the Design-Build Contractor from the Company.

<u>Maximum Liability Cap</u>. Subject to the exclusions set out below, the maximum aggregate liability of the Design-Build Contractor under the Design-Build Contract for any reason whatsoever is 40% of the Design-Build Contract Price (the "Maximum Liability Cap").

<u>Exclusions from Maximum Liability Cap</u>. The Design-Build Contractor's Maximum Liability Cap excludes and shall not apply to the following:

- (a) liability (including defense costs) to the extent:
 - (i) an amount thereof is paid directly from, or paid and subsequently recovered from, any Insurance Proceeds, net of any applicable deductibles;
 - (ii) the amount is paid by the Design-Build Contractor and subsequently recovered by the Design-Build Contractor from MDOT or the Company; or
 - (iii) the liability would have been recovered through insurance if the Design-Build Contractor had maintained the coverage required to be maintained by it under the Design-Build Contract or if the Design-Build Contractor had otherwise complied with its obligations under applicable insurance policies and diligently pursued the relevant insurance claim;
- (b) liability relating to any claim or sum paid by the Design-Build Contractor to the Company and subsequently recovered by the Design-Build Contractor from the Company;
- (c) liability arising out of third party claims, including, without limitation, any third party claims for any damage or destruction or property, death or personal injury or third party Intellectual Property;
- (d) liability arising out of or relating to abandonment, fraud, criminal conduct, intentional misconduct, gross negligence, recklessness or bad faith on the part of the Design-Build Contractor or any Contractor-Related Entity;
- (e) liability arising out of or relating to any Contractor Release of Hazardous Materials;
- (f) liability relating to any fines and penalties under statute incurred by the Company in complying with statutory obligations that arise out of any breach by the Design-Build Contractor of any Applicable Law (including breaches relating to workers' compensation, employment or health and safety laws or regulations);
- (g) interest, late charges, fees, transaction fees and charges, penalties and similar charges that are expressly stated to be due from the Design-Build Contractor to the Company; and
- (h) liability relating to any encumbrances created or caused by the Design-Build Contractor or any Contractor-Related Entity and preserved in respect of or attaching to the Site or any Project-related assets.

Design-Build Contract Price

<u>Lump Sum</u>. The Design-Build Contractor is undertaking the Contractor Obligations on a fixed price, lump sum basis for the Design-Build Contract Price of \$629,245,356 (subject to any adjustments made pursuant to the provisions of the Design-Build Contract). The Design-Build Contract Price is the total compensation payable by the Company for the performance by the Design-Build Contractor of its obligations under the Design-Build Contract.

Subject the provisions of the Design-Build Contract, all costs and expenses incurred by the Design-Build Contractor or for and in respect of the Contractor Obligations, including any cost overruns with respect to the Contractor Obligations, shall be the sole responsibility of the Design-Build Contractor and will not count toward the Maximum Liability Cap.

<u>Milestone Payments</u>. Each Milestone Payment is a source of funds for the Company and the Design-Build Contractor has no entitlement to receive any portion of a Milestone Payment unless and except to the extent that the Company has received the relevant Milestone Payment from MDOT, and then solely as may be determined in accordance with and subject to the provisions of the Design-Build Contract.

<u>Contractor Payments</u>. The Company will make Contractor Payments to the Design-Build Contractor in partial payment of the Design-Build Contract Price in the amount, if any, certified by the Lenders' Technical Advisor as corresponding to the progress of the D&C Work on the dates established in the Design-Build Contract's Drawdown Schedule.

No Contractor Payment shall be due and payable by the Company where a Contractor Default has occurred and is continuing.

If the Company has not received a Milestone Payment in respect of a Milestone Due Date that occurs in the month to which a payment application applies, then:

- (a) there shall be no Contractor Payment in respect of such month or in any other month after the relevant Milestone Due Date pursuant to any payment application until the Company is in receipt of the relevant Milestone Payment; provided that, pending receipt of such Milestone Payment, to the extent of funds scheduled and available to be used to make Contractor Payments under the Finance Documents during that period (and not including funds scheduled and/or available to be used for other project costs or requiring the Company to accelerate any draw amount thereunder or incur any breakage amounts to make such a payment), the Company will continue to pay Contractor Payments for work that has been certified performed as described above; and
- (b) except as described in the proviso above:
 - (i) the requested amounts in each such payment application shall not be due and payable for purposes of the Design-Build Contract;
 - (ii) the fact that the Company makes no payment to the Design-Build Contractor in these circumstances shall not constitute a failure to pay on the part of the Company or a Developer Default under the Design-Build Contract, and the Design-Build Contractor will not be entitled to suspend the performance of the Contractor Obligations in connection with such non-payment; and
 - (iii) the withheld amounts will not be due and payable until thirty (30) days after the date on which the Company has received the relevant Milestone Payment.

Subject to the Company's rights described above and the other rights of the Company under the Design-Build Contract to set off or withhold payment, within 20 days of the date of each payment certificate, the Company will pay each related Contractor Payment.

D&C Performance Security and DB Performance Support

<u>D&C Performance Security</u>. The Design-Build Contractor will procure, deliver to MDOT and be responsible to maintain the D&C Performance Security required under the Project Agreement. Liberty Mutual Insurance Company and Federal Insurance Company are proposed as the initial Eligible Sureties to provide the D&C Performance Security.

<u>DB Performance Support – Liquidity Bond</u>. The Design-Build Contractor shall procure the issuance of, deliver to the Company on or prior to the Financial Close Date, and thereafter maintain, the DB Liquidity Bond, naming the Company as obligee and issued by an Eligible Surety. The DB Liquidity Bond will stand as continuing security for the performance of all of the Contractor Obligations. The DB Liquidity Bond shall include the Collateral Agent as a co-obligee along with the Company. Liberty Mutual Insurance Company and Federal Insurance Company are proposed as the initial Eligible Sureties to provide the D&C Performance Security.

If at any time the surety under the DB Liquidity Bond ceases to be an Eligible Surety or becomes bankrupt or insolvent and the DB Liquidity Bond is still required to stand as security, the Design-Build Contractor will, by no later than twenty (20) Business Days after the date upon which such surety ceased to be an Eligible Surety or became bankrupt or insolvent:

- (a) replace the DB Liquidity Bond with a replacement DB Liquidity Bond on the same terms (including the current bond amount thereunder) from an Eligible Surety; or
- (b) replace the DB Liquidity Bond with Acceptable Replacement Support.

If the Design-Build Contractor fails to replace the DB Liquidity Bond as described above, then the Company can demand the entire current bond amount of the DB Liquidity Bond, place the proceeds into an account managed by the Collateral Agent and use any amounts held in such account in any circumstance in respect of which the Company would be entitled to make a demand under the DB Liquidity Bond.

If the Design-Build Contractor delivers Acceptable Replacement Support and at any time while such Acceptable Replacement Support is still required to stand as security, any issuer thereunder either (y) ceases to be a Permitted Letter of Credit Provider; or (z) advises the Company that it will not renew or otherwise maintain such instrument to its stated expiration date, the Design-Build Contractor will, by no later than twenty (20) Business Days

after the date of the relevant event, replace the relevant Acceptable Replacement Support with one or more irrevocable letters of credit issued by a Permitted Letter of Credit Provider and otherwise meeting the requirements described above for Acceptable Replacement Support. If the Design-Build Contractor fails to replace the relevant instrument, then the Company and the Collateral Agent can draw the full amount of such Acceptable Replacement Support, deposit the proceeds thereof in the account described above and use any amounts held in such account in any circumstance in respect of which the Company would be entitled to draw on the Acceptable Replacement Support.

<u>DB Performance Support – Design-Build Guarantee</u>. The Design-Build Contractor will provide the Design-Build Guarantee from each of the Design-Build Guarantors to the Company covering the full and timely performance, observance and payment by the Design-Build Contractor of each and every present and future covenant, agreement, undertaking, representation, warranty and obligation of the Design-Build Contractor under the Design-Build Contract.

The term of the Design-Build Guarantee will commence on the Effective Date and expire on the expiration date of the Design-Build Term, except with respect to any claims made prior to such expiry date, in which case the Design-Build Guarantee shall not terminate with respect to such claims until such claims have been satisfied in full.

<u>Return of DB Performance Support</u>. On the Substantial Completion Date, the Company will require liquid security (whether in the form of the DB Liquidity Bond, DB Liquidity Bond proceeds, Acceptable Replacement Support and/or the cash proceeds thereof) equal to the sum of:

- (a) 2% of the Design-Build Contract Price; plus
- (b) 125% of the Company's estimated cost to rectify Developer Punch List Items (as described below); plus
- (c) 200% of the amount that the Lenders' Technical Advisor certifies may be required to rectify any Defect identified on the Punch List in relation to Substantial Completion,

and the Company shall either:

- (d) advise the Design-Build Contractor and the surety under the DB Liquidity Bond of the amount so determined and the original bond amount of the DB Liquidity Bond shall be reduced to equal such amount; or
- (e) release an amount of DB Liquidity Bond proceeds or Acceptable Replacement Support (or proceeds thereof) such that the face amount thereof and/or the amount remaining on deposit in the account described above equals such amount.

On the expiration date of the Completion Warranty Period, the Company will require liquid security (whether in the form of the DB Liquidity Bond, DB Liquidity Bond proceeds, Acceptable Replacement Support and/or the cash proceeds thereof) equal to the amount that the Lenders' Technical Advisor certifies may be required to rectify any items that, on such date, require rectification pursuant to any remaining obligations of the Design-Build Contractor under the Design-Build Contract (based on an assumption of 125% of the estimated cost to rectify such Defect), and on such date the Company will either:

- (a) advise the Design-Build Contractor and the surety under the DB Liquidity Bond of the amount so determined and the bond amount of the DB Liquidity Bond shall be reduced to equal such amount; or
- (b) release an amount of DB Liquidity Bond proceeds or Acceptable Replacement Support (or proceeds thereof) such that the face amount thereof and/or the amount remaining on deposit in the account described above equals such amount.

Once all of the matters certified by the Lenders' Technical Advisor to require rectification as described above are rectified, the Company will release and return to the Design-Build Contractor the DB Liquidity Bond, the remaining DB Liquidity Bond proceeds and/or the Acceptable Replacement Support (or the remaining proceeds thereof).

Under the DB Liquidity Bond, at any time after the second reduction in the bond amount described above, the surety may provide written notice to the Company of the cancellation of the DB Liquidity Bond on a date that is not earlier than ninety (90) days from the date of such notice. Upon receipt of such notice, the Company will

demand payment of the entirety of the reduced bond amount and deposit the related DB Liquidity Bond proceeds in the account described above.

Key DB Subcontractors

Each of Dan's, Ajax, C.A. Hull and Jay Dee is a Key DB Subcontractor that has entered into a direct agreement with the Company pursuant to which:

- (a) if the Design-Build Contract is terminated as a result of a Contractor Default, the Company will have the option on notice within ten (10) days from the termination, to require the assignment of the Key DB Subcontract to the benefit of (i) the Company, without the consent of the Key DB Subcontractor, or (ii) a person designated by the Company in its sole discretion, with the prior consent of the Key DB Subcontractor, such consent not to be unreasonably withheld or delayed; and
- (b) each Key DB Subcontractor has agreed not to terminate the Key DB Subcontract without thirty (30) days' prior written notice to the Company and the Collateral Agent.

The Design-Build Contractor cannot terminate a Key DB Subcontract without thirty (30) days' prior written notice to that effect to the Company.

In addition to the provisions described above, the direct agreement between the Company and Jay Dee sets out certain obligations of the Design-Build Contractor and Jay Dee in relation to the purchase of the Tunnel Boring Machine, including acknowledgements of rights to use, grants of security interests in same and covenants to obtain related acknowledgements and/or subordination agreements from the Tunnel Boring Machine supplier and the surety under the D&C Performance Security.

Independent Company Rights

The Company has a right, separate and apart from MDOT's rights under the Project Agreement, to call for an uncovering of work by the Design-Build Contractor, to suspend the Contractor Obligations and to step-in in certain circumstances that correspond to MDOT's entitlements under the Project Agreement.

Completion Milestones

The Design-Build Contractor is responsible to achieve the Completion Milestones by the applicable deadlines and with the necessary approvals of MDOT under the Project Agreement.

The Company has an independent inspection right (with the Design-Build Contractor) in the context of purported completion of the Completion Milestones that can be exercised within the 21-day period available to the MDOT Authorized Representative to issue (or not issue) a Milestone Completion Certificate, Substantial Completion Certificate or Final Acceptance Certificate, as applicable.

The independent inspection will produce a "Developer Punch List" of items that remain to be performed, which will bind the Design-Build Contractor and the Company notwithstanding any certificate issued by the MDOT Authorized Representative (or any Punch List delivered by the MDOT Authorized Representative). The Design-Build Contractor will complete these Developer Punch List items: (a) prior to the Substantial Completion Deadline, for Developer Punch List items identified in certification of Completion Milestones other than Substantial Completion; or (b) prior to the Final Acceptance Deadline, for Developer Punch List items identified in the certification of Substantial Completion.

Delay Events

Subject to the Equivalent Project Relief provisions of the Design-Build Contract and the Design-Build Contractor's compliance with the claim process set out in the Design-Build Contract (including time buffers associated with deadlines under the Project Agreement), the Design-Build Contractor will receive time and compensatory relief applicable to events that are Delay Events under the Project Agreement, subject to provisions of the Project Agreement that deny or reduce coverage for concurrent delay attributable to the Design-Build Contractor or Contractor-Related Entities and/or Contractor Fault.

Contractor Default

<u>Contractor Defaults</u>. The occurrence of any one or more of the following events or conditions is a Contractor Default where such event is not solely and directly attributable to a Delay Event:

- (a) the Design-Build Contractor fails to begin the D&C Work within 24 days following issuance of NTP;
- (b) the Design-Build Contractor fails to begin the Interim Maintenance Work within 90 days following issuance of NTP;
- (c) the Design-Build Contractor fails to begin the Long Term Maintenance Work associated with the Tunnel and Pump Station to be performed prior to Substantial Completion within 24 days following a Milestone Completion Certificate for Milestone 2;
- (d) the Design-Build Contractor fails to make any payment due to the Company under the Design-Build Contract when due;
- (e) the Design-Build Contractor or a Design-Build Guarantor ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on the Design-Build Contractor's or such Design-Build's Guarantor's ability to perform its obligations under the Design-Build Contract or the Design-Build Guarantee;
- (f) the Design-Build Contractor abandons the Project or discontinues the performance of a substantial portion of the Contractor Obligations for a continuous period of 24 or more days, except in accordance with the approved Project Schedule;
- (g) the Design-Build Contractor fails to obtain, provide and maintain the Insurance Policies for which it is responsible under the Design-Build Contract and such failure is not cured within three days after receiving notice from the Company of such failure;
- (h) the Design-Build Contractor breaches the restrictions in the Design-Build Contract with respect to a Contractor Change in Control;
- any representation or warranty made by the Design-Build Contractor or a Design-Build Guarantor in the Design-Build Contract, the Design-Build Guarantee or any other document is false in any material respect is materially misleading or inaccurate in any material respect when made, or omits material information when made;
- (j) A Bankruptcy Event arises with respect to:
 - the Design-Build Contractor (except to the extent such Bankruptcy Event is caused by a failure by the Company to pay the Design-Build Contractor as required under the Design-Build Contract);
 - (ii) a Design-Build Contractor Member, being any limited liability company member of the Design-Build Contractor; or
 - (iii) a Design-Build Guarantor;
- (k) the Design-Build Contractor fails to achieve Substantial Completion by the DB Longstop Date, being the date that is six months prior to the Longstop Date under the Project Agreement;
- (l) a Persistent Contractor Default occurs, the Company delivers a Contractor Default Notice in respect of same, and either (i) the Design-Build Contractor fails to deliver to the Company, within 24 days after the earlier of: (A) such Contractor Default Notice being delivered by the Company; and (B) MDOT's delivery of a related Default Notice under the Project Agreement, a cure plan as described below meeting the requirements for approval, or (ii) the Design-Build Contractor fails to fully comply with the schedule or specific elements of, or actions required under, the approved cure plan;
- (m) the Design-Build Contractor fails to comply with the Company's or MDOT's suspension of the Contractor Obligations within the time reasonably allowed in such order;
- (n) after exhaustion of all rights of appeal, there occurs any disqualification, suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, from bidding, proposing or contracting with any United States

or State department or agency, of the Design-Build Contractor or any Key DB Subcontractor, where its work is not completed;

- (o) the Design-Build Contractor fails to timely observe or perform or cause to be observed or performed any other covenant, agreement, obligation, term or condition required to be observed or performed by the Design-Build Contractor under the Design-Build Contract or any related agreement, including failure to pay for or perform the Contractor Obligations or any portion thereof in accordance with the Design-Build Contract or any related agreement, or to cure any such failure identified in such notice (but excluding any Noncompliance Event unless the number of points accumulated with respect to such Noncompliance Event constitutes a Contractor Default described in clause (l) above);
- (p) the Design-Build Contractor fails to obtain, provide, maintain and deliver originals, certificates or required evidence of the D&C Performance Security, the DB Performance Support, other bonds, guarantees, letters of credit or other payment or performance security as and when required under the Design-Build Contract for the benefit of relevant parties, or fails to comply with any requirement of the Design-Build Contract pertaining to the amount, terms or coverage of the same;
- (q) the Design-Build Contractor fails to pay any Liquidated Damages (which sum or sums are not being disputed by the Design-Build Contractor in accordance with the DB Dispute Resolution Procedures);
- (r) the Maximum Liability Cap has been met or exceeded (other than by reason of claims excluded therefrom);
- (s) any Design-Build Guarantor defaults under the Design-Build Guarantee (which default, if it is in respect of a Contractor Default under the Design-Build Contract, will be after the relevant cure period (if any) under the Design-Build Contract applicable to such Contractor Default has expired) or expressly taking the position that the Design-Build Guarantee is invalid or unenforceable;
- (t) failure to implement a cure plan as described below for a Contractor Default or to comply with an agreed cure plan; and
- (u) failure to implement a cure plan as described below for a Persistent Contractor Default.

<u>Contractor Cure Periods</u>. The Design-Build Contractor has the following cure periods for the Contractor Defaults:

- (a) for the Contractor Default described in clause (a) above, 15 days after the Company's delivery of a Contractor Default Notice;
- (b) for the Contractor Defaults described in clauses (e) and (j) above, 11 days after the Company's delivery of a Contractor Default Notice;
- (c) for the Contractor Defaults described in clauses (d), (f) and (o), a period equal to the earlier of: (i) three-quarters (3/4) of the cure period available to the Company to cure the corresponding Developer Default under the Project Agreement; and (ii) 22 days after delivery by the Company of the Contractor Default Notice; provided that, if the Contractor Default is of such a nature that the cure cannot with diligence be completed within such time period and the Design-Build Contractor has commenced meaningful steps to cure promptly after receiving the Contractor Default Notice, the Design-Build Contractor will have an additional period of time equal to the lesser of: (iii) three-quarters (3/4) of the additional period available to the Company to cure the corresponding Developer Default under the Project Agreement, if any; and (iv) 45 days after delivery by the Company of the Contractor Default; and
- (d) no cure period for any other Contractor Default, provided that:
 - no Contractor Default described in clause (p) above will occur in relation to the DB Liquidity Bond if the Company makes a demand against same for the full bond amount and deposits the cash proceeds in the collateral account for same;
 - (ii) no Contractor Default described in clause (j)(ii) above will occur if:

- (A) no later than 30 days after the occurrence of the Bankruptcy Event, each relevant Design-Build Contractor Member has been replaced by an Acceptable Replacement Party that has assumed all of the obligations of the relevant Design-Build Contractor Member;
- (B) no other Contractor Default has occurred and is continuing;
- (C) the Contractor Obligations have continued and continue to be carried out by the Design-Build Contractor in accordance with the Design-Build Contract;
- (D) one of C.D.M. Leasing or JAJ Holdings is not in breach or default of its obligations under the Design-Build Contract or the Design-Build Guarantee; and
- (E) no termination right of MDOT has arisen under the Project Agreement with respect to a Contractor Default and is continuing that would not be cured by the replacement of the relevant Design-Build Contractor Member; and
- (iii) no Contractor Default described in clause (j)(iii) will occur if a Bankruptcy Event has not occurred in respect of one of C.D.M. Leasing or JAJ Holdings and such entity is not otherwise in breach or default of its obligations under the Design-Build Contract, the Design-Build Guarantee or the Design-Build Lenders' Direct Agreement.

<u>Contractor Cure Plans</u>. If the Company delivers a Contractor Default Notice to the Design-Build Contractor, then except in the case of the Contractor Defaults described in clauses (f), (h), (j), (k) and (l) above and the Contractor Defaults for which there is no cure period, the Design-Build Contractor will give the Company a plan to cure the Contractor Default (for review and approval by the Company, the Senior Secured Parties and MDOT) and comply with any requirements of the Company in accordance with the terms of the Contractor Default Notice. The Company and the Design-Build Contractor, and the Senior Secured Parties and MDOT as applicable, will develop and seek to agree on such plan, and following agreement or determination of the plan, the Design-Build Contractor shall implement and comply with it. Any failure to implement the cure plan or comply with the agreed cure plan will result in a Contractor Default which is not subject to any cure period.

In the case of a Persistent Contractor Default, within 22 days, the Design-Build Contractor will submit a cure plan to the Company (for review and approval by the Company, the Senior Secured Parties and MDOT), including specific actions to reduce (i) the cumulative number of Noncompliance Points assessed and cumulative number of breaches and failures to perform to the point that a Persistent Contractor Default no longer applies, and (ii) the cumulative number of Noncompliance Points outstanding with respect to the Contractor Default by at least 50%. The Company and the Design-Build Contractor, and the Senior Secured Parties and MDOT as applicable, will develop and seek to agree on such plan, and following agreement or determination of the plan, the Design-Build Contractor shall implement and comply with it. Any failure to implement the cure plan or comply with the agreed cure plan will result in a Contractor Default which is not subject to any cure period.

<u>Company Rights on Contractor Default</u>. Upon occurrence of a Contractor Default that has not been cured within the applicable cure period, if any, the Company will be entitled to:

- (a) exercise its step-in rights under the Design-Build Contract;
- (b) terminate the Design-Build Contract in accordance with its terms;
- (c) recover any liability on account of the occurrence of a Contractor Default. regardless of when the Contractor Default Notice is given, whether the liability accrues after the occurrence of the Contractor Default or whether the Contractor Default is subsequently cured;
- (d) where such Contractor Default is not cured within the applicable cure period, if any, make demand upon and enforce the D&C Performance Security and/or the DB Performance Support and/or make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security available to the Company under the Design-Build Contract with respect to the Contractor Default without notice to the Design-Build Contractor;
- (e) suspend the Contractor Obligations in whole or part in accordance with the Design-Build Contract; or
- (f) exercise any other remedies available under the Design-Build Contract or at law or in equity.

<u>Company Termination Right</u>. If (a) a Contractor Default occurs and it has not been cured within the relevant cure period, if any, set out in the related Contractor Default Notice or in accordance with any cure plan accepted by the Company, or (b) a Contractor Default occurs for which there is no cure period under the Design-Build Contract, then the Company by notice to the Design-Build Contractor may terminate the Design-Build Contract.

Contractor Default Termination Compensation.

(1) Project Agreement Does Not Terminate

If the Design-Build Contract is terminated due to a Contractor Default where there is no concurrent termination of the Project Agreement, then the Design-Build Contractor will pay the Company an amount, calculated at the termination date of the Design-Build Contract, equal to:

(a) the amount of the Company's liability resulting from the Contractor Default and termination of the Design-Build Contract;

<u>plus</u>

(b) all costs incurred by the Company associated with locating and appointing one or more replacement contractors to perform the D&C Work, the Interim Maintenance Work and/or the Long Term Maintenance Work prior to Substantial Completion;

<u>plus</u>

(c) increases to the cost of completing all remaining elements of the D&C Work, the Interim Maintenance Work and/or the Long Term Maintenance Work prior to Substantial Completion above the payments therefor remaining under the Design-Build Contract;

<u>plus</u>

(d) any Liquidated Damages that have accrued but have not been paid as at the termination date of the Design-Build Contract;

<u>plus</u>

(e) an allowance for the amount of any Liquidated Damages that the Company estimates will accrue as a result of the Contractor Default;

<u>plus</u>

(f) any Deduction and/or Unavailability Adjustment accrued prior to the termination date of the Design-Build Contract for which the Design-Build Contractor is responsible under the Design-Build Contract that has not, as at the date of calculation: (i) been deducted by the Company from any amount payable to the Design-Build Contractor; or (ii) been paid by the Design-Build Contractor or otherwise satisfied by the Company under the Design-Build Contract, where the amounts available to the Company against which to levy such reduction were insufficient;

<u>minus</u>

- (g) the contract value of the Contractor Obligations performed and for which the Design-Build Contractor is entitled to, but has not received, payment from the Company.
- (2) Project Agreement Terminates

If the Design-Build Contract terminates upon termination of the Project Agreement by MDOT for a Developer Default that has been caused by the Design-Build Contractor or any Contractor-Related Entity, in whole or in part, then the Design-Build Contractor will pay the Company an amount, calculated at the termination date of the Design-Build Contract, equal to:

(a) the amount of the Company's liability resulting from the Contractor Default and termination of the Design-Build Contract and the Project Agreement;

<u>plus</u>

(b) any Liquidated Damages that have accrued but have not been paid as at the termination date of the Design-Build Contract;

<u>plus</u>

(c) any Deduction and/or Unavailability Adjustment accrued prior to the termination date of the Design-Build Contract for which the Design-Build Contractor is responsible under the Design-Build Contract that has not, as at the date of calculation: (i) been deducted by the Company from any amount payable to the Design-Build Contractor; or (ii) been paid by the Design-Build Contractor or otherwise satisfied by the Company under the Design-Build Contract, where the amounts available to the Company against which to levy such reduction were insufficient;

<u>plus</u>

(d) the loss of each Equity Member (or its successor(s) or assign(s)) nominal equity investment in the Company (whether direct or indirect);

<u>minus</u>

(e) Insurance Proceeds received by the Company to the extent that such proceeds were not used to repair or replace any portion of the infrastructure or to satisfy a third party claim and the Company is entitled to retain the same;

<u>minus</u>

(f) the contract value of the Contractor Obligations performed and for which the Design-Build Contractor is entitled to, but has not received, payment from the Company.

Rights of Design-Build Contractor Following a Developer Default under the Design-Build Contract

<u>Developer Defaults</u>. The following are Developer Defaults under the Design-Build Contract, other than as a consequence of a breach by MDOT of its obligations under the Project Agreement or by the Design-Build Contractor of its obligations under the Design-Build Contract:

- (a) the Company fails to make any payment due and payable to the Design-Build Contractor under the terms and conditions of the Design-Build Contract to the extent such payment is not subject to a good faith dispute;
- (b) any representation made by the Company under the Design-Build Contract is false or materially misleading or inaccurate when made in each case in any material respect or omits material information when made; or
- (c) the Company commits a material breach of its obligations under the Design-Build Contract, which materially adversely affects the ability of the Design-Build Contractor to perform its obligations under the Design-Build Contract for a continuous period of not less than 60 days after notice from the Design-Build Contractor.

<u>Company Cure Periods</u>. In the case of a Developer Default described in clause (a) above, the Company has a 30-day cure period following receipt of notice from the Design-Build Contractor. In the case of a Developer Default described in clause (b) or (c) above, the Company has a 60-day cure period following receipt of notice from the Design-Build Contractor, provided that, if the Developer Default is of such a nature that the cure cannot with diligence be completed within such time period and the Company has commenced meaningful steps to cure immediately after receiving the Design-Build Contractor's notice, then the Company shall have up to a maximum 180-day cure period.

<u>Design-Build Contractor Suspension Right</u>. The Design-Build Contractor shall be entitled to suspend performance of the Contractor Obligations where a MDOT Default under the Project Agreement has resulted in a failure by the Company to pay an amount to the Design-Build Contractor to which the Design-Build Contractor would be entitled if received by the Company from MDOT. The Design-Build Contractor has no other rights of suspension in connection with any Developer Default under the Design-Build Contract.

Design-Build Contractor Termination Right. Subject to the Design-Build Lenders' Direct Agreement, the Design-Build Contractor has the right to terminate the Design-Build Contract upon the occurrence of a Developer

Default under the Design-Build Contract following notice and expiration of the applicable cure period. The Design-Build Contractor must provide the Company not less than 30 days' notice of termination.

<u>Developer Default Termination Compensation</u>. If the Design-Build Contract is terminated: (a) by the Design-Build Contractor for a Developer Default under the Design-Build Contract; or (b) upon termination of the Project Agreement by MDOT for a Developer Default under the Project Agreement that has not been caused by the Design-Build Contractor or any Contractor-Related Entity, in whole or in part, then the Company will pay the Design-Build Contractor an amount, calculated at the termination date of the Design-Build Contract, equal to:

(a) on an Equivalent Project Relief basis, to the extent recoverable under the Project Agreement pursuant to clause (b) of the definition of Developer Employee and Subcontractor Breakage Costs thereunder, the contract value of the Contractor Obligations performed and for which the Design-Build Contractor is entitled to, but has not received, payment from the Company;

<u>plus</u>

(b) on an Equivalent Project Relief basis, to the extent recoverable under the Project Agreement pursuant to clause (b) of the definition of Developer Employee and Subcontractor Breakage Costs, the Contractor Breakage Costs;

<u>minus</u>

(c) Insurance Proceeds received by the Design-Build Contractor to the extent that such proceeds were not used to repair or replace any portion of the infrastructure or to satisfy a third party claim;

<u>minus</u>

(d) any Deduction and/or Unavailability Adjustment accrued prior to the termination date of the Design-Build Contract for which the Design-Build Contractor is responsible under the Design-Build Contract that has not, as at the date of calculation: (i) been deducted by the Company from any amount payable to the Design-Build Contractor; or (ii) been paid by the Design-Build Contractor or otherwise satisfied by the Company under the Design-Build Contract, where the amounts available to the Company against which to levy such reduction were insufficient.

Other Design-Build Contract Termination and Compensation

<u>Termination of Project Agreement</u>. For certainty, the Design-Build Contract will terminate automatically upon any termination of the Project Agreement, including for MDOT Default or Developer Default under the Project Agreement, subject to the rights of MDOT set out in the Design-Build Contract and the terms of the PA Direct Agreement.

<u>Termination of Project Agreement for Convenience and Related Compensation</u>. If MDOT terminates the Project Agreement for convenience, the Design-Build Contract will terminate concurrently.

In such circumstances, the Company will pay the Design-Build Contractor the amount described above in connection with the termination of the Design-Build Contract for a Developer Default thereunder, provided that such amount shall only be payable by the Company to the Design-Build Contractor on an Equivalent Project Relief basis solely from and to the extent of the related termination compensation received by the Company from MDOT under the Project Agreement in connection with such termination of the Project Agreement.

<u>Termination of Project Agreement for Force Majeure Event and Related Compensation</u>. If MDOT or the Company terminates the Project Agreement for an extended Force Majeure Event, the Design-Build Contract will terminate concurrently.

In such circumstances, the Company will pay the Design-Build Contractor the amount described above in connection with the termination of the Design-Build Contract for a Developer Default thereunder, provided that such amount shall only be payable by the Company to the Design-Build Contractor on an Equivalent Project Relief basis solely from and to the extent of the related termination compensation received by the Company from MDOT under the Project Agreement in connection with such termination of the Project Agreement.

<u>Termination of Design-Build Contract for Extended Force Majeure Event and Related Compensation</u>. Where the Company is entitled to terminate the Project Agreement for an extended Force Majeure Event (and such right is still in effect) and the Company has elected not to terminate the Project Agreement by the date on which a total continuous period of 240 days of the Force Majeure Event preventing or likely continuing to prevent the Design-Build Contractor from undertaking all or substantially all of its obligations in accordance with the Design-Build Contract shall have lapsed, the Design-Build Contractor will be entitled to terminate the Design-Build Agreement on notice to the Company, in which case the Company will terminate the Project Agreement pursuant to the corresponding termination right.

If the Design-Build Contractor terminates the Design-Build Contract for such a Force Majeure Event, then the Company will pay the Design-Build Contractor the amount described above in connection with the termination of the Project Agreement for an extended Force Majeure Event, including that such amount shall only be payable by the Company to the Design-Build Contractor on an Equivalent Project Relief basis solely from and to the extent of the related termination compensation received by the Company from MDOT under the Project Agreement.

<u>Termination of Project Agreement for Unobtainable Coverage Event and Related Compensation</u>. If MDOT terminates the Project Agreement in connection with an Unobtainable Coverage Event, then the Design-Build Contract will terminate concurrently.

In such circumstances, the Company will pay the Design-Build Contractor the amount described above in connection with the termination of the Project Agreement for an extended Force Majeure Event, including that such amount shall only be payable by the Company to the Design-Build Contractor on an Equivalent Project Relief basis solely from and to the extent of the related termination compensation received by the Company from MDOT under the Project Agreement.

<u>Termination of Project Agreement for Failure to Reach Financial Close and Related Compensation</u>. If MDOT terminates the Project Agreement because Financial Close does not occur by the Financial Close Deadline and all conditions to Financial Close have been achieved, then the Design-Build Contract will terminate concurrently.

If MDOT terminates the Project Agreement for the Company's failure to achieve Financial Close, then the Design-Build Contract will terminate concurrently.

Design-Build Contractor's Indemnities

The Design-Build Contractor will indemnify the Company, any Developer-Related Entity and any direct or indirect shareholder, member, partner and/or joint venture member of, in or with the Company (the "Company Indemnified Parties") against any claim or liability arising out of or in connection with:

- (a) any alleged or actual Contractor Fault, if asserted or incurred by or awarded to any Third Party;
- (b) damage to public or private property owned by Third Parties and for injuries to any Person arising out of the Design-Build Contractor's performance of the Contractor Obligations;
- (c) any alleged Intellectual Property infringement or other allegedly improper appropriation or use of Intellectual Property by any Contractor-Related Entity in performance of the Contractor Obligations, or in connection with the infrastructure, excluding any infringement to the extent resulting from the Company's or, on an Equivalent Project Relief basis, MDOT's failure to comply with specific material written instructions regarding use provided to the Company or MDOT by the Design-Build Contractor;
- (d) any and all claims by any governmental or taxing authority claiming Taxes based on gross receipts, purchases or sales, or the use of any property or income of any Contractor-Related Entity with respect to any payment for the Contractor Obligations made to or earned by any Contractor-Related Entity;
- (e) the failure or alleged failure by any Contractor-Related Entity to pay sums due for the work or services of Subcontractors, laborers, or Suppliers, provided that the Company has paid all undisputed amounts owing to the Design-Build Contractor with respect to such Contractor Obligations, if asserted or incurred by or awarded to any Third Party;
- (f) any actual or threatened Contractor Release of Hazardous Materials;
- (g) the claim or assertion by any Interface Party: (i) that any Contractor-Related Entity failed to cooperate reasonably with such Interface Party, so as to cause interference, disruption, delay or loss, except where the Contractor-Related Entity was not in any manner engaged in performance

of the Contractor Obligations, or (ii) that any Contractor-Related Entity interfered with or hindered the progress or completion of work being performed by such Interface Party, so as to cause interference, disruption, delay or loss, to the extent such claim arises out of any Contractor Fault;

- (h) any Contractor-Related Entity's breach of or failure to perform an obligation that the Company or MDOT owes to a third person, including Governmental Entities and Utility Owners, under Applicable Law or under any agreement between the Company or MDOT and a third person, where the Company has delegated performance of the obligation to the Design-Build Contractor under the Design-Build Contract, or the acts or omissions of any Contractor-Related Entity which render the Company or MDOT unable to perform or abide by an obligation that the Company or MDOT owes to a third person, including Governmental Entities and Utility Owners, under any agreement between the Company or MDOT and a third person, where, in each case, the agreement was expressly disclosed or known to the Design-Build Contractor;
- (i) inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of: (i) the failure of any Contractor-Related Entity to comply with Good Industry Practices, requirements of the Design-Build Contract, the Project Management Plan or Governmental Approvals respecting control and mitigation of construction activities and construction impacts, (ii) the intentional misconduct or negligence of any Contractor-Related Entity in connection with performance of the Contractor Obligations, or (iii) the actual physical entry onto or encroachment upon another's property by any Contractor-Related Entity in connection with the performance of the Contractor Obligations;
- (j) Errors or other Defects in the design, supply, construction (including installation), operation or maintenance of the Project or of Utility Relocations included in the Contractor Obligations, excluding the Interim Maintenance Work; or
- (k) Errors or other Defects in the Interim Maintenance Work resulting from (i) the Design-Build Contractor's breach of its obligations under the Design-Build Contract with respect to Interim Maintenance Work, or (ii) the negligence, intentional misconduct, or recklessness of any Contractor-Related Entity.

The Design-Build Contractor's indemnity obligations do not extend, however, to any liability to the extent directly caused by:

- (a) on an Equivalent Project Relief basis:
 - (i) breach by MDOT of the Project Agreement;
 - (ii) the sole negligent acts, sole negligent omissions, recklessness or willful misconduct, bad faith or fraud of a MDOT Indemnified Party;
 - (iii) MDOT's violation of any Applicable Law; or
- (b) (i) breach by the Company of the Design-Build Contract, (ii) the sole negligent acts, sole negligent omissions, recklessness or willful misconduct, bad faith or fraud of a Company Indemnified Party, or (iii) the Company's violation of any Applicable Law.

Restrictions on Assignment

The Design-Build Contractor cannot voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber any portion of its rights or obligations under the Design-Build Contract without the Company's prior written approval, in the Company's sole discretion.

Any purported voluntary or involuntary sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, grant of right of entry, or grant of other special use, management or control of the infrastructure in violation of the Design-Build Contract shall be null and void *ab initio* and the Company, at its option, may declare any such attempted action to be a material Contractor Default.

Restrictions on Contractor Changes in Control and Contractor Transfers

No Contractor Change in Control or Contractor Transfer that results in a Design-Build Contractor Member ceasing to own (directly or indirectly) the same percentage of the issued share capital, partnership or membership

interests, as applicable, in the Design-Build Contractor that it owned (directly or indirectly) as of the Financial Close Date, is permitted without the Company's prior written approval, in its sole discretion.

Certain situations described in the Design-Build Contract will not constitute a Contractor Change in Control, and such transfers are allowed at any time without necessity for the Company's approval.

Any Contractor Change in Control in violation of the provisions of the Design-Build Contract shall be null and void *ab initio* and the Company, at its option, may declare any such attempted action to be a material Contractor Default.

LENDERS' TECHNICAL ADVISOR'S REPORT

Lenders' Technical Advisor's Report

WT prepared the Lenders' Technical Advisor's Report dated November 2, 2018 included in this Official Statement as APPENDIX G, which reviews the technical aspects of the Project and supporting information as well as the capabilities of the Company in completing the design, construction and operations and maintenance scope of the Project. WT reviewed a comprehensive set of documents related to the Project, including the Project Agreement, the Design-Build Contract, the construction schedule, budgets, operations and maintenance plans, reference design information, geotechnical reports and other such reference information and reports as provided by other consultants on behalf of MDOT or the Equity Members. WT opinions included therein are from the perspective of potential lenders and Owners.

Overview of WT Partnership

WT was founded in Australia in 1949. WT is a leading provider of P3 advisory services, having advised on over \$50 billion (USD) of P3 projects since 1999, and having been ranked in the Top Two Global P3/PPP Technical Advisory Firms by Inframation in 2017/18. WT currently manages \$6.5 billion dollars of active infrastructure projects across North America.

Executive Summary

WT opines that the Equity Members and Design-Build Contractor possess the expertise to respond to the requirements of the Project throughout the design, construction, and maintenance term. The Design-Build Contractor comprises a group of experienced local contractors with a demonstrated track record working in collaboration to deliver comparable projects. WT considers the scope of the Project to be well within the capabilities of the consortium members. The Project Agreement terms are viewed by WT as being generally consistent with P3 procurements for highway infrastructure in North America, and the terms of the Design-Build Contract appropriately pass down the risks related to design and construction onto the Design-Build Contractor. The proposed performance security package from the Design-Build Contractor is considered reflective of market standard and appropriate in light of analysis performed by WT.

WT opines that the operations and maintenance plan appropriately considers the requirements of the Project Agreement, and is considered feasible for the delivery of the Project. Based on benchmarking analysis and cost interrogation, WT opines that the proposed annual maintenance budget falls within expected ranges and is considered appropriate to deliver the services. The proposed lifecycle budget is also considered appropriate based on the results of WT's benchmarking and interrogation of the detailed costing.

Project Participants

Company

WT notes that collectively, the two largest Sponsors (being John Laing and AECOM Capital) and their Affiliates have demonstrated broad experience with the P3 procurement model and other large-scale development projects. WT notes that the Company will self-perform the operation and maintenance requirements under the Project Agreement through a combination of self-performance, on-call subcontracting arrangements and outsourced bids. WT opines that the Equity Members have many years of experience in pricing and delivery of maintenance services, and are capable of delivering a highly efficient maintenance plan.

Design-Build Contractor

WT opines that the firms which comprise the Design-Build Contractor have exceptional local highway construction experience and knowledge of working with MDOT and the local Oakland County jurisdictions. WT

opines that the Design-Build Contractor brings a significant amount of on-the-ground resources, including employees, equipment, quarries, and batch plants which provide risk mitigation. WT's report outlines an extensive track record of working together on previous MDOT projects amongst the Design-Build Contractor members.

Lead Engineering Firm

WT notes that the Lead Engineering Firm is a well-known engineering firm with a solid reputation for delivering design roles for similar P3 projects in the U.S., and has a portfolio of work which includes over 50 MDOT projects in excess of \$1 billion over the last 10 years, indicating an appropriate level of familiarity with MDOT standards, specifications, and approach to design development.

Project Agreement

WT reviewed the execution version of the Project Agreement dated October 12, 2018, including specifically provisions related to the contract term, payments, step-in and suspension rights, Delay Events and Relief Events, site conditions, force majeure, change in law and standards, change order process, dispute resolution, default and termination, and concluded that the Project Agreement terms are generally consistent with DBFM P3 procurements for highway infrastructure in North America. WT did not identify any areas of material risk under the PA which cannot be appropriately managed by the Company via drop-down to the Design-Build Contractor or standard management practices at the Developer level.

Design-Build Contract

WT has reviewed the execution version of the Design-Build Contract dated October 12, 2018 and has confirmed that the terms meet or exceed market standard for P3 procurements in the United States and generally comprise a full pass down of the Developer's design and construction responsibilities under the Project Agreement set out in Part 2 of the Design-Build Contract on a back-to-back basis to the Design-Build Contractor. No material "stranded risks" have been identified which have not been appropriately mitigated. WT notes that the proposed performance security package is considered reflective of market standard and includes liquidated damages sufficient to cover debt service in the event of a delay to the Longstop Date, which are backed by a liquid performance security instrument.

Construction Cost and Schedule

WT has reviewed the Draft Interim Schedule and notes that it adequately displays the general progression of the project and accounts for specific restrictions identified in the Project Agreement. The Project Schedule runs approximately 57 months from the Closing Date to the Substantial Completion Date. WT opines that the schedule is overall achievable, and notes the experience of the Design-Build Contractor in delivering in Michigan's climate, familiarity with local permitting requirements, and previous experience working on the I-75 corridor. In regards to the tunneling works, WT notes that there is 337 calendar days of Float to absorb any delays on the tunneling works, and opines that they do not foresee any schedule issues associated with the tunneling aspect of the project materially impacting the completion of the project.

WT has reviewed the construction cost through detailed unit cost analysis and benchmarking and opine that the Design-Build Contractor has a well-considered design and construction cost for the Project and that the Design-Build Contract Price set forth by the Design-Build Contractor is sufficient. WT opines that the degree of self-performance of the Construction Work, comprising approximately 94% of the work being performed directly by the Design-Build Contractor members, constitutes a substantive benefit and affords a significant measure of cost certainty at the outset of the Project.

Key Elements of Construction

- **Design.** WT opines that the roadway, grading, drainage, and structures design requirements are standard and reflect typical MDOT requirements which the Design-Build Contractor members have a proven track record of delivering. In respect of the Storage and Drainage Tunnel, WT notes various design optimizations that have been developed by the Design-Build Contractor which have mitigated potential risks. WT has also reviewed the amount of time allocated in the schedule for the various required design submittals and opines that the scheduling approach is appropriately conservative.
- **Tunneling.** WT notes that the Project includes a Storage and Drainage Tunnel 4 miles in length with a 14-foot diameter to be constructed beneath the northbound I-75 service drive. WT has reviewed the available geotechnical information reports made available by MDOT, and opines that the overall

geotechnical risk is moderate and the design team has exercised appropriate diligence in evaluating the identified subsurface conditions in the development of their design approach. WT notes that the Design-Build Contractor has mitigated project risk relating to methane gas deposits by elevating the excavation profile to avoid gases. WT opines that the Design-Build Contractor's proposed schedule for completion of the tunneling is reasonable in light of production rates achieved by the relevant Design-Build Contractor member (Jay Dee) on comparable projects. WT notes that risks related to the TBM have been further mitigated through: (1) the short-listing of three potential equipment manufacturers, each of whom have been utilized by Jay Dee on previous projects; and (2) through Jay Dee's proposed approach which involves stockpiling additional key parts of the TBM which they view as having the most potential for failure to be held at-hand, and having an in-house repair crew capable of servicing the equipment in the event of a failure, which together provide the ability for rapid replacement in the event of the breakdown of the equipment. WT opines that the Design-Build Contractor has proposed an appropriate design and construction strategy for the tunneling works in order to mitigate prospective risks.

- *Maintenance of Traffic.* WT notes that construction activities will be required to follow traffic management procedures outlined in the Project Agreement (including specific requirements regarding having a minimum number of lanes open to traffic at various times), in addition to a defined winter shutdown period for works on the freeway. The Design-Build Contractor has delineated the project into quadrants in order to align with the required number of lanes open to traffic and seasonal shutdown requirements. WT opines that the Design-Build Contractor's schedule conforms to the Project Agreement requirements and that the Design-Build Contractor has adequately outlined its plan to maintain the schedule. WT states that the Design-Build Contractor's schedule maximizes the work that can be done in the off-season to set up works for the coming construction season.
- **Permits.** Certain permits are required to be obtained by the Design-Build Contractor, including permits issued by municipalities, Michigan Department of Environmental Quality (MDEQ), and the Oakland County Water Resources Council (OCWRC). WT opines that the permitting requirements have been appropriately considered by the consortium and appropriate durations have been reflected in the schedule approach. The members of the Design-Build Contractor have considerable experience in working with the relevant agencies, given their local presence, and WT states that they expect that this level of familiarity will reduce permitting related risks.

Maintenance

WT has reviewed the maintenance and renewal requirements specified in the Project Agreement, in addition to the Company's proposed approach, methodology, and staffing plans in order to satisfy such requirements. WT considers the requirements to be suitably defined and opines that they should not pose undue risk to an appropriately managed team. WT opines that the Company's maintenance approach appropriately considers the requirements of the Project Agreement, and is feasible for the delivery of the Project.

WT has reviewed detailed budgeting for the long-term maintenance period. Based on benchmarking analysis and cost interrogation, WT opines that both the proposed annual maintenance budget, as well as the proposed lifecycle maintenance budget, fall within expected ranges and are considered appropriate to deliver the services.

Payments and Deductions

WT considers the non-compliance points regime to be stringent due to the relatively onerous response times for incident management. WT states that the Company has acknowledged the associated risks and has incorporated a deduction allowance into the annual maintenance budget. WT notes that the Company has taken significant measures (reflected in both the operating budget and maintenance strategy) to ensure that the more challenging response times are dealt with adequately. Furthermore, MDOT has implemented adjustments to the noncompliance points regime to lessen the associated financial impact of the incident management failures to more reasonable levels. On this basis, WT opines that the general deduction risk is low and has been appropriately accounted for in the Company's maintenance approach and inclusion of an appropriately sized allowance in the maintenance budget.

For a complete copy of the Lenders' Technical Advisor's Report, see APPENDIX G---"LENDERS' TECHNICAL ADVISOR'S REPORT."

PROJECTED SOURCES AND USES OF FUNDS

The following projected sources and uses table sets forth the projected amounts of the financing sources for the Project as well as the anticipated uses thereof. Potential investors in the Series 2018 Bonds should note that these are projected sources and uses and are used herein for informational purposes only and that the amounts of the actual sources and uses of the proceeds from the financing of the Project are subject to change as contemplated hereunder, may bear no correlation to the estimates included herein and do not create any obligation for the Equity Members to contribute the estimated amount included.

Estimated Allocation of the Proceeds of the Series 2018 Bonds on the Closing Date

(U.S. Dollars in thousands)

Sources

Par Amount of the Series 2018 Bonds	610,300
Net Original Issue Premium	24,240
TOTAL SOURCES ⁽¹⁾	634,540
Uses	

Deposit to Bond Proceeds Sub-Account ⁽²⁾ 626,985 Cost of Issuance ⁽³⁾ 7,555 TOTAL USES⁽¹⁾ 634,540

Totals presented may not match sum of individual items due to rounding.
 The amount that will be funded into the Bond Proceeds Sub-Account.
 Includes underwriters' fees, bond insurance premium policy, legal fees, rating agency fees and any other expenses for the issuance of the Series 2018 Bonds.

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Projected Sources and Uses of Funds through the End of Funding Date

(U.S. Dollars in thousands)

Sources	
Par Amount of Series 2018 Bonds	610,300
Milestone Payments	100,000
Equity Contribution	49,095
Interest Income on Series 2018 Bond Proceeds ⁽²⁾	44,942
Net Original Issue Premium	24,240
TOTAL SOURCES ⁽¹⁾	828,577
Uses	
Construction Costs	628,245
Interest on Series 2018 Bonds During Construction	134,808
Overhead and Maintenance Costs Payable During Construction ⁽³⁾	8,497
Development Costs payable at Financial Close	7,278
Equity LC Commitment Fees	4,697
Cost of Issuance ⁽⁴⁾	7,555
Reserves	
Debt Service Reserve Account	20,946
Interest Reserve Account	14,609
Construction Tax Reserve	718
Transfer to Operating Account	1,224
TOTAL USES ⁽¹⁾	828,577

(1) (2)

Totals presented may not match sum of individual items due to rounding. Calculated based on a Reinvestment Rate of 3.33% on Series 2018 Bond Proceeds based on Series 2018 GIC. Amount shown also includes a de minimus amount of interest income on other accounts funded by bond proceeds not included in Series 2018 GIC. Includes Special Purpose Vehicle Costs.

(3)

Includes underwriters' fees, bond insurance premium policy, legal fees, rating agency fees and any other expenses for the issuance of (4) the Series 2018 Bonds.

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(U.S. Dollars in thousands)													
Semi-Annual Ending	Period	Dec/ 2018	Jun/ 2019	Dec/ 2019	Jun/ 2020	Dec/ 2020	Jun/ 2021	Dec/ 2021	Jun/ 2022	Dec/ 2022	Jun/ 2023	Dec/ 2023	TOTAL
Sources of Funds													
Series 2018 Bon	d Proceeds	62,059	25,354	50,555	105,505	87,286	81,277	87,678	62,879	71,946			634,540
Milestone Paym	ents ⁽²⁾					20,000						80,000	100,000
Equity Contribu	tion									7,490	26,565	15,040	49,095
Interest Income		2,201	9,422	8,993	7,813	6,053	4,675	3,130	2,036	615		4	44,942
Total Sources of Fur	nds ⁽¹⁾	64,261	34,776	59,548	113,318	113,339	85,953	90,808	64,915	80,052	26,565	95,043	828,577
Uses of Funds													
Construction Co	sts	46,564	17,616	43,841	97,237	97,621	69,855	75,076	48,797	64,292	10,427	56,921	628,245
Interest of Series Bonds During C			17,937	14,609	14,609	14,609	14,609	14,609	14,609	14,609	14,609		134,808
Overhead Costs Lifecyle payable Construction		92	677	604	982	615	1,002	628	1,022	656	1,042	1,177	8,497
Development Co at Financial Clos		7,278											7,278
Equity LC Com Fees	mitment	113	487	495	490	495	487	495	487	495	487	167	4,697
Cost of Issuance	;	7,555											7,555
Reserves													
Series 2018 Bon Service Reserve												20,946	20,946
Interest Reserve	Account											14,609	14,609
Construction Ta	x Reserve	718											718
Transfer to Cons Cash Account	struction	1,941	(1,941)										
Transfer to Oper Account	rating											1,224	1,224
Total Uses of Funds	1)	64,261	34,776	59,548	113,318	113,339	85,953	90,808	64,915	80,052	26,565	95,043	828,577

Projected Semi-Annual Sources and Uses of Funds through End of Funding Date

Totals presented may not match sum of individual items due to rounding.

(1) (2) Reflects receipt of Milestone Payments under anticipated MDOT payment timing.

PROJECTED FINANCIAL INFORMATION

The following tables set forth the projected cash flow and debt service coverage for the Series 2018 Bonds. Potential investors in the Series 2018 Bonds should note that these interest rates and Equity Contribution amounts are estimates being used herein for information purposes only and that the actual interest rates applicable to the Series 2018 Bonds and the actual amount of equity contributed by the Equity Members are subject to change as contemplated hereunder, may bear no correlation to the estimates included herein, may in no way be indicative of the final yield on the Series 2018 Bonds and do not create an obligation for the Equity Members to contribute the estimated amount included herein. See the forward-looking statements disclaimer provided on pages ii - iii for additional information regarding the risks and uncertainties surrounding the information included in the following tables.

Projected Debt Service Requirements

(U.S. Dollars in thousands)

Ending Period			
(12/31)	Principal	Interest ⁽¹⁾	Total Debt Service on Series 2018 Bonds
2018			
2019		32,546	32,546
2020		29,218	29,218
2021		29,218	29,218
2022		29,218	29,218
2023	2,310	29,218	31,528
2024	13,105	28,943	42,048
2025	13,875	28,275	42,150
2026	14,625	27,572	42,197
2027	15,405	26,831	42,236
2028	16,230	26,051	42,281
2029	17,035	25,230	42,265
2030	18,000	24,366	42,366
2031	18,960	23,454	42,414
2032	19,975	22,493	42,468
2033	21,025	21,482	42,507
2034	22,095	20,464	42,559
2035	23,065	19,543	42,608
2036	24,070	18,559	42,629
2037	25,130	17,525	42,655
2038	26,325	16,445	42,770
2039	27,565	15,262	42,827
2040	29,025	13,866	42,891
2041	30,545	12,396	42,941
2042	32,155	10,849	43,004
2043	33,835	9,220	43,055
2044	31,500	7,525	39,025
2045	32,875	6,117	38,992
2046	38,805	4,455	43,260
2047	41,010	2,588	43,598
2048	21,755	521	22,276
	D 1 1 4	1	

(1) Paid from the Bond Proceeds and other revenues during construction.

Ending Pariod

Projected Cash Flow and Debt Service Coverage
(US Dollars in thousands)

Ending Period ^(1,2) (12/31)	Availability Payments and Renewal Work Payments ⁽²⁾	Cash Reinvestment Income ⁽²⁾	Overhead, Maintenance Costs ⁽²⁾	(U.S. Dollar Lifecycle Costs / Handback Costs ⁽²⁾	rs in thousands) Handback / Maintenance Reserve / Operating Account Deposits (Releases) ⁽²⁾	Net Cash Flow	Interest on Series 2018 Bonds	Principal on Series 2018 Bonds	Total Debt Service on Series 2018 Bonds	Senior Debt Service Coverage Ratio
2023	4,263	133	716	0	1,003	2,676	29,218	2,310	31,528	
2024	51,177	569	3,529	1	(141)	48,358	28,943	13,105	42,048	1.15x
2025	51,933	572	3,364	644	25	48,471	28,275	13,875	42,150	1.15x
2026	51,404	568	3,428	1	22	48,522	27,572	14,625	42,197	1.15x
2027	53,892	580	3,506	2,372	25	48,570	26,831	15,405	42,236	1.15x
2028	51,676	572	3,567	21	37	48,623	26,051	16,230	42,281	1.15x
2029	52,050	572	3,705	272	41	48,604	25,230	17,035	42,265	1.15x
2030	52,696	576	3,714	794	40	48,724	24,366	18,000	42,366	1.15x
2031	54,370	584	3,794	2,341	44	48,775	23,454	18,960	42,414	1.15x
2032	55,661	592	3,872	3,503	43	48,835	22,493	19,975	42,468	1.15x
2033	52,652	577	3,941	361	44	48,883	21,482	21,025	42,507	1.15x
2034	53,085	580	4,019	659	45	48,942	20,464	22,095	42,559	1.15x
2035	53,957	586	4,103	1,411	30	48,998	19,543	23,065	42,608	1.15x
2036	53,188	582	4,203	502	43	49,022	18,559	24,070	42,629	1.15x
2037	56,608	597	4,353	3,780	18	49,054	17,525	25,130	42,655	1.15x
2038	53,368	583	4,350	449	(29)	49,181	16,445	26,325	42,770	1.15x
2039	53,432	584	4,422	311	29	49,254	15,262	27,565	42,827	1.15x
2040	54,620	593	4,512	1,348	30	49,323	13,866	29,025	42,891	1.15x
2041	58,687	609	4,619	5,261	35	49,381	12,396	30,545	42,941	1.15x
2042	62,688	628	4,722	9,105	33	49,457	10,849	32,155	43,004	1.15x
2043	54,172	590	4,787	428	31	49,517	9,220	33,835	43,055	1.15x
2044	54,252	585	4,880	344	4,738	44,874	7,525	31,500	39,025	1.15x
2045	54,425	577	5,072	1,040	4,052	44,839	6,117	32,875	38,992	1.15x
2046	54,603	631	5,091	4,245	(3,852)	49,749	4,455	38,805	43,260	1.15x
2047	54,784	659	5,199	5,200	(5,097)	50,142	2,588	41,010	43,598	1.15x
2048	27,429	323	2,149	184	(197)	25,614	521	21,755	22,276	1.15x

DSCR calculation is shown here on a full calendar year basis, from 2024 through 2048.
 Cash flows shown only from the duration of the debt.

Projected Renewal Work Cashflows

(U.S. Dollars in thousands)

Starting Period	Ending Period	Renewal Work Payments ⁽¹⁾	Running Total of Renewal Payments	Lifecycle Costs ⁽²⁾	Running Total of Lifecycle Costs ⁽²⁾
01-Jul-23	31-Dec-23	0.2	0.2		
01-Jan-24	30-Jun-24	0.3	0.5	0.3	0.3
01-Jul-24	31-Dec-24	0.3	0.8	0.3	0.7
01-Jan-25	30-Jun-25	644.1	644.9	644.1	644.8
01-Jul-25	31-Dec-25	0.3	645.3	0.3	645.1
01-Jan-26	30-Jun-26	0.3	645.6	0.3	645.5
01-Jul-26	31-Dec-26	0.3	646.0	0.3	645.8
01-Jan-27	30-Jun-27	2,371.2	3,017.2	1,177.9	1,823.7
01-Jul-27	31-Dec-27	0.4	3,017.5	1,193.6	3,017.3
01-Jan-28	30-Jun-28	5.5	3,023.0	0.4	3,017.7
01-Jul-28	31-Dec-28	31.3	3,054.3	21.0	3,038.7
01-Jan-29	30-Jun-29	225.1	3,279.4	219.6	3,258.3
01-Jul-29	31-Dec-29	63.4	3,342.8	52.8	3,311.1
01-Jan-30	30-Jun-30	713.8	4,056.6	383.6	3,694.7
01-Jul-30	31-Dec-30	96.8	4,153.4	410.3	4,105.0
01-Jan-31	30-Jun-31	2,226.7	6,380.1	1,151.7	5,256.7
01-Jul-31	31-Dec-31	131.6	6,511.7	1,189.2	6,445.9
01-Jan-32	30-Jun-32	3,352.9	9,864.6	1,728.4	8,174.2
01-Jul-32	31-Dec-32	167.7	10,032.2	1,774.2	9,948.4
01-Jan-33	30-Jun-33	174.5	10,206.7	167.7	10,116.1
01-Jul-33	31-Dec-33	205.1	10,411.8	193.2	10,309.3
01-Jan-34	30-Jun-34	434.1	10,845.9	426.9	10,736.2
01-Jul-34	31-Dec-34	244.0	11,090.0	231.8	10,967.9
01-Jan-35	30-Jun-35	1,164.7	12,254.7	1,163.1	12,131.0
01-Jul-35	31-Dec-35	248.9	12,503.6	248.1	12,379.2
01-Jan-36	30-Jun-36	250.6	12,754.2	248.9	12,628.1
01-Jul-36	31-Dec-36	253.9	13,008.1	253.1	12,881.1
01-Jan-37	30-Jun-37	3,523.3	16,531.3	1,876.9	14,758.0
01-Jul-37	31-Dec-37	259.0	16,790.3	1,902.8	16,660.8
01-Jan-38	30-Jun-38	242.4	17,032.7	259.0	16,919.8
01-Jul-38	31-Dec-38	154.4	17,187.1	190.1	17,109.9
01-Jan-39	30-Jun-39	155.4	17,342.5	154.4	17,264.3
01-Jul-39	31-Dec-39	157.5	17,500.0	156.9	17,421.2
01-Jan-40	30-Jun-40	1,188.9	18,688.8	1,187.8	18,609.0
01-Jul-40	31-Dec-40	160.6	18,849.4	160.1	18,769.1
01-Jan-41	30-Jun-41	5,098.9	23,948.3	2,612.9	21,382.0
01-Jul-41	31-Dec-41	163.8	24,112.1	2,648.2	24,030.2
01-Jan-42	30-Jun-42	8,939.3	33,051.4	4,521.9	28,552.2
01-Jul-42	31-Dec-42	167.1	33,218.5	4,582.8	33,135.0
01-Jan-43	30-Jun-43	259.3	33,477.8	258.2	33,393.2

		Renewal Work	Running Total of Renewal		Running Total of Lifecycle
Starting Period	Ending Period	Payments ⁽¹⁾	Payments	Lifecycle Costs ⁽²⁾	Costs ⁽²⁾
01-Jul-43	31-Dec-43	170.4	33,648.3	169.9	33,563.1
01-Jan-44	30-Jun-44	171.6	33,819.9	170.4	33,733.5
01-Jul-44	31-Dec-44	173.9	33,993.7	173.3	33,906.8
01-Jan-45	30-Jun-45	175.0	34,168.7	173.9	34,080.6
01-Jul-45	31-Dec-45	177.3	34,346.0	176.7	34,257.4
01-Jan-46	30-Jun-46	178.5	34,524.6	177.3	34,434.7
01-Jul-46	31-Dec-46	180.9	34,705.4	180.3	34,615.0
01-Jan-47	30-Jun-47	182.1	34,887.5	180.9	34,795.9
01-Jul-47	31-Dec-47	184.5	35,072.0	183.9	34,979.8
01-Jan-48	30-Jun-48	154.4	35,226.4	184.5	35,164.2
01-Jul-48	31-Dec-48		35,226.4	62.1	35,226.4

 $(1) \qquad \text{Assumes 2 Month Delay from Invoice Date at End of Quarter to Cash Inflow.}$

(2) Does not include de minimis 2023 Lifecycle Costs of \$220, which are not funded by the Renewal Work Payment Mechanism.

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CONTINUING DISCLOSURE AND OTHER REPORTING REQUIREMENTS

Continuing Disclosure under Rule 15c2-12

General

Pursuant to the requirements of the Securities and Exchange Commission Rule 15c2-12 (17 C.F.R. Part 240, § 240.15c2-12) ("Rule 15c2-12"), the State, acting by and through MDOT and the Michigan Department of Treasury will enter into a continuing disclosure certificate (the "MDOT Continuing Disclosure Certificate") and the Company will enter a continuing disclosure agreement (the "Company Continuing Disclosure Agreement"), each to be dated as of the date of issuance of the Series 2018 Bonds and each to provide certain financial information, other operating data and notices of material events (in the case of the Company Continuing Disclosure Agreement only) for the benefit of the Owners of the Series 2018 Bonds.

The Issuer has determined that no financial or operating data concerning the Issuer is material to an evaluation of the offering of the Series 2018 Bonds or to any decision to purchase, hold or sell the Series 2018 Bonds and the Issuer will not provide any such information. The Issuer shall have no liability to the Owners of the Series 2018 Bonds or to any other person with respect to Rule 15c2-12.

The State and the MDOT Continuing Disclosure Certificate

The State and the Department of Treasury have covenanted for the benefit of the Owners and the Beneficial Owners (as such terms are defined in the MDOT Continuing Disclosure Certificate) of the Series 2018 Bonds, to provide certain financial information and operating data relating to the State by not later than seven months following the end of the State's fiscal year, commencing with the fiscal year ending September 30, 2018 (the "Annual Financial Report"). The MDOT Continuing Disclosure Certificate requires that the required annual financial information be submitted to the MSRB through EMMA. The form of MDOT Continuing Disclosure Certificate is attached hereto as APPENDIX H-1— "FORM OF MDOT CONTINUING DISCLOSURE CERTIFICATE."

A failure by the State and the Michigan Department of Treasury to comply with the requirements of the MDOT Continuing Disclosure Certificate does not in and of itself constitute an event of default under the MDOT Continuing Disclosure Certificate or any Finance Document. Nevertheless, such a failure must be reported in accordance with Rule 15c2-12 and must be considered by any broker, dealer or municipal securities dealer before recommending the purchase or sale of the Series 2018 Bonds in the secondary market. Consequently, such a failure may adversely affect the transferability and liquidity of the Series 2018 Bonds and their market price.

Compliance by the State

To the best of the State's knowledge, except as noted below under "Certain State Actions with Respect to Continuing Disclosure," in the last five years, the State has not failed to comply with its continuing disclosure agreements with respect to any of its debt.

Date	Action	Reason for Notice	Bonds Affected
July 1, 2014	Filed EMMA notice	Moody's published separate notices downgrading the Garvee Bonds on February 18, 2014 and June 6, 2014. State's EMMA notice included the more recent June 6 report.	 State of Michigan Grant Anticipation Bonds, Series 2007, and State of Michigan Grant Anticipation Bonds Series 2009 (Taxable-Build America Bonds - Direct Payment) (collectively the "Garvee Bonds").
August 4, 2015	Filed EMMA notice	State timely filed Comprehensive Annual Financial Report ("CAFR") for the State fiscal years ending September 30, 2013 and September 30, 2014, but did originally not include all applicable CUSIPS.	State of Michigan General Obligation Environmental Program and Refunding Bonds, Series 2011B (Federally Taxable).
July 6, 2016	Filed EMMA notice	Most recent Table 1 — "Receipts into the Highway Account of the Highway Trust Fund Federal Fiscal Years 2015-2018," containing information widely and readily available from the Congressional Budget Office, was inadvertently omitted from the State's annual filing due April 30, 2016.	Garvee Bonds.
July 6, 2016	Filed EMMA notice	March, 2014 rating upgrade by S&P of Assured Guaranty Municipal Corp., the successor insurer to Financial Security Assurance Inc. State believes it never received this upgrade notice.	State of Michigan Grant Anticipation Bonds, Series 2007.
August 18, 2017	Filed EMMA notice	Table 9 - "Allocation of Motor Vehicle Related Sales Tax Revenue Fiscal Year 2015" was inadvertently omitted from State's annual filing due April 30, 2016.	Outstanding State of Michigan Comprehensive Transportation Bonds.

Certain State Actions with Respect to Continuing Disclosure

The Company and the Company Continuing Disclosure Agreement

The Company has not, prior to the date of this Official Statement, entered into, and will not, prior to the date of issuance of the Series 2018 Bonds, enter into (except in connection with the issuance of the Series 2018 Bonds) any obligations pursuant to Rule 15c2-12. The form of Continuing Disclosure Agreement applicable to the Company is attached hereto as APPENDIX H-2— "FORM OF COMPANY CONTINUING DISCLOSURE AGREEMENT."

Reporting Requirements under the Series 2018 Loan Agreement

The Company has covenanted pursuant to the terms of the Series 2018 Loan Agreement to comply with certain reporting requirements. See APPENDIX F—"SUMMARY OF CERTAIN PROVISIONS OF THE SENIOR LOAN AGREEMENT—Covenants of the Company—Accounts and Reporting" for a full description of these reporting requirements.

LEGAL MATTERS

The Issuer will furnish the Underwriters a transcript of certain proceedings incident to the authorization and issuance of the Series 2018 Bonds. The Issuer will also furnish, at the Company's expense, the approving legal opinion of Bond Counsel to the Issuer as set forth in APPENDIX J-1—"FORM OF APPROVING OPINION OF BOND COUNSEL."

The various legal opinions to be delivered concurrently with the delivery of the Series 2018 Bonds express the professional judgment of the attorneys rendering the opinions as to the legal issues explicitly addressed therein. In rendering a legal opinion, the attorney does not become an insurer or guarantor of the expression of professional judgment, of the transaction opined upon, or of the future performance of the parties to the transaction, nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

The Series 2018 Bonds are offered when, as and if issued and delivered and accepted by the Underwriters and subject to receipt of the approving legal opinion of Dykema Gossett PLLC, Bond Counsel, and to certain other conditions. Certain legal matters will be passed upon for the Issuer by its counsel, the Attorney General of the State of Michigan; for MDOT by its counsel, the Attorney General of the State of Michigan; for the Company by its counsel, Davies Ward Phillips & Vineberg LLP; and for the Underwriters by their special counsel, Greenberg Traurig, LLP.

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TAX MATTERS

General

In the opinion of the Attorney General of the State of Michigan and in the opinion of Dykema Gossett PLLC, Bond Counsel, based on their examination of the documents described in their respective opinions, under existing law, the interest on the Series 2018 Bonds is excludable from gross income for federal income tax purposes except for interest on any Series 2018 Bond during any period while it is held by a "substantial user" of the Project or a "related person" as those terms are used in Section 147(a) of the Code. The Series 2018 Bonds, the interest thereon and their transfer are exempt from all taxation in the State, except estate, gift and inheritance taxes. See APPENDICES J-1 "Form of Approving Opinion of Bond Counsel" and J-2 "Form of Approving Opinion of Attorney General" hereto.

The Code also subjects taxpayers to an alternative minimum tax on a taxpayer's "alternative minimum taxable income," which, in general terms, consists of a taxpayer's regular taxable income plus its preferences and special adjustments with respect to certain deductions used by a corporation to compute taxable income. The alternative minimum tax is repealed with respect to corporations effective for tax years of the corporation beginning after December 31, 2017. The interest on the Series 2018 Bonds is an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and, for tax years beginning before January 1, 2018, imposed on corporations.

The Series 2018 Bonds are not "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code.

The Attorney General and Bond Counsel will express no opinion regarding any other federal, state, local or foreign tax consequences arising with respect to the Series 2018 Bonds and the interest thereon. Prospective purchasers should consult their own tax advisors regarding the tax consequences of their owning the Series 2018 Bonds.

The opinions on federal tax matters are based on the accuracy of certain representations and certifications, and continuing compliance with certain covenants, of the MSF and the Company contained in the transcript of proceedings and which are intended to evidence and assure the foregoing, including that the Series 2018 Bonds are and will remain obligations, the interest on which is excludable from gross income for federal income tax purposes. Each of MSF and the Company has covenanted to take the actions required of it for the interest on the Series 2018 Bonds to be and to remain excludable from gross income for federal income tax purposes, and not to take any actions that would adversely affect that exclusion. The opinions assume the accuracy of the MSF's and the Company's certifications and representations and the continuing compliance with the MSF's and the Company's covenants. Noncompliance with these covenants by either or both of MSF and the Company may cause the interest on the Series 2018 Bonds to be included in gross income for federal income tax purposes retroactively to the date of issuance of the Series 2018 Bonds. After the date of issuance of the Series 2018 Bonds, the Attorney General and Bond Counsel will not undertake to determine (or to so inform any person) whether any actions taken or not taken, or any events occurring or not occurring, or any other matters coming to its attention, may adversely affect the exclusion from gross income for federal income tax purposes and be contaken, or the Series 2018 Bonds.

The opinions of the Attorney General and of Bond Counsel are based on current legal authority and cover certain matters not directly addressed by such authority. It represents their respective legal judgment as to the excludability of interest on the Series 2018 Bonds from gross income for federal income tax purposes but is not a guarantee of that conclusion. The opinion is not binding on the IRS or any court. The Attorney General and Bond Counsel cannot give and have not given any opinion or assurance about the effect of future changes in the Code, the applicable regulations, the interpretations thereof or the enforcement thereof by the IRS.

Prospective purchasers of the Series 2018 Bonds should be aware that (i) interest on the Series 2018 Bonds is included in the effectively connected earnings and profits of certain foreign corporations for purposes of calculating the branch profits tax imposed by Section 884 of the Code, (ii) interest on the Series 2018 Bonds may be subject to a tax on excess net passive income of certain S corporations imposed by Section 1375 of the Code, (iii) interest on the Series 2018 Bonds is included in the calculation of modified adjusted gross income for purposes of determining taxability of social security or railroad retirement benefits, (iv) the receipt of interest on the Series 2018 Bonds by life insurance companies may affect the federal tax liability of such companies, (v) in the case of property and casualty insurance companies, the amount of certain loss deductions otherwise allowed is reduced by a specific

percentage of, among other things, interest on the Series 2018 Bonds, (vi) Owners acquiring the Series 2018 Bonds subsequent to initial issuance will generally be required to treat market discount recognized under Section 1276 of the Code as ordinary taxable income, (vii) the receipt or accrual of interest on the Series 2018 Bonds may cause disallowance of the earned income credit under Section 32 of the Code, (viii) interest on the Series 2018 Bonds is subject to backup withholding under Section 3406 of the Code in the case of Owners that have not reported a taxpayer identification number and are not otherwise exempt from backup withholding, and (ix) Owners of the Series 2018 Bonds may not deduct interest on indebtedness incurred or continued to purchase or carry the Series 2018 Bonds, and financial institutions may not deduct that portion of their interest expense allocated to interest on the Series 2018 Bonds. The Attorney General and Bond Counsel will express no opinion regarding any such consequences.

Information Reporting and Backup Withholding - Series 2018 Bonds. Information reporting requirements apply to interest paid after March 31, 2007 on tax-exempt obligations, including the Series 2018 Bonds. In general, such requirements are satisfied if the interest recipient completes, and provides the payor with, a Form W-9, "Request for Taxpayer Identification Number and Certification," or unless the recipient is one of a limited class of exempt recipients, including corporations. A recipient not otherwise exempt from information reporting who fails to satisfy the information reporting requirements will be subject to "backup withholding," which means that the payor is required to deduct and withhold a tax from the interest payment, calculated in the manner set forth in the Code. For the foregoing purpose, a "payor" generally refers to the person or entity from whom a recipient receives its payments of interest or who collects such payments on behalf of the recipient.

If an owner purchasing the Series 2018 Bonds through a brokerage account has executed a Form W-9 in connection with the establishment of such account, no backup withholding should occur. In any event, backup withholding does not affect the excludability of the interest on the Series 2018 Bonds from gross income for federal income tax purposes. Any amounts withheld pursuant to backup withholding would be allowed as a refund or a credit against the owner's federal income tax once the required information is furnished to the IRS.

Tax Treatment of Accruals on Original Issue Discount Bonds. For federal income tax purposes, the difference between the initial offering prices to the public (excluding bond houses and brokers) at which a substantial amount of the Series 2018 Bonds initially sold at a discount as shown on the inside cover page hereof (the "OID Bonds") is sold and the amount payable at the stated redemption price at maturity thereof constitutes "original issue discount." Such discount is treated as interest excluded from federal gross income to the extent properly allocable to each registered owner thereof. The original issue discount accrues over the term to maturity of each such OID Bond on the basis of a constant interest rate compounded at the end of each six-month period (or shorter period from the date of original issue) with straight line interpolations between compounding dates. The amount of original issue discount accruing during each period is added to the adjusted basis of such OID Bonds to determine taxable gain upon disposition (including sale, redemption or payment on maturity) of such OID Bonds.

The Code contains certain provisions relating to the accrual of original issue discount in the case of registered owners of the OID Bonds who purchase such bonds after the initial offering of a substantial amount thereof. Registered owners who do not purchase such OID Bonds in the initial offering at the initial offering and purchase prices should consult their own tax advisors with respect to the tax consequences of ownership of such OID Bonds.

Amortizable Bond Premium. For federal income tax purposes, the excess of the initial offering price to the public (excluding bond houses and brokers) at which a Series 2018 Bond is sold over the amount payable at maturity thereof constitutes for the original purchasers of such Series 2018 Bonds (collectively, the "Original Premium Bonds") an amortizable bond premium. Series 2018 Bonds other than Original Premium Bonds may also be subject to an amortizable bond premium determined generally with regard to the taxpayer's basis (for purposes of determining loss on a sale or exchange) and the amount payable on maturity or, in certain cases, on an earlier call date (such bonds being referred to herein as Premium Bonds). Such amortizable bond premium is not deductible from gross income, but is taken into account by certain corporations in determining adjusted current earnings for purposes of computing alternative minimum tax, which may also affect liability for the branch profits tax imposed by Section 884 of the Code. The amount of amortizable bond premium allocable to each taxable year is generally determining loss on sale or exchange) of such Premium Bonds and compounding at the close of each six-month accrual period. The amount of amortizable bond premium allocable to each taxable year is deducted from the

taxpayer's adjusted basis of such Premium Bonds to determine taxable gain upon disposition (including sale, redemption or payment at maturity) of such Premium Bonds.

All holders of the Premium Bonds should consult with their own tax advisors as to the amount and effect of the amortizable bond premium.

Market Discount. The "market discount rules" of the Code apply to the Series 2018 Bonds. Accordingly, holders acquiring their Series 2018 Bonds subsequent to the initial issuance of the Series 2018 Bonds will generally be required to treat market discount recognized under the provisions of the Code as ordinary taxable income (as opposed to capital gain income). Holders should consult their own tax advisors regarding the application of the market discount provisions of the Code and the advisability of making any of the elections relating to market discount allowed by the Code.

Future Developments. Bond Counsel's engagement with respect to the Series 2018 Bonds ends with the issuance of the Series 2018 Bonds and, unless separately engaged, Bond Counsel is not obligated to defend the MSF in the event of an audit examination by the IRS. The IRS has a program to audit tax-exempt obligations to determine whether the interest thereon is includible in gross income for federal income tax purposes. If the IRS does audit the Series 2018 Bonds, under current IRS procedures, the IRS will treat the MSF as the taxpayer and the beneficial owners of the Series 2018 Bonds will have only limited rights, if any, to obtain and participate in judicial review of such audit.

NO ASSURANCE CAN BE GIVEN THAT ANY FUTURE LEGISLATION OR CLARIFICATIONS OR AMENDMENTS TO THE CODE, IF ENACTED INTO LAW, WILL NOT CONTAIN PROPOSALS WHICH COULD CAUSE THE INTEREST ON THE SERIES 2018 BONDS TO BE SUBJECT DIRECTLY OR INDIRECTLY TO FEDERAL OR STATE OF MICHIGAN INCOME TAXATION, ADVERSELY AFFECT THE MARKET PRICE OR MARKETABILITY OF THE SERIES 2018 BONDS, OR OTHERWISE PREVENT THE HOLDERS FROM REALIZING THE FULL CURRENT BENEFIT OF THE STATUS OF THE INTEREST THEREON. THE ATTORNEY GENERAL AND BOND COUNSEL EXPRESS NO OPINION REGARDING ANY PENDING OR PROPOSED FEDERAL OR STATE OF MICHIGAN TAX LEGISLATION.

FURTHER, NO ASSURANCE CAN BE GIVEN THAT ANY ACTIONS OF THE IRS, INCLUDING, BUT NOT LIMITED TO, SELECTION OF THE SERIES 2018 BONDS FOR AUDIT EXAMINATION, OR THE COURSE OR RESULT OF ANY EXAMINATION OF THE SERIES 2018 BONDS, OR OTHER BONDS WHICH PRESENT SIMILAR TAX ISSUES, WILL NOT AFFECT THE MARKET PRICE OF THE SERIES 2018 BONDS.

INVESTORS SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE TAX CONSEQUENCES OF THEIR ACQUISITION, HOLDING OR DISPOSITION OF THE SERIES 2018 BONDS, INCLUDING THE IMPACT OF ANY PENDING OR PROPOSED FEDERAL OR STATE OF MICHIGAN TAX LEGISLATION.

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NO LITIGATION

The Issuer

There is not now, pending and served or, to the knowledge of the Issuer, any litigation threatened against the Issuer seeking to restrain or enjoin the issuance or delivery of the Series 2018 Bonds or questioning or affecting the validity of the Series 2018 Bonds or the proceedings of the Issuer under which they are to be issued. There is not now, pending and served or, to the knowledge of the Issuer, any litigation threatened against the Issuer which in any manner questions the right of the Issuer to authorize the resolution pursuant to which the Series 2018 Bonds were authorized or enter into the Senior Loan Agreement or the Indenture or to secure the Series 2018 Bonds in the manner provided in the Indenture.

MDOT

There is no action, suit, proceeding, or litigation pending and served on MDOT which challenges the authority of MDOT to execute, deliver or perform, or the validity or enforceability of, the Project Agreement or which challenges the authority of a MDOT official executing the Project Agreement.

The Company

At the time of delivery and payment for the Series 2018 Bonds, the Company will deliver a certificate substantially to the effect that there is no litigation or other proceeding of any nature now pending or threatened against or adversely affecting the Company of which the Company has notice or, to the Company's knowledge, any basis therefor, seeking to restrain or enjoin the issuance, sale, execution or delivery of the Series 2018 Bonds, or in any way contesting or affecting the validity of the Series 2018 Bonds, the resolutions adopted by the Company to authorize the transaction, the Company's obligation and agreement to provide certain continuing disclosure as set forth in the Senior Loan Agreement and the Company Continuing Disclosure Agreement (a form of which is set forth in APPENDIX H-2—"FORM OF COMPANY CONTINUING DISCLOSURE AGREEMENT"), or any proceedings of the Company taken with respect to the issuance or sale of the Series 2018 Bonds, or the pledge, collection or application of any moneys or security provided for the payment of the Series 2018 Bonds, or the existence, powers or operations of the Company, or contesting the completeness or accuracy of this Official Statement.

APPROVAL OF LEGALITY

The Attorney General of the State of Michigan will render an opinion approving the validity of the Project Agreement. All of the legal proceedings in connection with the authorization and issuance of the Series 2018 Bonds are subject to approval of the Attorney General of the State, and Bond Counsel, Dykema Gossett PLLC, Lansing, Michigan. The approving opinions of the Attorney General and Bond Counsel to the Issuer as to the authorization, issuance, sale and delivery of the Series 2018 Bonds in substantially the forms attached hereto as Appendices J-1 and J-2 will be delivered at the closing. The fees of Bond Counsel in connection with the issuance of such approving opinion will be paid from proceeds of the Series 2018 Bonds as one of the costs of issuance.

Certain legal matters will be passed upon for the Issuer by the Attorney General of the State and Bond Counsel. Certain legal matters will be passed upon for the Underwriters by their counsel, Greenberg Traurig, LLP.

Dykema Gossett PLLC and Greenberg Traurig, LLP, have in the past, are now and may in the future represent the Issuer, the State, the Underwriters and/or one or more purchasers of the Series 2018 Bonds with respect to matters unrelated to the issuance of the Series 2018 Bonds. By the purchase of one or more of the Series 2018 Bonds, such purchaser consents to such unrelated representations and to such firms acting as Underwriters' counsel and Bond Counsel with respect to the Series 2018 Bonds.

RELATED PARTY TRANSACTIONS

Certain of the parties with which the Company has contracted or will contract to provide guarantees, staffing and administrative, maintenance, technical and other services to the Project are affiliates of or otherwise related to certain of the Equity Members.

The Company will enter into a Design-Build Contract with the Design-Build Contractor, a Michigan limited liability company whose members consist of (1) Ajax, a corporation organized and existing under the laws of Michigan, (2) Dan's, a corporation organized and existing under the laws of Michigan, (2) Dan's, a corporation organized and existing under the laws of Michigan, (2) Dan's, a corporation organized and existing under the laws of Michigan, (2) Dan's, a corporation organized and existing under the laws of Michigan, (2) Dan's, a corporation organized and existing under the laws of Michigan, (2) Dan's, a corporation organized and existing under the laws of Michigan, (2) Dan's, a corporation organized and existing under the laws of Michigan, (2) Dan's, a corporation organized and existing under the laws of Michigan, (2) Dan's, a corporation organized and existing under the laws of Michigan, (2) Dan's, a corporation organized and existing under the laws of Michigan, (2) Dan's, a corporation organized and existing under the laws of Michigan, (2) Dan's, a corporation organized and existing under the laws of Michigan, (2) Dan's, a corporation organized and existing under the laws of Michigan, (2) Dan's, a corporation organized and existing under the laws of Michigan, (2) Dan's, a corporation organized and existing under the laws of Michigan, (2) Dan's, a corporation organized and existing under the laws of Michigan, (2) Dan's, Jay Dee, C.A. Hull, C.D.M. Leasing and JAJ Holdings, in their capacities as the Design-Build Guarantors, will provide a joint and several guaranty to support the Design-Build Contractor's obligations under the Design-Build Contract, pursuant to the Design-Build Guarantee. See "PROJECT PARTICIPANTS—Design-Build Guarantors."

The Company will pay a development fee to compensate each of the Equity Members for out-of-pocket, third-party development costs as well as internal development costs incurred in developing the Project and achieving Financial Close on the Closing Date. In addition, the Company may enter into one or several TAMSAs during the Term.

The Company will also pay a letter of credit fee to each of the Equity Members to compensate them for providing the respective Equity Letters of Credit and for providing equity commitment guaranties in accordance with the Equity Contribution Agreement.

RATINGS

Moody's and S&P are expected to assign ratings of "A2" and "AA", respectively, to the Insured Series 2018 Bonds, which long-term ratings are based on the understanding that the Insurer will issue the Bond Insurance Policy simultaneously with the delivery of the Series 2018 Bonds. Moody's and KBRA have assigned underlying long-term ratings on the uninsured Series 2018 Bonds of "Baa2 (stable outlook)" and "BBB (stable outlook)", respectively. The foregoing ratings reflect only the respective views of the rating agencies and any desired explanation of the significance of such ratings should be obtained from the rating agency furnishing the same. Generally, a rating agency bases its rating on information and materials furnished to it and on investigations, studies and assumptions by such rating agency. A rating is not a recommendation to buy, sell or hold the Series 2018 Bonds. There is no assurance that any such ratings will continue for any given period of time or that any such ratings will not be revised downward, suspended or withdrawn entirely if, in the judgment of each rating agency, circumstances so warrant. Any such downward revision, suspension or withdrawal of such ratings may have an adverse effect on the market price of the Series 2018 Bonds. The Underwriters, the Issuer, the Company and MDOT undertake no responsibility after the issuance of the Series 2018 Bonds to assure the maintenance of any rating or to oppose any revision, suspension or withdrawal thereof.

UNDERWRITING

The Series 2018 Bonds are being sold at an aggregate purchase price of \$631,848,967.19 (representing the \$610,300,000 aggregate original principal amount of the Series 2018 Bonds less an underwriting discount of \$2,690,937.96 plus net original issue premium of \$24,239,905.15) to the Underwriters pursuant to a bond purchase agreement, dated November 15, 2018, entered into among the Underwriters, the Issuer and the Company. The expenses associated with the issuance of the Series 2018 Bonds are being paid by the Company from proceeds of the Series 2018 Bonds and other available funds. The right of the Underwriters to receive compensation in connection with the Series 2018 Bonds is contingent upon the actual sale and delivery of the Series 2018 Bonds. The Underwriters will initially offer the Series 2018 Bonds for sale at the prices or yields set forth on the inside cover of this Official Statement. Such prices or yields may subsequently change in connection with the marketing of the Series 2018 Bonds. The Underwriters and sell the Series 2018 Bonds to certain dealers (including dealers depositing the Series 2018 Bonds into investment trusts) and others at prices lower than the initial public offering price or prices set forth in this Official Statement. The Underwriters reserve the right to join with dealers and other investment banking firms in offering the Series 2018 Bonds for sale.

Merrill Lynch, Pierce, Fenner & Smith Incorporated ("BofA Merrill Lynch") and Wells Fargo Bank, N.A. (together with BofA Merrill Lynch, the "Underwriters", and individually, each, an "Underwriter") provided support letters in connection with the Company's bid submitted to MDOT for the contract to construct, finance and maintain the Project and in connection with the Underwriters' role in the potential financing of the Project.

Wells Fargo Securities is the trade name for certain securities-related capital markets and investment banking services of Wells Fargo & Company and its subsidiaries, including Wells Fargo Bank, National Association, which conducts its municipal securities sales, trading and underwriting operations through the Wells Fargo Bank, NA Municipal Products Group, a separately identifiable department of Wells Fargo Bank, National Association, registered with the Securities and Exchange Commission as a municipal securities dealer pursuant to Section 15B(a) of the Securities Exchange Act of 1934.

Wells Fargo Bank, National Association, acting through its Municipal Products Group ("WFBNA"), one of the underwriters of the Series 2018 Bonds, has entered into an agreement (the "WFA Distribution Agreement") with its affiliate, Wells Fargo Clearing Services, LLC (which uses the trade name "Wells Fargo Advisors") ("WFA"), for the distribution of certain municipal securities offerings, including the Series 2018 Bonds. Pursuant to the WFA Distribution Agreement, WFBNA will share a portion of its underwriting or remarketing agent compensation, as applicable, with respect to the Series 2018 Bonds with WFA. WFBNA has also entered into an agreement (the "WFSLLC Distribution Agreement") with its affiliate, Wells Fargo Securities, LLC ("WFSLLC"), for the distribution of municipal securities offerings, including the Series 2018 Bonds. Pursuant to the WFSLLC Distribution Agreement, WFBNA pays a portion of WFSLLC's expenses based on its municipal securities transactions. WFBNA, WFSLLC, and WFA are each wholly-owned subsidiaries of Wells Fargo & Company.

The Underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. Certain of the Underwriters and their respective affiliates have provided, and may in the future provide, a variety of these services to the Issuer, MDOT or the Company and to persons and entities with relationships with the Issuer, MDOT or the Company, for which they received or will receive customary fees and expenses.

In the ordinary course of their various business activities, the Underwriters and their respective affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and actively trade securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of the Issuer or the Company (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with the Issuer, MDOT or the Company. The Underwriters and their respective affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

The Underwriters and their respective affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

FINANCIAL ADVISOR

BMO Capital Markets Corp. ("BMO") has acted as financial advisor to the Company in connection with certain aspects of the issuance of the Series 2018 Bonds. BMO has provided advice on the plan of finance and structure of the issue. BMO has not been engaged, nor has it undertaken, to make an independent verification or to guarantee the accuracy, completeness or fairness of the information contained in this Official Statement.

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CONCLUDING STATEMENT

All quotations in this Official Statement from, and summaries and explanations of the Michigan Constitution, Act 51 and the bond proceedings do not purport to be complete. Reference is made to the pertinent provisions of the Constitution, Act 51 and those documents for all complete statements of their provisions. Copies of the bond proceedings are available upon request from the Issuer.

To the extent that any statements in this Official Statement involve matters of opinion or estimates (whether or not expressly stated to be such) those statements are made as such and not as representations of fact or certainty. No representation is made that any of those statements will be realized. Information in this Official Statement has been derived by the Company from official and other sources and is believed by the Company to be accurate and reliable, but information other than that obtained from the Company's records has not been independently confirmed or verified by the Company and its accuracy is not guaranteed.

This Official Statement is not to be construed as a contract or agreement between the Company, the Issuer or MDOT and the original purchaser or subsequent holders or Beneficial Owners of any of the Series 2018 Bonds.

This Official Statement has been prepared, approved and delivered by the Company, and signed for and on its behalf and in its official capacity by the official indicated below.

OAKLAND CORRIDOR PARTNERS LLC

By: /s/David Nachman Chief Executive Officer [THIS PAGE INTENTIONALLY LEFT BLANK]

APPENDIX A

DEFINITIONS OF TERMS

Defined Terms

"Acceptable Bank" means any bank, financial institution or trust company (a) with an Acceptable Credit Rating from any of S&P, Moody's or Fitch or, in the case of DBRS and KBRA, has an Acceptable Credit Rating from both (with the lower rating applying thereto), (b) having a capital and surplus of not less than \$500,000,000, (c) authorized to engage in the banking business, and (d) organized under or licensed as a branch or agency under the laws of the United States or any state thereof.

"Acceptable Credit Rating" means, in the case of any bank, financial institution or trust company, a rating of its senior unsecured debt by at least one (1) Nationally Recognized Rating Agency at the following level:

- (a) A- or higher by S&P;
- (b) A- or higher by Fitch;
- (c) A3 or higher by Moody's;
- (d) A (low) or higher by DBRS;
- (e) A- or higher by KBRA; or
- (f) the equivalent rating from another Nationally Recognized Rating Agency.

"Acceptable Letter of Credit" means an irrevocable standby letter of credit that is (a) denominated in United States dollars, (b) without recourse to Company, and (c) issued by an Acceptable Bank at the time of issuance.

"Acceptable Replacement Party" means any Person that:

- (a) provides evidence satisfactory to the Company and the Lenders' Technical Advisor (solely with respect to technical capability and acting reasonably) that such third party is technically capable of fulfilling all of the obligations of the party it is replacing;
- (b) has, or its Affiliate that provides a Design-Build Guarantee has, similar or greater creditworthiness as the counterparty (and its guarantors, if applicable) being so replaced and demonstrates, or its parent guarantor demonstrates, at the time of such replacement, in each case to the satisfaction of the Company that it is financially capable of fulfilling all of the obligations of the Design-Build Contract Guarantor or the Design-Build Contractor under its Design-Build Guarantee or the Design-Build Contract, and
- (c) satisfies (including through waiver) any and all minimum requirements set forth in the Project Agreement.

"Acceptable Replacement Support" has the meaning set out in Part 1 Section 14.5(a)(ii) of the Design-Build Contract.

"Account Interest" means the interest income earned on any Project Accounts received by Company.

"Accounts" means, collectively, the accounts and sub-accounts established and created by the Indenture.

"Accreted Redemption Price" means, with respect to any Original Issue Discount Bonds, the Accreted Value of the Bonds to be redeemed, plus accrued interest (if any) to, but not including, the redemption date.

"Accreted Value" means, with respect to any Original Issue Discount Bonds, as of any Calculation Date, an amount equal to the initial offering price of such Bonds, plus the amount of discounted principal that has accreted thereon from its date of issuance to, but not including, such Calculation Date at the rate on such Bonds; provided, however, that if the Calculation Date for the determination of Accreted Value of any Original Issue Discount Bond is not a Principal Payment Date, the Accreted Value of such Bonds will be calculated by straight line interpolation of Accreted Value as between the immediately preceding Principal Payment Date and the Accreted Value as of the Calculation Date. As used with respect to any Original Issue Discount Bond, the term "principal" means the Accreted Value thereof, except as used in connection with the authorization and issuance of such Bonds and with the order of priority of payments of such Bonds after an Event of Default in which case "principal" means the initial offering price of an Original Issue Discount Bond.

"Additional Equity Contribution" has the meaning specified in Section 8.07 of the Senior Loan Agreement.

"Additional Parity Bonds" means additional bonds issued pursuant to the Indenture, which additional bonds shall be equally and ratably secured by the Trust Estate with all other then outstanding Bonds, without preference, priority or distinction

"Additional Parity Bonds Loan" means any loan of the proceeds of any Additional Parity Bonds to the Company pursuant to an Additional Parity Bonds Loan Agreement.

"Additional Parity Bonds Loan Agreement" means, for each series of Additional Parity Bonds, the loan agreement to be executed by the Issuer and the Company in connection with the issuance of such Additional Parity Bonds pursuant to the Indenture, with such changes as are acceptable to the Company and the Issuer and permitted by the Transaction Documents.

"Additional Properties" has the meaning given in Section 9.2.1 of the Project Agreement.

"Adverse Event" has the meaning given in Section 3.11.1 of the Project Agreement.

"Adverse Event Termination Amount" means the amount calculated in accordance with Section 4.0 of Schedule 16 (Termination Compensation) of the Project Agreement.

"Affiliate" means, with respect to any Person, any entity over which such Person exercises, directly or indirectly, Control, is under the common Control of the same Person as such entity, or any entity which exercises Control over such Person by virtue of ownership, financial participation or the rules which govern it.

"Agent" means each of the Trustee and the Collateral Agent and "Agents" means all of them collectively.

"Aggregate Capital Commitment" means the total amount of Equity Contributions that the Equity Members agree to make pursuant to the Equity Contribution Agreement, which contributions shall satisfy any minimum equity contribution requirement pursuant to the Project Agreement.

"Ajax" means Ajax Paving Industries, Inc.

"Amortized Redemption Price" means the Amortized Value of the Series 2018 Bonds to be redeemed, plus accrued interest, to but not including, the redemption date.

"Amortized Value" means the principal amount of the Series 2018 Bonds to be redeemed multiplied by the price of such Series 2018 Bonds expressed as a percentage, calculated based on industry standard methods calculating bond prices, with a delivery date equal to the redemption date, the maturity date of such Series 2018 Bonds (taking into account any optional redemption provision) and a yield equal to such Series 2018 Bond's original offering yield set forth on the inside front cover of the Official Statement.

"Annual Operating Budget" has the meaning set forth in Section 6.01(a)(4) of the Senior Loan Agreement.

"Anti-Corruption Laws" means any law or regulation in a U.S. or any non-U.S. jurisdiction regarding bribery or any other corrupt activity, including the U.S. Foreign Corrupt Practices Act.

"Anti-Money Laundering Laws" means any law regarding money laundering or other money laundering predicate crimes of any jurisdiction applicable to the Company and the Sponsors, including, without limitation, the Currency and Foreign Transaction Reporting Act of 1970 (otherwise known as the Bank Secrecy Act) and the USA PATRIOT Act.

"Anticipated Duration" means each of the durations specified in Table 5-1 (Duration and Responsibility Matrix) of TR Article 5 of the Project Agreement for each of design and construction for a Relocation.

"Applicable Law" means any federal, state, or local (a) statute, law, code, regulation, ordinance, rule or common law; (b) binding judgment (other than regarding a Claim or Dispute); (c) binding judicial or administrative order or decree (other than regarding a Claim or Dispute); (d) written directive, guideline, policy requirement or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by MDOT within the scope of its administration of the Project Documents, but Governmental Approvals shall not be part of this exclusion); or (e) 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, as amended, revised, supplemented, or otherwise modified from time to time, which is applicable to or has an impact on the Project or the Relevant Infrastructure, whether taking effect before or after the Commercial Close Date.

"Applicable Reserve Letter of Credit" means, with respect to any Reserve Account, an Acceptable Letter of Credit delivered to the Collateral Agent to fund all or a portion of the Applicable Reserve Requirement relating to such Reserve Account in accordance with the terms of the Collateral Agency Agreement.

"Applicable Reserve Requirement" means (a) with respect to the Senior Debt Service Reserve Account, the Senior Debt Service Reserve Required Balance; and (b) with respect to the Maintenance Reserve Account, the Maintenance Reserve Account Required Balance.

"Approved Construction Requisition" means a Construction Requisition Certificate and Technical Advisor Certificate that satisfy the conditions of Section 5.02 and Section 5.18(a) of the Collateral Agency Agreement with respect to any Construction Funds Transfer Date.

"As-Built Drawings" means the as-built documents that depict the final completed Project, and are in accordance with the MDOT Road Design Manual Section 14.73.

"Authorized Denomination" means denominations of \$5,000 principal amount and integral multiples thereof.

"Authorized Representative" has the meaning given in Section 7.1.1 of the Project Agreement. Schedule 2 (Project Specific Information) of the Project Agreement provides the Parties' initial Authorized Representative designations.

"Availability Payment" means the amount calculated in accordance with in Section 2.0 of Schedule 4 (Payment Mechanism) of the Project Agreement.

"Bankruptcy Event" means, with respect to any Person:

(a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking
 (1) liquidation, reorganization or other relief in respect of any Person, or of a substantial part of the assets of such Person, under any insolvency law or (2) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for any Person or a substantial

part of such Person's assets and, in any case referred to in the foregoing subclauses (1) and (2), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; or

(b) such Person shall (1) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Person or for a substantial part of such Person's assets, or (2) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or (3) make a general assignment for the benefit of creditors, or (4) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, or (5) commence a voluntary proceeding under any insolvency law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any insolvency law, or (6) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (1) through (5), inclusive, of this clause (b).

"Base Case Equity IRR" means the percentage specified in cell J42 of the "Dashboard" tab of the Bid Financial Model, as updated in accordance with the Project Agreement.

"Base Case Model" means a mechanically sound financial model, approved by the Model Auditor, forecasting the revenues and expenditures of the Project for time periods and based upon assumptions and methodology provided by Company, as may be amended from time to time with the approval of the Lenders' Technical Advisor.

"Base MAP" means:

(a) at Commercial Close, the annual amount specified in cell H15 of the "Form P-3" tab of the Bid Financial Model and as set out in Schedule 2 (Project Specific Information) of the Project Agreement; and

(b) at Financial Close, \$50,621,793.41, as such Base MAP is otherwise updated in accordance with the Project Agreement.

"Base Renewal Work Payment" means the amount per Contract Year specified in cells J20 to J139 of the "Form P-3" tab of the Bid Financial Model and as set out in Appendix C of Schedule 4 (Payment Mechanism) of the Project Agreement.

"**Baseline Schedule**" means the schedule, consistent with the Completion Deadlines, submitted by Developer under Section 12.1.5 of the Project Agreement, setting forth the schedule of D&C Work against which any subsequent schedule amendments are tracked, as more particularly described in TR Article 3.3.2.3 of the Project Agreement.

"**Basic Configuration**" means the Basic Roadway Configuration or Basic Storage and Drainage Tunnel Configuration, or both of them, as the context requires.

"Basic Roadway Configuration" means the following Elements defining the Project:

(a) The (i) Planned ROW Limits and (ii) Control of Access in the ROW Work Maps;

(b) The number and type of lanes in the Segment 3 Roadway Plan, subject to TR Article 11 of the Project Agreement;

(c) The approximate location of Ramps in the Segment 3 Roadway Plan subject to TR Article 11 of the Project Agreement;

(d) The number and approximate location of interchanges and the type of interchanges in the Segment3 Roadway Plan subject to TR Article 11 of the Project Agreement;

(e) The number and approximate location of pedestrian and vehicular bridges in the Segment 3 Roadway Plan subject to TR Article 11 of the Project Agreement; and

(f) The number and approximate horizontal and vertical location of noise walls in the Segment 3 Roadway Plan subject to TR Article 13 of the Project Agreement.

"Basic Storage and Drainage Tunnel Configuration" means the following Elements:

(a) The horizontal alignment between tunnel station 14+41 to station 24+00 and tunnel station 228+00 to 230+54 as depicted on Segment 3 Storage and Drainage Tunnel Plan, subject to TR Article 21 of the Project Agreement;

(b) The horizontal alignment between tunnel station 24+00 and station 228+00 as depicted on Segment 3 Storage and Drainage Tunnel Plan, subject to TR Article 21 of the Project Agreement; provided, however, that the horizontal alignment between these stations may deviate from the alignment shown up to five (5) feet horizontally;

(c) The vertical alignment as depicted on Segment 3 Storage and Drainage Tunnel Plan, subject to TR Article 21 of the Project Agreement; provided, however, that the vertical alignment may deviate vertically up to +/- 12 inches;

(d) The number and general location of three tunnel construction shafts as depicted on Segment 3 Storage and Drainage Tunnel Plan, subject to TR Article 21 of the Project Agreement; and

(e) The number and general location of tunnel drop shafts as depicted on Segment 3 Storage and Drainage Tunnel Plan, subject to TR Article 21 of the Project Agreement.

"**Betterment**" means any upgrading of the Utility in the course of such Utility Relocation 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 a Relocated Utility over that which was provided by the existing Utility. Notwithstanding the foregoing, the following are not considered Betterments:

(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);

(f) Any upgrading required by the Utility Owner's applicable Relocation Standards; and

(g) Any discretionary decision by a Utility Owner that is contemplated within a particular standard described in clause (f) above.

"**Bid Financial Model**" means the financial model submitted by Developer as part of its Proposal as agreed between MDOT and the Developer and included in Schedule 3-B (Bid Financial Model) of the Project Agreement.

"**Bond Authorizing Resolution**" means Resolution No. 2018-176 adopted by the Issuer on October 23, 2018, authorizing the issuance of the Series 2018 Bonds, and each such subsequent bond authorizing resolution issued or adopted by the Issuer authorizing the issuance, sale and delivery of Additional Parity Bonds.

"**Bond Counsel**" means Dykema Gossett PLLC, or other attorneys selected by the Issuer, with the consent of the Company, which consent shall not be unreasonably withheld, who have nationally recognized expertise in the issuance of municipal securities, the interest on which is excluded from gross income for federal and state income tax purposes

"**Bond Insurance Policy**" means the monoline insurance policy, if any, issued at the request of the Issuer or the Company by the Insurer guaranteeing the scheduled payment of the principal of and interest on all or a portion of the Series 2018 Bonds when due.

"**Bond Obligations**" means all obligations of the Company now existing or hereafter arising under the Senior Loan Agreement, any Additional Parity Bonds Loan Agreement, if applicable, and the other Finance Documents relating to the issuance of the Series 2018 Bonds.

"**Bond Proceeds Sub-Account**" means the "Bond Proceeds Sub-Account" established and created in the name of the Company pursuant to Section 5.01(a)(i)(A) of the Collateral Agency Agreement.

"**Bond Purchase Agreement**" means the Bond Purchase Agreement entered into among the Company, the Issuer, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Wells Fargo Bank, N.A. dated on or around the date of the Collateral Agency Agreement.

"Bondholder" or "Owner" of a Bond means the registered owner of such Bond as shown in the registration records of the Trustee.

"**Bonds**" means the Series 2018 Bonds together with the Additional Parity Bonds issued from time to time pursuant to the Indenture, if any.

"Bonds Mandatory Prepayment Sub-Account" means the "Bonds Mandatory Prepayment Sub-Account" of the Mandatory Prepayment Account established and created in the name of the Company pursuant to Section 5.01 of the Collateral Agency Agreement.

"Borrower Representative" means the Chief Executive Officer (or person performing a similar function) of the Company; any member of the Company; or any other individual (or individuals) so designated by the Company to act as Borrower Representative by written certificate furnished to the Collateral Agent or any other Secured Party, as applicable, containing the specimen signature of such Person and signed on behalf of the Company by the Chief Executive Officer (or person performing a similar function) of the Company or by HoldCo as sole member of the Company. Such certificate may designate an alternate or alternates.

"Business Day" means any day other than a Saturday, a Sunday or any other day on which commercial banks in New York City, New York or Lansing, Michigan are required or authorized by law to be closed.

"Calculation Date" means each March 31, June 30, September 30 and December 31 occurring on or after the Substantial Completion Date.

"Calculation Period" means,

- (a) for the first Calculation Period, the three-month period commencing on January 1, 2024 (the "Calculation Period Commencement Date") and ending on March 31, 2024;
- (b) for the second Calculation Period, the six-month period commencing on the Calculation Period Commencement Date and ending on June 30, 2024;
- (c) for the third Calculation Period, the nine-month period commencing on the Calculation Period Commencement Date and ending on September 30, 2024;
- (d) thereafter, the twelve (12) consecutive month period ending on a Calculation Date.

"**Cash Account Balances**" means all amounts standing to the credit of any bank account held by or on behalf of Developer, including in Lender accounts and reserve accounts (excluding the Handback Account), or the value of any letter of credit issued in substitution for any bank account previously held by Developer (excluding the Handback Account), at the Expiration Date.

"Change" means:

- (a) with respect to the D&C Work, any change to Schedule 17 (Technical Requirements) of the Project Agreement, including any addition, decrease, omission, deletion, removal or modification from the D&C Work which result from such change to such Schedule 17 (Technical Requirements) of the Project Agreement;
- (b) with respect to the Maintenance Work, any change to Schedule 17 of the Project Agreement (Technical Requirements) of the Project Agreement, including any addition, decrease, omission, deletion, removal or modification to or from the Maintenance Work which result from such change to such Schedule 17 (Technical Requirements) of the Project Agreement; and
- (c) any change to the Project, including any addition, decrease omission, deletion, removal or modification to or from Project.

"Change in Control" means any Equity Transfer, transfer of an interest, direct or indirect, in an Equity Member, or other assignment, sale, financing, grant of security interest, hypothecation, conveyance, transfer of interest or transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation, bankruptcy 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 Developer or a material aspect of its business. A change in possession of the power to direct or control or cause the direction or control of Developer if such Equity Member possesses, immediately prior to such Change in Control, the power to direct or control or cause the direction or control of the management of Developer. Notwithstanding the foregoing, the following shall not constitute a Change in Control:

(a) a change in possession of the power to direct or control the management of Developer or a material aspect of its business due solely to a bona fide transaction involving beneficial interests in the ultimate parent organization of an Equity Member, (but not if the Equity Member is the ultimate parent organization), <u>provided</u>, <u>however</u>, that this exception shall not apply if the transferee in such transaction is, at the time of the transaction, suspended or debarred, 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 State department or agency;

(b) an upstream reorganization or transfer of direct or indirect interests in Developer 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 Developer;

(c) a transfer of interests (i) between managed funds that are under common ownership, management or control or (ii) by an Equity Member to a fund, investment vehicle or other entity managed by or under common control of such Equity Member, except, in each case, a change in the management or control of a fund, investment vehicle or other entity, as applicable, that manages or controls Developer;

(d) an Equity Transfer, where the transferring Equity Member and the transferee are under the same ultimate parent organization ownership, management and control before and after the transfer;

(e) a change in possession of the power to direct or control the management of Developer 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;

(f) the exercise of minority veto or voting rights (whether provided by Applicable Law, by Developer's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of Developer, provided that if such minority veto or voting rights are provided by shareholder or similar agreements, MDOT has received copies of such agreements; or

(g) the grant of a security interest pursuant to the Security Documents, in strict compliance with the Project Agreement, or the exercise of Lender remedies under the Security Documents, including foreclosure.

"Change Order" means a written order issued by MDOT in accordance with Schedule 9 (Change Procedure) of the Project Agreement directing Developer to make a Change. This written document amends the Project Agreement by adding, deleting or modifying the Project Agreement to include payment, time, Project Work and conditions not previously addressed within the Project Agreement.

"Change Request" means a written request from Developer issued in accordance with Section 2.1 of Schedule 9 (Change Procedure) of the Project Agreement seeking to change the character, quantity, quality, description, scope or location of any part of the Project Work, or to modify or deviate from the Project Agreement.

"Change Response" means the written document prepared by Developer in accordance with Section 1.4 of Schedule 9 (Change Procedure) of the Project Agreement.

"Claim" means any claim, proceeding, action, cause of action, investigation, demand or suit (including by way of contribution or indemnity) made:

- (a) in connection with the Design-Build Contract or Relevant Infrastructure; and
- (b) at law or for specific performance, in equity, restitution, payment of money (including damages), increase in the Milestone Payments or Availability Payments and extension of time or other form of relief.

"Closing Date" means with respect to the Series 2018 Bonds, the date on which Financial Close (as defined in the Project Agreement) occurs and with respect to any other series of the Bonds, the date on which such Bonds are issued, authenticated and delivered in accordance with the Indenture or the Supplemental Indenture, if any.

"Code" means the Internal Revenue Code of 1986 and the regulations promulgated and rulings issued thereunder, each as amended from time to time, and any successor statute.

"**Collateral**" means all real and personal property, now owned or hereafter acquired, which is subject to the security interests or Security Interests granted under any of the Security Documents, including without limitation:

- (a) All Project Revenues, subject to the terms of the Project Agreement;
- (b) Company's interest in the Project when granted to Company as contemplated in the Project Agreement;
- (c) Company's right, title and interest in all of its accounts (with the exception of the Distribution Account and the PA Handback Account), general intangibles, and contracts or other rights to receive Project Revenues, including its right, title and interest in any Material Project Contract and performance security;
- (d) All assignable permits and other governmental approvals related to the Project;

- (e) Proceeds of insurance policies or condemnation proceedings to the extent not used to repair or rebuild the Project or otherwise for their intended purpose and permitted under the Project Agreement;
- (f) Company's other property;
- (g) the proceeds of the foregoing; and
- (h) a pledge by HoldCo of the shares or membership interests in Company and any Indebtedness of the Company to a Sponsor (or an Affiliate of a Sponsor) as a result of affiliate or Shareholder Loans made to the Company.

"Collateral Agent" means U.S. Bank National Association, in its capacity as collateral agent on behalf of itself and the other Secured Parties and its successors and assigns pursuant to the Collateral Agency Agreement.

"Commercial Close" means the execution of the Project Agreement by Developer and MDOT, in accordance with Section 6 of the ITP.

"Commercial Close Date" means the date of Commercial Close.

"**Commercially Reasonable Insurance Rates**" means an amount for insurance premiums up to 130% of 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) the rates for the relevant Insurance Policy assumed in the Financial Model.

"Communication" has the meaning set out in Part 1 Section 3.4 of the Design-Build Contract.

"Company" or "Developer" means Oakland Corridor Partners LLC, a Delaware limited liability company.

"Compensable Delay Event" means any of the following events or circumstances to the extent, in each case, that it directly and adversely impacts the D&C Work, Interim Maintenance Work or the Long Term Maintenance Work for the Tunnel and Pump Station during the D&C Term:

- (a) the implementation of an MDOT Change, excluding any Change following a Change Request;
- (b) MDOT Fault;
- (c) a Hazardous Materials Relief Event;
- (d) a (i) Relevant Change in Law or (ii) Change in Law occurring during the D&C Term which interferes directly and adversely with, or causes a failure of, the performance of the Long Term Maintenance Work;
- (e) a NEPA Event;
- (f) compliance by Developer with an order or direction of an Emergency Service Provider in an Emergency;
- (g) the preemption, confiscation, diversion, destruction or other interference in possession or performance of substantial materials or services by a Governmental Entity in connection with an Emergency or any condemnation or other taking by eminent domain of any material portion of the Project ROW or the D&C Work;
- (h) failure of MDOT to provide responses to proposed schedules, plans, design documents, and other Submittals and matters submitted to MDOT after the Commercial Close for which response is

required under the Project Agreement as an express prerequisite to Developer's right to proceed or act, within the time periods indicated in the Project Agreement, or if no time period is indicated, within a reasonable time, taking into consideration the nature, importance and complexity of the Submittal or matter; provided, however, that the foregoing shall apply only following delivery of Notice after the expiration of the applicable time period from Developer requesting such action in accordance with the terms and requirements of the Project Agreement;

- discovery at, near or on the Project ROW of any archeological, paleontological or cultural resources (including historic properties), excluding any such substance or resources known or disclosed to Developer as of the Setting Date (or which should have been known to Developer pursuant to a Reasonable Investigation);
- discovery at, near or on the Project ROW of any Threatened or Endangered Species (regardless of when the species was listed as threatened or endangered), excluding any such presence of species known or disclosed to Developer as of the Setting Date (or which should have been known to Developer pursuant to a Reasonable Investigation);
- (k) loss or damage to the Relevant Infrastructure directly caused by MDOT Fault;
- issuance of a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of, or by complying with such temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction results in prohibiting the prosecution of, any material portion of the D&C Work, Interim Maintenance Work, or Long Term Maintenance Work;
- (m) subject to Developer promptly notifying MDOT in writing upon discovery and before the conditions are disturbed or before the affected Project Work is performed, discovery of (i) actual subsurface or latent physical conditions within two (2) feet of boring holes identified in the Geotechnical Data Reports that differ materially from the subsurface conditions indicated in such report at such boring holes, excluding any such conditions known or disclosed to Developer prior to the Setting Date or that could have been reasonably anticipated as potentially present by an experienced global civil works contractor based on the information contained in such Geotechnical Data Reports (for avoidance of doubt, encountering conditions more than two (2) feet away from the actual boring holes that differ from conditions extrapolated from such boring data is not a Compensable Delay Event); or (ii) discovery of actual subsurface physical conditions within the Planned ROW Limits of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Project Agreement, excluding any such conditions known or disclosed to Developer prior to the Setting Date or that would become known to Developer by undertaking a Reasonable Investigation;
- (n) any order of MDOT to suspend for convenience exceeding 24 hours in total for a single suspension or 144 cumulative hours in total across multiple suspensions;
- (o) subject to Developer complying with its obligations under Sections 9.4 and 14.8, performance of work, other than snow and ice removal, in the vicinity of the Project Right of Way by MDOT Contractors or the P3 Lighting Contractor that materially and directly disrupts and interferes with the D&C Work or Interim Maintenance Work;
- (p) subject to Developer complying with its obligations under Section 9.4, Section 14.6 and TR Article 4, performance of work in the vicinity of the Project Right of Way by the Segment 2 Contractor that materially and directly disrupts and interferes with the D&C Work or Interim Maintenance Work, provided, however, that Developer may not seek relief pursuant to this clause (p) if the Segment 2 Contractor or any partner or joint venture member of the Segment 2 Contractor is an Affiliate of (i) Developer, (ii) any Equity Member of the Developer, or (iii) the D&C Contractor or any Equity Member of the D&C Contractor unless the claimed material disruption or interference is (x) a direct result of an excusable delay in the work of the Segment 2

Contractor and (y) not caused, in whole or in part, by a culpable act, omission, negligence, recklessness or intentional misconduct of the Segment 2 Contractor or breach by the Segment 2 Contractor of its obligations and covenants under its contract with MDOT;

- (q) Subject to Section 24.8, loss or damage to the Relevant Infrastructure directly caused by Vehicle Damage;
- (r) a Utility Relief Event; and
- (s) a Utility Delay.

"**Compensable Relief Event**" means any of the following events or circumstances to the extent, in each case, that it interferes directly and adversely with, or causes a failure of, the performance of the Punch List or Long Term Maintenance Work after the Substantial Completion Date:

- (a) the implementation of an MDOT Change, excluding any Change following a Change Request;
- (b) MDOT Fault;
- (c) a Hazardous Materials Relief Event;
- (d) a NEPA Event;

(e) compliance by Developer with an order or direction of an Emergency Service Provider in an Emergency;

(f) a change in standards materially impacting the Punch List or Long Term Maintenance Work or the Project with which MDOT directs Developer to comply under Section 27.2;

(g) any Change in Law;

(h) failure of MDOT to provide responses to proposed schedules, plans, design documents, and other Submittals and matters submitted to MDOT after the Commercial Close Date for which response is required under the Project Agreement as an express prerequisite to Developer's right to proceed or act, within the time periods (if any) indicated in the Project Agreement, or if no time period is indicated, within a reasonable time, taking into consideration the nature, importance and complexity of the Submittal or matter; provided, however, that the foregoing shall apply only following delivery of Notice after the expiration of the applicable time period from the Developer requesting such action in accordance with the terms and requirements of the Project Agreement;

(i) discovery at, near or on the Planned ROW Limits of any archeological, paleontological or cultural resources (including historic properties), excluding any such substance or resources known or disclosed to the Developer as of the Setting Date (or which should have been known to Developer pursuant to a Reasonable Investigation);

(j) discovery at, near or on the Planned ROW Limits of any Threatened or Endangered Species (regardless of when the species was listed as threatened or endangered), excluding any such presence of species known to the Developer as of the Setting Date (or which should have been known or disclosed to Developer pursuant to a Reasonable Investigation);

(k) loss or damage to the Relevant Infrastructure directly caused by MDOT Fault;

(l) issuance of a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of a material portion of the Punch List or Long Term Maintenance Work; and

(m) discovery of actual subsurface or latent physical conditions within two (2) feet of boring holes identified in the Geotechnical Data Reports included among the Reference Information Documents that differ materially from the subsurface conditions indicated in such report at such boring holes, excluding any such conditions known to Developer prior to the Setting Date or that could have been reasonably anticipated as potentially present by an experienced global civil works contractor based on the information contained in such Geotechnical Data Reports (for avoidance of doubt, encountering conditions more than two (2) feet away from the actual boring holes that differ from conditions extrapolated from such boring data is not a Compensable Relief Event); or discovery of actual subsurface physical conditions within the Project ROW, including Additional Properties required due to MDOT Changes, but excluding any other Additional Properties, of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Project Agreement, excluding any such conditions known or disclosed to Developer prior to the Setting Date or that would become known to Developer by undertaking a Reasonable Investigation;

(n) any order of MDOT to suspend for convenience exceeding 24 hours in total for a single suspension or 144 cumulative hours in total across multiple suspensions;

(o) subject to Developer complying with its obligations under Sections 9.4.3 and 14.8, performance of work, other than snow and ice removal, in the vicinity of the Project Right of Way by an MDOT Contractor or the P3 Lighting Contractor that materially and directly disrupts and interferes with the Punch List or Long Term Maintenance Work occurring on the Project Right of Way; and

(p) Subject to Section 24.8, loss or damage to the Relevant Infrastructure directly caused by Vehicle Damage.

"Compensation Amounts" means the amounts, if any, payable by MDOT to the Company under the Project Agreement on account of the occurrence of a Compensable Relief Event.

"**Completion Deadline**" means the Substantial Completion Deadline and the Final Acceptance Deadline, or both of them, as the context requires.

"Completion Milestone" means each Milestone, Substantial Completion and Final Acceptance Deadline, or all of them, as the context requires.

"**Completion Warranty Period**" means the period commencing on the Substantial Completion Date and ending two (2) years after the Substantial Completion Date.

"Conditions to Assistance" has the meaning given in Section 10.7.5(a) of the Project Agreement.

"Constitution" means the Michigan Constitution of 1963, as amended.

"**Construction Account**" means the "Construction Account" established and created in the name of the Company pursuant to Section 5.01 of the Collateral Agency Agreement.

"Construction Funds Transfer Date" has the meaning specified in Section 5.02(b) of the Collateral Agency Agreement.

"Construction Requisition Certificate" means a certificate prepared by the Company in accordance with the terms of the Collateral Agency Agreement substantially in the form of Exhibit E to the Collateral Agency Agreement containing the certifications by the Company required by the Collateral Agency Agreement with respect to a requested transfer of funds from the Construction Account.

"Construction Work" means all work to build or construct, make, form, manufacture, furnish, install, supply, deliver, or equip the Project, excluding Design Work.

"Consumer Price Index" means the Consumer Price Index for All Urban Consumers (CPI-U), All Items, for the Detroit metropolitan statistical area, as published twice per year by the United States Department of Labor, Bureau of Labor Statistics, for which the base year is 1982-84 = 100.

"Contaminated Groundwater" means any extracted, pumped and/or ponded groundwater that contains Hazardous Materials.

"Continuing Disclosure Agreement (Company)" means the Continuing Disclosure Agreement, dated as of the Closing Date, between the Company and U.S. Bank National Association, as dissemination agent, pursuant to the Rule.

"Continuing Disclosure Agreement (MDOT)" means the Continuing Disclosure Agreement, dated as of the Closing Date, by MDOT, pursuant to the Rule.

"Continuing Disclosure Agreements" means each of (i) the Continuing Disclosure Agreement (Company), (ii) the Continuing Disclosure Agreement (MDOT) and (iii) any other continuing disclosure agreement with respect to Rule 15c2-12 to be entered into between the dissemination agent referred to therein and each "obligated person" (as such term is defined under Rule 15c2-12).

"Contract Year" means each of:

(a) for the 1st year after Financial Close, the period from the Financial Close Date to the next September 30th;

(b) each subsequent period of 12 calendar months commencing on October 1st and ending on September 30th; and

(c) for the last year of the Project Agreement, the period from October 1st in the year in which the Project Agreement expires or is terminated (for whatever reason) to and including the Expiration Date.

Any computation made on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than 365 or 366 days, whichever is applicable.

"Contractor Breakage Costs" means:

(a) [INTENTIONALLY DELETED]; and

(b) losses that have been or will be reasonably and properly incurred by Contractor under the DB Subcontracts as a direct result of the termination of the Design-Build Agreement (and which shall not include lost profit or lost opportunity), but only to the extent that:

(i) the losses that have been or will be reasonably and properly incurred are in connection with the Project and with respect to the Contractor Obligations required to be provided or carried out, including:

(A) any materials or goods ordered or subcontracts placed that cannot be cancelled without such losses;

(B) any expenditure incurred in anticipation of the provision of services or the completion of Contractor Obligations in the future; and

(C) the cost of demobilization including the cost of any relocation of equipment used in connection with the Project;

(ii) the losses that have been or will be reasonably and properly incurred are under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on an arm's length basis; and

(iii) Contractor and each relevant DB Subcontractor has used its reasonable efforts to mitigate such losses.

"Contractor Change in Control" means any Contractor Transfer, transfer of an interest, direct or indirect, in a Design-Build Contractor Member or a Contractor Guarantor, or other assignment, sale, financing, grant of security interest, hypothecation, conveyance, transfer of interest or transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation, bankruptcy 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 Contractor or a material aspect of its business. A change in possession of the power to direct or control or cause the direction or control of the management of a Design-Build Contractor Member or a Contractor Guarantor may constitute a Contractor Change in Control if such Design-Build Contractor Member or control or cause the direction or control of such Contractor Change in Control, the power to direct or control or cause the direction or control of the management of Contractor. Notwithstanding the foregoing, the following shall not constitute a Contractor Change in Control:

(a) a change in possession of the power to direct or control the management of Contractor or a material aspect of its business due solely to a bona fide transaction involving beneficial interests in the ultimate parent organization of a Design-Build Contractor Member or a Contractor Guarantor (but not if the Design-Build Contractor Member or Contractor Guarantor is the ultimate parent organization), provided, however, that this exception shall not apply if the transferee in such transaction is, at the time of the transaction, suspended or debarred, 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 State department or agency;

(b) an upstream reorganization or transfer of direct or indirect interests in Contractor, a Design-Build Contractor Member or a Contractor Guarantor 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 Contractor, a Design-Build Contractor Member or a Contractor Guarantor;

(c) a transfer of interests between managed funds that are under common ownership or control, except a change in the management or control of a fund that manages or controls Contractor, a Design-Build Contractor Member or a Contractor Guarantor;

(d) a Contractor Transfer, where the transferor and the transferee are under the same ultimate parent organization ownership, management and control before and after the transfer;

(e) a change in possession of the power to direct or control the management of Contractor, a Design-Build Contractor Member or a Contractor Guarantor 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;

(f) the exercise of minority veto or voting rights (whether provided by Applicable Law, by the organizational documents of Contractor, a Design-Build Contractor Member or a Contractor Guarantor or by related member or shareholder agreements or similar agreements) over major business decisions of Contractor, a Design-Build Contractor Member or a Contractor, provided that if such minority veto or voting rights are provided by shareholder or similar agreements, Developer has received copies of such agreements; or

(g) [INTENTIONALLY DELETED].

"Contractor's Construction Manager" has the meaning given in TR Article 3 of the Project Agreement. Contractor's Construction Manager is considered a Key DB Personnel position.

"Contractor Default" means the occurrence of any one or more of the following events or conditions where such event is not solely and directly attributable to a Delay Event:

(a) Contractor fails to begin the D&C Work within 24 days following MDOT's issuance of NTP;

(b) Contractor fails to begin the Interim Maintenance Work within 90 days following MDOT's issuance of NTP;

(c) Contractor fails to begin the Long Term Maintenance Work associated with the Tunnel and Pump Station to be performed prior to Substantial Completion within 24 days following a Milestone Completion Certificate for Milestone 2;

(d) [INTENTIONALLY DELETED];

(e) Contractor fails to make any payment due to Developer under the Design-Build Contract when due;

(f) Contractor or a Contractor Guarantor ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on Contractor's or such Contractor Guarantor's ability to perform its obligations under the Design-Build Documents;

(g) Contractor abandons the Project or discontinues the performance of a substantial portion of the Contractor Obligations for a continuous period of 24 or more days, except in accordance with the approved Project Schedule;

(h) Contractor fails to obtain, provide and maintain the Insurance Policies for which it is responsible in accordance with the Design-Build Contract and such failure is not cured within three days after receiving notice from Developer of such failure;

(i) Contractor breaches Part 2 Section 23.1 with respect to a Contractor Change in Control;

(j) Any representation or warranty made by Contractor or a Contractor Guarantor in the Design-Build Contract or any other Design-Build Document is false in any material respect or materially misleading or inaccurate in any material respect when made or omits material information when made;

(k) A Bankruptcy Event arises with respect to:

(i) Contractor (except to the extent such Bankruptcy Event is caused by a failure by Developer to pay Contractor as required under the Design-Build Contract);

(ii) subject to Part 2 Section 30.3.3(d)(ii) of the Design-Build Contract, any Design-Build Contractor Member; or

(iii) subject to Part 2 Section 30.3.3(d)(ii) of the Design-Build Contract, any Contractor Guarantor;

(l) [INTENTIONALLY DELETED]

(m) Contractor fails to achieve Substantial Completion by the DB Longstop Date;

(n) A Persistent Contractor Default occurs, Developer delivers to Contractor a Contractor Default Notice, and either (i) Contractor fails to deliver to Developer, within 24 days after the earlier of: (A) such Contractor Default Notice being delivered by Developer; and (B) MDOT's delivery of a related Default Notice under (and as defined in) the Project Agreement, a cure plan meeting the requirements for approval in Part 2 Section 30.6.1 of the Design-Build Contract or (ii) Contractor fails to fully comply with the schedule or specific elements of, or actions required under, the approved cure plan;

(o) Contractor fails to comply with Developer's or MDOT's suspension of the Contractor Obligations issued in accordance with Part 2 Section 20.6 of the Design-Build Contract within the time reasonably allowed in such order;

(p) After exhaustion of all rights of appeal, there occurs any disqualification, suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, from bidding, proposing or contracting with any United States or State department or agency, of Contractor or any Key DB Subcontractor, where its work is not completed;

(q) [INTENTIONALLY DELETED];

(r) Without limitation to Part 2 Sections 30.1.1 through 30.1.16 of the Design-Build Contract, Contractor fails to timely observe or perform or cause to be observed or performed any other covenant, agreement, obligation, term or condition required to be observed or performed by Contractor under the Design-Build Documents, including failure to pay for or perform the Contractor Obligations or any portion thereof in accordance with the Design-Build Documents, to cure any such failure identified in such Notice (but excluding any Noncompliance Event unless the number of points accumulated with respect to such Noncompliance Event constitutes a Contractor Default under Part 2 Section 30.1.14 of the Design-Build Contract);

(s) Contractor fails to obtain, provide, maintain and deliver originals, certificates or required evidence of the D&C Performance Security, the DB Performance Support, other bonds, guarantees, letters of credit or other payment or performance security as and when required under the Design-Build Contract for the benefit of relevant parties, or fails to comply with any requirement of the Design-Build Contract pertaining to the amount, terms or coverage of the same;

(t) Contractor failing to pay any Liquidated Damages (which sum or sums are not being disputed by Contractor in accordance with the DB Dispute Resolution Procedures);

(u) The Maximum Liability Cap of Contractor as set out in Part 1 Section 12.2 of the Design-Build Contract has been met or exceeded (other than by reason of claims excluded therefrom pursuant to Part 1 Section 12.3 of the Design-Build Contract), including, without limitation, by reason of Liquidated Damages, indemnities, abatements or other losses, in each case, recovered by Developer under the Design-Build Contract;

(v) Any Contractor Guarantor defaulting under the Parent Guaranty (which default, if it is in respect of a Contractor Default under the Design-Build Contract, shall be after the relevant cure period (if any) under the Design-Build Contract applicable to such Contractor Default has expired) or expressly taking the position that the Parent Guaranty is invalid or unenforceable;

(w) Contractor fails to implement any cure plan required under Part 2 Section 30.5 of the Design-Build Contract or comply with such agreed cure plan; and

(x) Contractor fails to implement any cure plan required under Part 2 Section 30.6 of the Design-Build Contract or comply with such agreed cure plan; and

"Contractor Default Notice" has the meaning given in Part 2 Section 30.3.2 of the Design-Build Contract.

"Contractor Environmental Approvals" means any Contractor Governmental Approvals relating to environmental matters, including NEPA Approval.

"Contractor Fault" means:

(a) the breach by any Contractor-Related Entity of any of its obligations or any representation, warranty or covenant under the Design-Build Documents;

(b) a breach of Applicable Law or any Governmental Approval by any Contractor-Related Entity; and

(c) fraud, criminal conduct, intentional misconduct, recklessness, bad faith, gross negligence, negligence or other culpable act or omission of any Contractor-Related Entity.

"Contractor Governmental Approval" means any permit, license, consent, concession, grant, franchise, authorization, waiver, certification, exemption, filing, lease, registration or ruling, variance or other approval, guidance, protocol, mitigation agreement, agreement or memoranda of agreement/understanding, and any revision, modification, amendment, supplement, renewal or extension of any of the foregoing, required by or with any Governmental Entity in order to perform the Contractor Obligations or take actions required to complete obligations in connection with the Design-Build Contract. Contractor Governmental Approvals include encroachment permits and other access rights or right of entries for Contractor Obligations to be performed in areas under the jurisdiction of Local Agencies and Contractor Environmental Approvals.

"Contractor Guarantor" means any Design-Build Contractor Member, C.D.M. Leasing or JAJ Holdings, and Contractor Guarantors means all of them collectively.

"Contractor Obligations" means:

- (a) the performance of the D&C Work;
- (b) the performance of the Interim Maintenance Work;

(c) the performance of the Long Term Maintenance Work for the Tunnel and Pump Station prior to the Substantial Completion Date; and

(d) the performance of all other obligations of Contractor under the Design-Build Contract, including, without limitation, the performance of all warranty obligations,

all in accordance with the Design-Build Contract and the Design-Build Documents (including, for certainty, the Developer Requirements), but excluding the Excluded Obligations.

"Contractor Payment" has the meaning given in Part 1 Section 13.4(h) of the Design-Build Contract.

"Contractor's Project Manager" has the meaning given in TR Article 3 of the Project Agreement. Contractor's Project Manager is considered a Key DB Personnel position.

"Contractor Release of Hazardous Materials" means (a) Release(s) of Hazardous Material attributable to the actions, omissions, negligence, willful misconduct, or breach of Applicable Law or contract by any Contractor-Related Entity, provided that the removal of Hazardous Materials by a Contractor-Related Entity in accordance with the requirements of the Design-Build Documents, on an Equivalent Project Relief basis, shall not be a "Contractor Release of Hazardous Material"; (b) Release(s) of Hazardous Materials arranged to be brought onto the Site or elsewhere by any Contractor-Related Entity; regardless of cause, or (c) use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any Contractor-Related Entity in violation of the requirements of the Design-Build Documents or any Applicable Law or Governmental Approval. "Contractor Transfer" means any assignment, mortgage, encumbrance, hypothecation, conveyance, sale, or other transfer of an Equity Interest in Contractor, a Design-Build Contractor Member or a Contractor Guarantor.

"Contractor Warning Notice" has the meaning given in Part 2 Section 30.4.1 of the Design-Build Contract.

"Contractor-Related Entity" means:

- (a) Contractor;
- (b) each Design-Build Contractor Member;
- (c) each Contractor Guarantor;
- (d) each DB Subcontractor; and

(e) employees, agents, officers, directors, shareholders (but excluding shareholders of publicly traded companies), representatives, consultants, successors, assigns and invitees of any of the parties in clauses (a) through (d) of this definition,

and Contractor-Related Entities shall be construed accordingly. For greater certainty, none of Developer or any Developer-Related Entity (as defined in the Design-Build Contract) shall be a Contractor-Related Entity for purposes of the Design-Build Contract; provided that, any overlap between an entity being a Developer-Related Entity and being a Contractor-Related Entity shall not prevent such entity from being a Contractor-Related Entity hereunder.

"**Control**" means, with respect to any entity, any other entity having the power, directly or indirectly, to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract or otherwise (and the term "**Controlling**" has a corresponding meaning).

"**Control Agreement**" means a deposit account control agreement among the Company, the Collateral Agent and any Deposit Account Bank with respect to the Operating Account in form and substance reasonably satisfactory to the Collateral Agent.

"Controlling Work Item" means the activity or work item on the Critical Path of the D&C Work having the least amount of total Float.

"Cost to Complete" means:

(a) Those costs (internal and external) that MDOT reasonably and properly projects that it will incur in carrying out any process to request tenders from any parties interested in entering into a contract with MDOT to achieve Final Acceptance, including all costs related to the preparation of tender documentation, evaluation of tenders and negotiation and execution of relevant contracts; plus

(b) Costs that MDOT reasonably and properly projects that it will incur in achieving Final Acceptance; plus

(c) Any other Liability that MDOT would, but for the termination of the Project Agreement, not have incurred prior to Final Acceptance; minus

(d) Any insurance proceeds received by MDOT for the purposes of achieving Final Acceptance.

"Critical Path" means each critical path on the Project Schedule, which ends on the Substantial Completion Deadline or the Final Acceptance Deadline, as applicable (i.e. the term shall apply only following consumption of all available Float in the schedule for Substantial Completion or Final Acceptance, as applicable).

The lower case term "critical path" means the activities and durations associated with the longest chain(s) of logically connected activities through the Project Schedule with the least amount of total Float for all chains.

"Cure Action" has the meaning specified in Section 8.07 of the Senior Loan Agreement.

"D&C Contract" means:

- (a) the Project Agreement, where Developer will self-perform the D&C Work; or
- (b) the Design-Build Contract, where Developer will not self-perform the D&C Work; and
- (c) any other contract between Developer and a Subcontractor for the undertaking of the D&C Work.

"D&C Contract Price" means the price for performing the D&C Work under the D&C Contract as set out in Schedule 2 (Project Specific Information) of the Project Agreement.

"D&C Contractor" means Developer or the persons engaged by Developer in accordance with the D&C Contract being, at the date of Project Agreement, the Party listed in Schedule 2 (Project Specific Information) of the Project Agreement or any other Person who, in addition or substitution, is engaged by Developer to undertake all, or substantially all of the D&C Work.

"D&C Deduction" means a reduction to the Milestone Payment or Availability Payment in respect of a D&C Failure calculated in accordance with Sections 4.5 and 5.0 of Schedule 4 (Payment Mechanism) of the Project Agreement.

"D&C Direct Agreement" means the direct agreement dated on or before the Closing Date, among the Design-Build Contractor, the Design-Build Guarantors, the Company and the Collateral Agent, substantially in the form of Attachment 22 to the Design-Build Contract.

"D&C Failure" means each Noncompliance Event identified in Appendix A of the NCP Table which occurs prior to the Substantial Completion Date and relates to the Interim Maintenance Work or the Long Term Maintenance Work for the Tunnel and Pump Station.

"D&C Limits" means the Storage and Drainage Tunnel D&C Limits and the Roadway D&C Limits or either of them as the context requires.

"D&C Payment Bond" means a bond in the form of Schedule 7-C (Form of D&C Payment Bond) of the Project Agreement, with such non-material modifications acceptable to MDOT, in its sole discretion, in the amount set out in Schedule 2 (Project Specific Information) of the Project Agreement.

"D&C Performance Bond 1" means a bond in the form of Schedule 7-A (Form of D&C Performance Bond 1) of the Project Agreement, with such non-material modifications acceptable to MDOT, in its sole discretion, in the amount set out in Schedule 2 (Project Specific Information) of the Project Agreement.

"D&C Performance Bond 2" means a bond in the form of Schedule 7-B (Form of D&C Performance Bond 2) of the Project Agreement, with such non-material modifications acceptable to MDOT, in its sole discretion, in the amount set out in Schedule 2 (Project Specific Information) of the Project Agreement.

"D&C Performance Bonds" means the D&C Performance Bond 1 and D&C Performance Bond 2.

"D&C Performance Security" means:

- (a) the D&C Performance Bonds; and
- (b) the D&C Payment Bond,

or either of them as the context requires.

"D&C Term" means the period starting on the day after the Financial Close Date and ending at 11:59 p.m. on the Substantial Completion Date.

"D&C Work" means the Design Work, the Construction Work, the Non-Maintained Facilities Work and all other work necessary for the design, supply, construction (including installation) and commissioning of the Project including any Changes and any rectification of Defects in the Project.

"Dan's" means Dan's Excavating, Inc.

"DB Change" means:

(a) with respect to the D&C Work, any change to Attachment 17 (Technical Requirements), including any addition, decrease, omission, deletion, removal or modification from the D&C Work which result from such change to Attachment 17 (Technical Requirements);

(b) with respect to the Interim Maintenance Work or the Long Term Maintenance Work for the Tunnel and Pump Station prior to the Substantial Completion Date, any change to Attachment 17 (Technical Requirements), including any addition, decrease, omission, deletion, removal or modification to or from the Interim Maintenance Work or the Long Term Maintenance Work for the Tunnel and Pump Station prior to the Substantial Completion Date which result from such change to Attachment 17 (Technical Requirements); and

(c) any change to the Contractor Obligations, including any addition, decrease omission, deletion, removal or modification to or from the Contractor Obligations.

"DB Change Order" means a written order issued by Developer in accordance with Attachment 9 (DB Change Procedure) of the Design-Build Contract directing Contractor to make a DB Change. This written document amends the Design-Build Contract by adding, deleting or modifying the Design-Build Contract to include payment, time, Contractor Obligations and conditions not previously addressed within the Design-Build Contract.

"DB Change Request" means a written request from Contractor issued in accordance with Section 2.1 of Attachment 9 (DB Change Procedure) of the Design-Build Contract seeking to change the character, quantity, quality, description, scope or location of any part of the Contractor Obligations, or to modify or deviate from the Design-Build Contract.

"DB Dispute" has the meaning given in Attachment 15 (DB Dispute Resolution Procedures) of the Design-Build Contract.

"DB Dispute Resolution Procedures" means Attachment 15 (DB Dispute Resolution Procedures) of the Design-Build Contract.

"DB Liquidity Bond" means a "DB Liquidity Bond" (as defined in the Design-Build Contract) provided in accordance with the requirements of Part 1 Article 14 of the Design-Build Contract.

"DB Liquidity Bond Proceeds" has the meaning set out in Part 1 Section 14.5(b) of the Design-Build Contract.

"DB Longstop Date" means the date that is six (6) months prior to the Longstop Date.

"DB Performance Support" means:

(a) the DB Liquidity Bond and/or the DB Liquidity Bond Proceeds on deposit in the collateral account described in Part 1 Section 14.5(b) of the Design-Build Contract;

(b) Acceptable Replacement Support and/or the proceeds thereof on deposit in the collateral account described in Part 1 Section 14.5(b) of the Design-Build Contract; and

(c) the Parent Guaranty.

"DB Security Sub-Account" means the "DB Security Sub-Account" established and created in the name of the Company pursuant to Section 5.01 of the Collateral Agency Agreement.

"DB Subcontract" means any agreement entered into by Contractor with any DB Subcontractor in connection with the Contractor Obligations, or any such agreement, supplement or amendment at a lower tier, between DB Subcontractor and its lower tier DB Subcontractor or a supplier and its lower tier supplier, at all tiers, except purchase orders for the supply of off the shelf items that do not involve installation services on the Project ROW.

"DB Subcontractor" means any Person with whom Contractor has entered into any DB Subcontract to perform any part of the Contractor Obligations or provide any materials, equipment or supplies for the Project, on behalf of Contractor, and any other Person with whom any DB Subcontractor has further subcontracted any part of the Contractor Obligations, at all tiers.

"DB Submittal" means any document, design, plan, written work product or other written or electronic end product or item required under the Design-Build Contract to be delivered or submitted by Contractor to Developer and/or MDOT. DB Submittal does not include Notice of a Delay Event or Notices with respect to Disputes or DB Disputes.

"DB Submittal Requirements" has the meaning given in Part 2 Section 41, and includes the provisions of Attachment 10 (DB Submittal Requirements) of the Design-Build Contract.

"DB Work Order" means the letter described in Section 1.2 of Attachment 9 (DB Change Procedure) of the Design-Build Contract.

"DBE Goal" has the meaning given in Section 11.7.1 of the Project Agreement.

"DBRS" means DBRS Ratings Limited.

"Deduction" means any D&C Deduction and any Maintenance Deduction or either of them as the context requires.

"**Default**" means any event or circumstance that, with the giving of notice, the passage of time, or both, would (if not cured or otherwise remedied during such time) constitute an Event of Default.

"Defaulting Equity Member" means an Equity Member fails to make a payment due by it in accordance with the provisions of Section 2.2 of the Equity Contribution Agreement; and payment is not either (A) available to be drawn from the Equity Contribution Sub-Account or (B) made by the issuer of such Equity Member's relevant Equity Letter of Credit, if any, following a demand by the Collateral Agent pursuant to Section 2.4 of the Equity Contribution Agreement.

"Defeasance Escrow Account" means the "Defeasance Escrow Account" established and created pursuant to Section 11.2 of the Indenture.

"Defeasance Securities" means to the extent permitted by Law: (a) cash, (b) non-callable direct obligations of the United States of America ("Treasuries"), (c) evidences of ownership of proportionate interests in future interest and principal payments on Treasuries held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying Treasuries are not available to any Person claiming through the custodian or to whom the custodian may be obligated, (d) pre-refunded municipal obligations rated no lower than the then-current rating on

direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), (e) securities eligible for "AA+" defeasance under then existing criteria of S&P or (f) any combination thereof used to effect defeasance of the Bonds.

"Defect" means, as to the Project Agreement:

(a) any Element which does not comply with the requirements of the Project Agreement or the Design-Build Contract (as applicable); or

(b) any Error in an Element that is not consistent or is incompatible with its age, function, performance and use when properly maintained in accordance with Good Industry Practice. For greater certainty, if the improper maintenance of the Element arises or relates to the period prior to Substantial Completion, then the Error in the Element remains the obligation of the Contractor in accordance with and subject to the terms of the Design-Build Contract.

"**Defect Losses**" means, in respect of a Defect and without duplication: (a) all reasonable Liability incurred by Developer in connection with such Defect, including in respect of any temporary measures in relation thereto and/or the correction or repair thereof; and (b) all monetary deductions and other deductions, offsets and/or negative adjustments made by MDOT pursuant to the Project Agreement arising as a result of such Defect.

"Deferred Equity Amounts" means, on any date, any amount of unfunded cash equity that has been committed to Developer (including commitments to provide an Equity Investment or Equity Member Debt) and is shown to be available for use in the Financial Model prior to the Substantial Completion Date, but only to the extent that the commitment to provide such amount is supported by an irrevocable on-demand letter of credit issued by an Eligible LC Issuer naming Developer and/or the Collateral Agent as beneficiary and guaranteeing the provision of the committed amount by a date which is not later than the Final Acceptance Date.

"Delay Costs" means direct costs and Extra Work Costs incurred by Developer relating to Controlling Work Items that result solely and directly from a Delay Event, which are limited to those costs identified in and calculated in accordance with Section 3 of Schedule 5 (Costs Schedule) of the Project Agreement. The term "Delay Costs" does not include any Extra Work Costs incurred by Developer that relate to non-Controlling Work Items incident or collateral to a Delay Event or Controlling Work Items that do not result solely and directly from a Delay Event. In any event, Developer shall not be entitled to Delay Costs to the extent Developer is responsible for the delay or could have reasonably mitigated.

"Delay Event" means any of the following events or circumstances that occur during the D&C Term and directly impact the D&C Work, the Interim Maintenance Work or the Long Term Maintenance Work for the Tunnel and Pump Station:

- (a) a Force Majeure Event; or
- (b) a Compensable Delay Event.

"Delay Liquidated Damages" has the meaning set out in Part 1 Section 10.1.1 of the Design-Build Contract.

"Delay Liquidated Damages Cap" has the meaning set out in Part 1 Section 12.1 of the Design-Build Contract.

"Deposit Account Bank" means any bank, financial institution or trust company holding the Operating Account which is party to a Control Agreement over such account.

"Design Life" has the meaning given in TR Article 3.4.5(b)(ii) and Table 3-6 of the Project Agreement.

"Design Work" means all work related to the design, redesign, engineering or architecture for the Project.

"Design-Build Contract" means the Design-Build Contract for the Project, dated as of October 12, 2018, between the Company and the Design-Build Contractor, and any replacement contract entered into by the Company in accordance with the terms of the Finance Documents.

"Design-Build Contract Price" has the meaning set out in Attachment 2 (Project Specific Information) of the Design-Build Contract.

"Design-Build Contractor" or "Contractor" means MI 75 Constructors, LLC, a Michigan limited liability company, and any replacement contractor party to a replacement Design-Build Contract entered into in accordance with the terms of the Finance Documents.

"Design-Build Contractor Default" or "Contractor Default" has the meaning given in Part 2 Section 30.1 of the Design-Build Contract.

"Design-Build Contractor Member" means each of Ajax, C.A. Hull, Dan's and Jay Dee.

"Design-Build Documents" means:

- (a) the Design-Build Contract;
- (b) the D&C Performance Security;
- (c) the DB Performance Support;
- (d) the Design-Build Lenders' Direct Agreement; and

(e) any other document or agreement entered into under or for the purposes of supplementing, replacing, amending or novating, any of them or any other documents as Developer and Contractor agree is a Design-Build Document,

as each may be amended, restated, supplemented or otherwise modified from time to time.

"Design-Build Guarantee" means the Guarantee dated as of October 12, 2018 by the Design-Build Guarantor in favor of the Company.

"Design-Build Guarantor" means each of Dan's, Ajax, Jay Dee and C.A. Hull, C.D.M. Leasing or JAJ Holdings and "Design-Build Guarantors" means all of them collectively.

"Design-Build Lenders' Direct Agreement" means the direct agreement dated on or before the Closing Date, among the Design-Build Contractor, the Design-Build Guarantors, the Company and the Collateral Agent, substantially in the form of Attachment 22 to the Design-Build Contract.

"Design-Build Term" has the meaning set out in Part 2 Section 4.1 of the Design-Build Contract.

"Designated Payment Office of the Trustee" means the Corporate Trust Office of U.S. Bank National Association, a national banking association, whose office is located at U.S. Bank National Association, 101 S. Washington Square, Suite 520, Lansing, MI 48933 Attention: Global Corporate Trust Services – MDOT I-75.

"Developer Act" means:

(a) a breach of the Agreement by Developer that is not remedied by Developer within: (i) five (5) Business Days, in respect of any matter that has a material financial impact on Contractor; or (ii) twenty (20) Business Days, in respect of any matter that does not have a material financial impact on Contractor, in each case after receipt of notice of such breach from Contractor; or

(b) a negligent act or omission on the part of Developer,

but for greater certainty, neither resulting, directly or indirectly, from any breach, act or omission of MDOT, Contractor or any Contractor-Related Entity.

"Developer Default" means the occurrence of any one or more of the following events or conditions where such event is not solely and directly attributable to a Delay Event or Relief Event:

(a) Developer fails to begin the D&C Work within 30 days following MDOT's issuance of NTP;

(b) Developer fails to begin the Interim Maintenance Work within 120 days following MDOT's issuance of NTP;

(c) Developer fails to begin the Long Term Maintenance Work associated with the Tunnel and Pump Station within 30 days following a Milestone Completion Certificate for Milestone 2;

(d) Developer fails to begin all Long Term Maintenance Work for the remainder of the I-75 (Segment 3) excluding the Tunnel and Pump Station within 30 days following the Substantial Completion Certificate;

(e) Developer fails to (a) make any payment due to MDOT under the Project Agreement when due, (b) deposit funds to any custodial account, trust account or other reserve or account in the amount and within the time period required by the Project Agreement or (c) deliver the Acceptable Letter of Credit for Handback in accordance with Section 18 of the Project Agreement (if applicable) in an amount and within the period required in the Project Agreement;

(f) Developer ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on Developer's ability to perform its obligations under the Project Agreement;

(g) Developer abandons the Project or discontinues the performance of a substantial portion of the Project Work for a continuous period of 30 or more days, except in accordance with the approved Project Schedule;

(h) Developer fails to obtain, provide and maintain the Insurance Policies in accordance with the Project Agreement and such failure is not cured within 5 days after receiving notice from MDOT of such failure;

(i) Developer breaches Section 23.1 of the Project Agreement with respect to a Change in Control;

(j) Any representation or warranty made by Developer in the Project Agreement or any documents delivered to MDOT under the Project Agreement is false in any material respect or materially misleading or inaccurate in any material respect when made or omits material information when made;

(k) A Bankruptcy Event arises with respect to:

(i) Developer except to the extent such Bankruptcy Event is caused by a failure by MDOT to pay Developer as required under the Project Agreement, and/or

(ii) Any D&C Contractor (only during the D&C Term) or Maintenance Contractor, unless Developer:

(iii) enters into a replacement D&C Contract, guarantee or Maintenance Contract (as relevant) with a reputable counterparty acceptable to MDOT, in its good faith discretion, within 60 days of the relevant Bankruptcy Event;

(A) in the absence of entering into a replacement D&C Contract, Developer otherwise demonstrates to the satisfaction of MDOT, in its good faith discretion, that Developer possesses the technical and financial capacity to perform all remaining D&C Work in accordance with the Project Agreement; or

(B) in the absence of entering into a replacement Maintenance Contract, Developer otherwise demonstrates to the satisfaction of MDOT, in its good faith discretion, that Developer possesses the technical and financial capacity to perform all remaining Maintenance Work in accordance with the Project Agreement;

(l) Any D&C Contract or Maintenance Contract is terminated (other than non-default termination on its scheduled termination date) and Developer has not either:

(i) Entered into a replacement D&C Contract or Maintenance Contract (as relevant) with a reputable counterparty acceptable to MDOT, in its good faith discretion, within 60 days of the termination of the relevant D&C Contract or Maintenance Contract (as relevant), provided, however that if Developer is required to replace the Lead Tunnel Subcontractor, Developer shall have 120 days from the termination of the relevant D&C Contract to enter into a replacement D&C Contract; or

(ii) In the absence of entering into a replacement Maintenance Contract, Developer otherwise demonstrates to the satisfaction of MDOT, in its good faith discretion, that Developer possesses the technical and financial capacity to perform all remaining Maintenance Work in accordance with the Project Agreement;

(m) Developer fails to achieve Substantial Completion by the Longstop Date;

(n) A Persistent Developer Default occurs, MDOT delivers to Developer a Default Notice, and either (i) Developer fails to deliver to MDOT, within 30 days after such Notice is delivered, a cure plan meeting the requirements for approval in Section 30.6.1 of the Project Agreement or (ii) Developer fails to fully comply with the schedule or specific elements of, or actions required under, the approved cure plan;

(o) Developer fails to comply with MDOT's suspension of Project Work issued in accordance with Section 20.6 of the Project Agreement within the time reasonably allowed in such order;

(p) After exhaustion of all rights of appeal, there occurs any disqualification, suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, from bidding, proposing or contracting with any United States or State department or agency of (a) Developer, (b) any affiliate of Developer (as "affiliate" is defined in 29 CFR § 16.105 or successor regulation of similar import), (c) any Equity Member or (d) any Key Subcontractor whose work is not completed;

(q) Developer fails to replace and maintain the Maintenance Performance Security in accordance with the Project Agreement, including Section 13.3.4 thereof; and

(r) Without limitation to Sections 30.1.1 through 30.1.17 of the Project Agreement, Developer 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 Developer under the Project Documents, including failure to pay for or perform the D&C Work, Maintenance Work or any portion thereof in accordance with the Project Documents, to cure any such failure identified in such Notice from MDOT (but excluding any Noncompliance Event unless the number of points accumulated with respect to such Noncompliance Event constitutes a Developer Default under Section 30.1.14 of the Project Agreement).

"Developer Default Termination Amount" means the amount calculated in accordance with Section 2.0 of Schedule 16 (Termination Compensation) of the Project Agreement.

"Developer Employee and Subcontractor Breakage Costs" means:

(a) the payment of all wages earned, accrued unused vacation time, and any other payments required to be made by Developer to its employees under law, or under the terms and conditions of Developer's employment agreements with its employees as a direct result of the termination of the Project Agreement but only to the extent that such employment agreements are consistent with terms that have been entered into in the ordinary course of business; and

(b) losses that have been or will be reasonably and properly incurred by Developer under a Key Subcontract as a direct result of the termination of the Project Agreement (and which shall not include lost profit or lost opportunity), but only to the extent that:

(i) the losses that have been or will be reasonably and properly incurred are in connection with the Project and with respect to the Project Work required to be provided or carried out, including:

(1) any materials or goods ordered or subcontracts placed that cannot be cancelled without such losses;

(2) any expenditure incurred in anticipation of the provision of services or the completion of Project Work in the future; and

(3) the cost of demobilization including the cost of any relocation of equipment used in connection with the Project;

(ii) the losses that have been or will be reasonably and properly incurred are under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on an arm's length basis; and

(iii) Developer and the relevant Key Subcontractor have each used their reasonable efforts to mitigate such losses.

"Developer Fault" means:

(a) the breach by any Developer-Related Entity of any of its obligations or any representation, warranty or covenant under the Project Documents;

(b) a breach of Applicable Law or any Governmental Approval by any Developer-Related Entity; and

(c) fraud, criminal conduct, intentional misconduct, recklessness, bad faith, gross negligence, negligence or other culpable act or omission of any Developer-Related Entity.

"Developer Intellectual Property" means Intellectual Property developed by Developer either (a) prior to the Proposal Due Date, (b) independently of the Project Documents and/or (c) not authored, created, invented and/or put into practice under and/or for the purposes of the Project, and the Project Work.

"Developer Punch List Items" means Contractor Obligations that would otherwise be required to achieve a Completion Milestone but (a) were not completed by the Contractor on or prior to the applicable Milestone Completion and were not included as part of the Punch List Items, or (b) MDOT determines at any time that (i) such Contractor Obligations do not need to be performed, or (ii) such Contractor Obligations may be completed by a date after the applicable Milestone Completion date, and (c) in the case of the Contractor Obligations described in clauses (a) or (b)(ii) of this definition, if not completed, may have an adverse impact on the Developer or the performance of the Long Term Maintenance Work (as defined in the Project Agreement).

"Developer Release of Hazardous Materials" means (a) Release(s) of Hazardous Material attributable to the actions, omissions, negligence, willful misconduct, or breach of Applicable Law or contract by any Developer-

Related Entity, provided that the removal of Hazardous Materials by a Developer-Related Entity in accordance with the requirements of the Project Documents shall not be a "Developer Release of Hazardous Material"; (b) Release(s) of Hazardous Materials arranged to be brought onto the Site or elsewhere by any Developer-Related Entity; regardless of cause, or (c) use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any Developer-Related Entity in violation of the requirements of the Project Documents or any Applicable Law or Governmental Approval.

"Developer Requirements" has the meaning given in Part 1 Section 18.3 of the Design-Build Contract, and the Developer Requirements are set out in Attachment 23 (Developer Requirements) of the Design-Build Contract.

"Developer-Related Entity" means:

- (a) Developer;
- (b) each Non-Equity Member; and
- (c) each Equity Member.

"Deviation" means:

(a) any proposed or actual change, deviation, modification, alteration or exception from Schedule 17 (Technical Requirements) of the Project Agreement; or

(b) a design variance as described in Schedule 17 (Technical Requirements) of the Project Agreement.

Such Deviations include "design exceptions."

"Direct Agreements" means the collective reference to the PA Direct Agreement and the D&C Direct Agreement.

"Direct Participants" means DTC's participants that deposit U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments with DTC.

"Disadvantaged Business Enterprise" ("DBE") has the meaning given in 49 CFR Part 26.

"Dispute" has the meaning given in Schedule 15 (Dispute Resolution Procedures) of the Project Agreement.

"Dispute Resolution Procedures" means Schedule 15 (Dispute Resolution Procedures) of the Project Agreement.

"Distribution" means whether in cash or in kind, and both made and projected to be made:

(a) any:

(i) distribution to Equity Members, an Affiliate of the Developer or other distribution in respect of Units;

(ii) redemption or purchase of Units or reduction of limited liability company capital or the amount of an Equity Member's contribution stated in the articles of organization or any other reorganization or variation to limited liability company capital;

(iii) payment in respect of Junior Debt (whether of fees, principal, interest including capitalized interest and interest on overdue interest, breakage costs, or otherwise and whether or not such items are included or excluded from the definition of Junior Debt);

(iv) payment, loan, contractual arrangement, including any management agreement or payment in respect thereof or transfer of assets or rights, in each case to the extent made or entered into after the date of the Project Agreement and not in the ordinary course of business and on commercially reasonable terms including to any Equity Member, or any Affiliate of any Equity Member;

(v) conferral of any other benefit which is not conferred and received in the ordinary course of business and on commercially reasonable terms, including to any Equity Member, any Affiliate of any Equity Member or the Developer; and

(vi) other payment to any Equity Member, any current or former Affiliate of any Equity Member or the Developer howsoever arising and whether made under the terms of an agreement or otherwise or in respect of any class of Units or other securities of or interests in the Developer if, in any such case, such payment would not have been made were it not for the occurrence of any Refinancing or Change in Control; 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.

A Distribution shall be calculated in a manner that is consistent with the calculation of the Base Case Equity IRR.

"Distribution Account" has the meaning specified in Section 5.01(b)(iii) of the Collateral Agency Agreement.

"Dollars", "U.S. Dollars" or "\$" means the lawful currency of the United States of America.

"**Draft Interim Schedule**" means the deliverable submitted by Developer as part of its Proposal. Once updated in accordance with Section 12.1.2 of the Project Agreement and approved by MDOT as a condition precedent to Financial Close, the schedule will be the Final Interim Schedule.

"Drawdown Schedule" means Attachment 26 (Drawdown Schedule) of the Design-Build Contract.

"DSCR" means, for any Calculation Period, the ratio of A divided by B where:

A = the Net Cash Flow for such Calculation Period; and

B = all Senior Debt Service required to be deposited in the Senior Debt Service Account for such Calculation Period.

"DTC" means the Depository Trust Company.

"Effective Date" means the effective date of the Design-Build Guarantee, being October 12, 2018.

"Element" means any portion of the Project Work or the I-75 (Segment 3), including equipment, materials, products, operating systems, or related process tools.

"Eligible LC Issuer" means a financial institution with long term unsecured debt ratings of at least the following, from at least two of the listed major Rating Agencies: (a) A- by S&P; (b) A3 by Moody's; (c) A- by Fitch; (d) A low by DBRS; or (e) A- by KBRA.

"Eligible Project Costs" shall include Project Costs except for: any amounts payable under any interest rate hedging agreement; funding of reserves (including the Maintenance Reserve Account and Senior Debt Service Reserve Account); any Project Costs incurred prior to July 27, 2018 (60 days prior to Issuer's inducement resolution); any Taxes, assessments or governmental charges payable by the Sponsors in connection with the Project; any Renewal Work and initial operating expenses of the Project, Maintenance Expenditures, and mobilization payments in respect of maintenance activities in the aggregate total in excess of five (5) percent of the sale proceeds of the Series 2018 Bonds; and any costs of issuing the Series 2018 Bonds in excess of two (2) percent of the proceeds of the Series 2018 Bonds.

"Eligible Surety" means a surety or insurance company with an office in the State, as applicable, meeting the requirements of Applicable Law, licensed or authorized to do business in the State and rated at least "A" or better according to A.M. Best's Financial Strength Rating and "VIII" or better according to A.M. Best's Financial Strength Rating and "VIII" or better according to A.M. Best's Financial Strength Rating and "VIII" or better according to A.M. Best's Financial Strength Rating and "VIII" or better according to A.M. Best's Financial Strength Rating and "VIII" or better according to A.M. Best's Financial Strength Rating and "VIII" or better according to A.M. Best's Financial Strength Rating and "VIII" or better according to A.M. Best's Financial Strength Rating and "VIII" or better according to A.M. Best's Financial Strength Rating and "VIII" or better according to A.M. Best's Financial Strength Rating and "VIII" or better according to A.M. Best's Financial Strength Rating and "VIII" or better according to A.M. Best's Financial Strength Rating and "VIII" or better according to A.M. Best's Financial Strength Rating according to A.M. Best's Financial Str

"Emergency" means any unplanned event or condition originating from within or adjacent to the Project ROW that: (a) presents an immediate or imminent threat to the integrity of any part of the infrastructure of the Project, to the environment, to property adjacent to the Project or to the safety of the public; (b) has caused serious injury to persons, or significant damage to property or the environment, within or adjacent to the Project; (c) is recognized by the Michigan Department of Public Safety as an emergency; or (d) is recognized or declared by the Governor of the State, the Federal Emergency Management Administration, the U.S. Department of Homeland Security or other Governmental Entity with authority to declare an emergency.

"Emergency Service Provider" means any police service, fire fighting service, ambulance service, armed forces or other authority with emergency service authority under Applicable Law which may require access to the Project ROW from time to time.

"EMMA" means the Municipal Securities Rulemaking Board's electronic municipal market access website – see <u>www.emma.mrsb.org</u>.

"End of Funding Date" means the date occurring fifteen (15) days following the date of receipt by the Company of Milestone Payment 3 upon the issuance of the Substantial Completion Certificate.

"Enforcement Action" means any action, whether by judicial proceedings or otherwise, to enforce any of the rights and remedies granted to the Collateral Agent and/or the Secured Parties pursuant to the Security Documents against the Collateral of the Company upon the occurrence and during the continuance of an Event of Default.

"Environmental Approvals" means any Governmental Approvals relating to environmental matters, including NEPA Approval.

"Environmental Law" means any Applicable Law to the Project or the Project Work regulating or imposing liability or standards of conduct that pertains to the environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, and any lawful requirements and standards that pertain to the environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated, under Applicable Law, as such have been or are amended, modified, or supplemented from time to time (including any present and future amendments thereto and reauthorizations thereof) including those relating to:

(a) The manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, and transportation of Hazardous Materials;

- (b) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;
- (c) Releases of Hazardous Materials;

(d) Protection of wildlife, Threatened or Endangered Species, sensitive species, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, and natural resources;

- (e) The operation and closure of underground storage tanks;
- (f) safety of employees and other persons; and
- (g) Notification, documentation, and record keeping requirements relating to the foregoing.

Without limiting the above, the term "Environmental Laws" shall also include the following:

(i) The National Environmental Policy Act (42 U.S.C. §§ 4321 et seq.), as amended;

(ii) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d);

(iii) Section 4(f) of the U.S. Department of Transportation Act of 1966 (49 U.S.C. § 303(c));

(iv) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (49 CFR Part 24);

(v) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), as amended;

(vi) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.);

(vii) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 et seq.), as amended;

(viii) The Clean Air Act (42 U.S.C. §§ 7401 et seq.), as amended;

(ix) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 et seq.);

(x) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, et seq.), as amended;

(xi) The Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), as amended;

(xii) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), as amended;

(xiii) The Oil Pollution Act (33 U.S.C. §§ 2701, et. seq.), as amended;

(xiv) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 et seq.), as amended;

(xv) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 et seq.), as amended;

(xvi) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 et seq.), as amended;

(xvii) The Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.);

(xviii) The Endangered Species Act (16 U.S.C. §§ 1531 et seq.), as amended;

(xix) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 et seq.), as amended;

(xx) The National Historic Preservation Act (16 U.S.C. §§ 470 et seq.), as amended; and

(xxi) The Coastal Zone Management Act (33 U.S.C. §§ 1451 et seq.), as amended.

"Equity Contribution" means the contributions made by the Equity Members pursuant to the Equity Contribution Agreement.

"Equity Contribution Agreement" means the equity contribution agreement entered into among the Equity Members and the Collateral Agent on or around the date of the Collateral Agency Agreement.

"Equity Contribution Sub-Account" means the "Equity Contribution Sub-Account" established and created in the name of the Company pursuant to the Collateral Agency Agreement.

"Equity Interests" means the membership interests or other equity interests in the Company.

"Equity Investment(s)" means (a) any form of direct cash investment by Equity Members, including the purchase of newly issued equity shares in Developer and/or subordinated loans to Developer, and (b) any cash draws by or on behalf of Developer under the letter(s) of credit described in the definition of Deferred Equity Amount.

"Equity IRR" means the nominal post-tax internal rate of return on Equity Investment (on actual drawdowns of equity) over the full Term assuming no early termination or extension of the Project Agreement, projected for the Project as of any date after the Financial Close Date during the Term, using the Financial Model as updated (including as to the financial performance of the Project) so as to be current immediately prior to the date of projection, and taking into account Distributions made and projected to be made. For purposes of this definition, "post-tax" refers only to U.S. federal and state income tax liability of Developer or its Equity Members and specifically excludes (i) any foreign income tax and other tax of any kind, and (ii) any withholding tax, including any tax that Developer or an Equity Member is obligated to withhold on Distributions (whether actual or constructive) or other payments or allocations to Equity Members or holders of debt of or equity interests in an Equity Member under 26 U.S.C. \S 1441 – 1446, notwithstanding 26 U.S.C. \S 1461.

"Equity Letter of Credit" has the meaning set forth in Section 2.4.1 of the Equity Contribution Agreement.

"Equity Lock-Up Account" means the "Equity Lock-Up Account" established and created in the name of the Company pursuant to the Collateral Agency Agreement.

"Equity Member" means each member of HoldCo, which members may be either the Sponsors, wholly-owned subsidiaries of the Sponsors, holding companies of the Sponsors or other designated affiliates of the Sponsors, and "Equity Members" means all of them collectively.

"Equity Member Debt" means bona fide indebtedness for funds borrowed that: (a) is held by any Equity Member, and (b) is subordinated in priority of payment and security to all Project Debt held by Persons who are not Equity Members.

"Equity Member Funding Agreements" means any loan agreement, credit agreement or other similar financing agreement or subordination agreement providing for or evidencing Equity Member Debt.

"Equity Transfer" means any assignment, mortgage, encumbrance, hypothecation, conveyance, sale, or other transfer of equity interest in Developer.

"Equivalent Project Relief" has the meaning set out in Part 1 Section 7.1(a) of the Design-Build Contract.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto of similar import, together with the regulations thereunder, in each case as in effect from time to time.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with Company, is treated as a single employer under Section 414(b) or (c) of the Code (or Section 414(m) or (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"ERISA Event" means (a) a "reportable event" within the meaning of Section 4043(c) of ERISA and the regulations issued thereunder with respect to a Pension Plan (other than events for which notice is waived), (b) the existence with respect to any Pension Plan of Company or any of its ERISA Affiliates of an "accumulated funding deficiency" (within the meaning of Section 302 of ERISA or Section 412 of the Code) and (c) the incurrence by Company or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal of Company or any such ERISA Affiliate from any Pension Plan during a plan year in which Company or such ERISA Affiliate is a "substantial employer" (as defined in Section 4001(a)(2) of ERISA) or from any Multiemployer Plan.

"Error" means an error, omission, inconsistency, inaccuracy or deficiency.

"Event of Default" has the meaning specified for such term in the respective Finance Document.

"Excluded Obligations" means the following (which, for clarity, do not form part of the Contractor Obligations):

(a) financing the Project, including financial modeling (except, for clarity, the provision by Contractor of the D&C Performance Security and the DB Performance Support);

(b) the Maintenance Work (other than Interim Maintenance Work and the Long Term Maintenance Work for the Tunnel and Pump Station prior to the Substantial Completion Date), except in respect of the remediation of Defects and Latent Defects as set out in Part 1 Article 10;

(c) costs, fees and charges of Developer's own personnel, consultants and professional advisors, except as specifically provided in the Design-Build Contract;

(d) cost, fees and charges of a mediator or arbitrator acting under the DB Dispute Resolution Procedures to the extent required to be paid by Developer; and

(e) any other obligation which is expressly stated to be the obligation of Developer under the Design-Build Contract and which is not an obligation of MDOT under the Project Agreement.

"Exempt Refinancing" means:

(a) any Refinancing that was identified and taken into account in the Financial Model and calculation of the Availability Payment;

(b) minor and non-monetary amendments, modifications, supplements or consents to the Financing Documents, and the exercise by a Lender of rights, waivers, consents and similar actions;

(c) movement of monies between the Project accounts in accordance with the terms of Financing 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 Financing Documents; (ii) the grant by such Lender of any rights of participation, or the disposition by such Lender of any of its rights or interests, in respect of the senior Financing Documents 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 Financing Documents or the revenues or assets of the Developer, whether by way of security or otherwise, in favor of any other Lender of any investor; or (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 Freeway Lighting System" has the meaning given in <u>TR Article 24.3.4</u> of the Project Agreement.

"Existing MDOT ROW" means the real property, owned by MDOT, within the lines delineating the outside boundaries of the Project specified in the ROW Work Maps.

"Existing Pump Stations" means the pump stations described in TR Article 23.1 of the Project Agreement.

"Expiration Date" has the meaning given in Section 4.1.2 of the Project Agreement.

"Extended Force Majeure and Unobtainable Coverage Event Termination Amount" means the amount calculated in accordance with Section 3.0 of Schedule 16 (Termination Compensation) of the Project Agreement.

"Extra Work" means any Project Work in the nature of additional work, altered work or deleted work which is directly attributable to a Change as a result of a Delay Event or Relief Event and, absent the Delay Event or Relief Event, would not be required by the Project Documents. The term "Extra Work" includes additional work necessary for Developer to obtain Environmental Approvals, reevaluations, amendments and supplements of the NEPA Approval, and other Governmental Approvals required under the Project Agreement in connection with a Delay Event or Relief Event. "Extra Work" does not include delay or Delay Costs caused by a Delay Event.

"Extra Work Costs" means the incremental increase in Developer's cost of labor, material, equipment and other direct and indirect costs directly attributable to Extra Work, calculated in accordance with Section 1 of Schedule 5 (Costs Schedule) of the Project Agreement.

"Fast Track DB Dispute Resolution Procedures" has the meaning given in Attachment 15 (DB Dispute Resolution Procedures) of the Design-Build Contract.

"Fee Letter" means that certain Agent Fee Letter, entered into by and between the Company and U.S. Bank National Association, in its capacity as Collateral Agent, Trustee and depositary agent.

"FHWA" means the Federal Highway Administration.

"Final Acceptance" means the stage when all of the following have occurred:

(a) the balance of the D&C Work not completed as part of Substantial Completion has been completed, including correcting all Punch List Items specified in the Substantial Completion Certificate or notified to Developer under Section 16 of the Project Agreement;

(b) Developer has acquired and properly stored, or arranged for immediate availability, a reasonable inventory of all spare parts, spare components, spare equipment, special tools, materials, expendables and consumables necessary for operation and maintenance of the Project during the Maintenance Term as identified in the Maintenance Plan;

(c) all Submittals required by the Project Management Plan or Project Documents to be submitted to MDOT in accordance with Schedule 10 (Submittal Requirements) of the Project Agreement prior to Final Acceptance have been submitted to and approved by MDOT, in the form and content required by the Project Management Plan or Project Documents, as applicable;

(d) MDOT has received a complete set of the As-Built Drawings and any as-built survey sheets for the Project in form and content required by Schedule 17 (Technical Requirements) of the Project Agreement;

(e) MDOT has received the final certifications regarding suspension or debarment as specified in Section 11.4 of the Project Agreement;

(f) there exist no uncured Developer Defaults that are the subject of a Default Notice, and no event exists that would be a Developer Default with the giving of Default Notice or the passage of time (except any Developer Default for which Final Acceptance will affect its full and complete cure); and

(g) Developer has done everything which the Project Agreement requires Developer to do as a condition precedent to Final Acceptance.

"Final Acceptance Amount" means an amount needed to pay all Project Costs incurred or anticipated to be incurred but not yet paid through and including the Final Acceptance Date, as certified by the Company and the Lenders' Technical Advisor in the Final Acceptance Amount Certificate.

"Final Acceptance Amount Certificate" means a certificate prepared by the Company in accordance with the terms of the Collateral Agency Agreement containing the certifications by the Company and the Lenders' Technical Advisor required by the Collateral Agency Agreement with respect to the Final Acceptance Amount.

"Final Acceptance Certificate" means the certificate to be issued by the MDOT Authorized Representative in accordance with Section 16.3.1(a) of the Project Agreement.

"Final Acceptance Date" means the date on which Final Acceptance is achieved as such date is evidenced by the Final Acceptance Certificate.

"Final Acceptance Deadline" means 6 months after the Substantial Completion Date.

"Final Construction Impact Assessment" has the meaning given to "Construction Impact Assessment" in TR Article 21.3.9.8 of the Project Agreement.

"Final Construction Impact Assessment Report" has the meaning given to "Final CIAR" in TR Article 21.3.9.9 of the Project Agreement.

"**Final Equity Contribution Date**" means the date that is 30 days following the date on which Milestone Payment 3 is received by the Company.

"Final Interim Schedule" means Developer's approved Draft Interim Schedule prepared and submitted in accordance with Section 12.1.2 of the Project Agreement

"Final Project Handback Condition Report" has the meaning given in Section 18.6 of the Project Agreement.

"Final Updated Schedule" has the meaning given in TR Article 3.3.2.7 of the Project Agreement.

"Finance Documents" means:

- (a) the Indenture;
- (b) the Series 2018 Bonds;
- (c) the Senior Loan Agreement;

- (d) the Collateral Agency Agreement;
- (e) the Direct Agreements;
- (f) the Fee Letters;
- (g) the other Security Documents;
- (h) the Equity Contribution Agreement;
- (i) any Applicable Reserve Letter of Credit;
- (j) any Additional Financing Documents;
- (k) the Non-Arbitrage Certificate;
- (l) the Continuing Disclosure Agreements;
- (m) any Supplemental Indenture executed with respect to the Bonds or any Additional Parity Bonds; and
- (n) any other agreement, document or instrument relating to the foregoing and designated as a Finance Document in writing by the Company and the Collateral Agent (acting at the direction of the Trustee).

"Financial Close" means the satisfaction or waiver of all conditions precedent in Section 3.8 of the Project Agreement.

"Financial Close Date" means the date of Financial Close when each of the Developer and MDOT have provided Notice that the relevant conditions precedent have been satisfied.

"Financial Close Deadline" means the deadline for achieving Financial Close, which shall be either: (a) the Scheduled Financial Close Date in the Notice from Developer to MDOT in Section 3.4 of the Project Agreement, or (b) the Delayed Financial Close Date in the Notice from MDOT to Developer in Section 3.11.5(a) of the Project Agreement.

"Financial Close Security" means the bond(s) or letter(s) of credit in the aggregate amount of \$15,000,000 provided by Developer to MDOT as a condition precedent of Commercial Close in accordance with Section 6.8 of the ITP.

"Financial Model" means the Bid Financial Model, as updated by the most recent Financial Model Update.

"Financial Model Update" means any update to the Financial Model prepared under Section 2.3 of the Project Agreement.

"Financing Delay Costs" means:

(a) In the case of Delay Events, an amount equal to interest payments on the Senior Debt Service Amount accrued and paid, or which became payable, by Developer to the Senior Lenders in accordance with the Funding Agreements that accrued during the period of Critical Path delay as a direct result of the Delay Event; and (b) in the case of MDOT-Caused Delay only, such other amounts so as to result in Developer achieving the same Equity IRR (with reference to the Base Case Equity IRR) as if such Compensable Delay Event had not occurred.

"Financing Documents" means the Funding Agreements and the Security Documents (as each such term is defined in the Project Agreement).

"Fitch" means Fitch Ratings Limited and any successor thereto.

"Fixed Maintenance Costs" means the sum of those fixed costs:

(a) incurred by the Maintenance Contractor with respect to insurance premiums, office rental and office expenses, equipment hire costs, depreciation on items of equipment used by Developer in the performance of the Maintenance Work excluding:

(i) equipment incorporated into the Relevant Infrastructure and not capable of being demobilized and remobilized to a different site or portion of the Relevant Infrastructure or to another project;

- (ii) third party accounting, audit and legal costs; and
- (iii) any costs payable by Developer to the Maintenance Contractor for the provision of labor,

(b) incurred directly by the Maintenance Contractor during the Maintenance Term in meeting its obligations in accordance with the Project Agreement and solely and directly attributable to the Project and which are not reasonably capable of being deferred or avoided by the Maintenance Contractor; and

(c) evidenced in writing to the reasonable satisfaction of the MDOT Authorized Representative.

"Float" means the amount of time that any given activity or logically connected sequence of activities shown on the Project Schedule may be delayed before it will affect the Substantial Completion Deadline or Final Acceptance Deadline, as applicable. Such Float is generally identified as the difference between the early start date and late start date, or early completion date and late completion date, for activities shown on the Project Schedule, and shall include any float contained within an activity as well as any period containing an artificial activity (that is, one which is not encompassed with the meaning of the word "D&C Work").

"Flood Event" means a "flood" (as defined by the Federal Emergency Management Agency) where flood waters at the Site reach two (2) or more acres of normally dry land measured, at or in excess of the one percent annual recurrence interval flood event (or its equivalent, successor measurement), for each water crossing of the Project.

"Force Majeure Event" means any of the following events or circumstances which directly cause either Party to be unable to perform all or a material part of its obligations under the Project Agreement:

- (a) war (including civil war or revolution), invasion, violent act of foreign enemy or armed conflict, military or armed blockade, or military or armed takeover of the Project, occurring within the State;
- (b) any act of terrorism, riot, insurrection, civil commotion or sabotage that causes direct physical damage to, or otherwise directly causes interruption to construction or direct losses during maintenance of the Project;
- (c) national strikes not specific to Developer, embargoes, unavailability or shortages of materials, that, in each case, directly causes interruption to construction or direct losses during maintenance of the Project;

- (d) nuclear, radioactive, or biological contamination of the Project unless the source or cause of the contamination is brought to or near the Relevant Infrastructure by Developer-Related Entities;
- (e) Flood Event, fire, explosion, a tornado with an enhanced Fujita Score Rating of EF2, sinkhole caused by natural events, or landslide caused by natural events, in each case directly impacting and damaging the physical improvements of the Project or performance of Project Work;
- (f) a seismic event, where such earthquakes, ground shaking, liquefaction, settlement, or ground movements directly impact, and cause damage to, temporary or permanent works of the Project; and
- (g) any governor-declared Emergency within the limits of the Project ROW, except one consisting of or arising out of traffic accidents or Vehicle Damage.

"Freeway Lighting System" means the entire physical infrastructure and capital improvements comprising the Freeway Lighting Work.

"Freeway Lighting Work" means the work for the lighting Elements of the I-75 (Segment 3) to be performed by the Developer under the Project Agreement, excluding any such Elements included within the Maintenance Work scope as described in Schedule 17 (Technical Requirements) of the Project Agreement.

"Freeway Lighting Work Completion" means MDOT's final acceptance of the Freeway Lighting Work in accordance with the terms of the Project Agreement.

"Funding Shortfall" means any circumstance where on any date prior to the Substantial Completion Date, the aggregate amount of funds available to the Company under the Finance Documents and from the Construction Account and all other Project Accounts (which amount, for the avoidance of doubt, shall include all Milestone Payments), the Aggregate Capital Commitment, available insurance proceeds and other payments then owing to the Company under any Material Project Contracts (including any amounts available by set off or as liquidated damages) and any other source of funds permitted under the Finance Documents and then available to the Company during the D&C Term is less than the aggregate of:

- (a) the aggregate amount of all Project Costs incurred by the Company for the design and construction of the Project which, in each case, are due and payable but have not yet been paid; and
- (b) the aggregate amount of all unpaid Project Costs required to be incurred by the Company for the design and construction of the Project prior to the scheduled date of Substantial Completion.

"Funds" means the funds created by the Indenture.

"**Funds Transfer Certificate**" means a certificate prepared by the Company in accordance with the terms of the Collateral Agency Agreement substantially in the form of Exhibit B attached to the Collateral Agency Agreement containing the certifications by the Company required by the Collateral Agency Agreement with respect to a requested transfer of funds from a Project Account after the Substantial Completion Date.

"GAAP" means generally accepted accounting principles as defined by the American Institute of Certified Public Accountants or such other nationally recognized professional body, in effect from time to time in the United States of America, consistently applied.

"Geotechnical Data Report (Roadway)" means the document entitled GDR Roadway in the Reference Information Documents.

"Geotechnical Data Report (Tunnel)" means the document entitled GDR Tunnel in the Reference Information Documents.

"Geotechnical Data Reports" means the Geotechnical Data Report (Tunnel) and the Geotechnical Data Report (Roadway) or either of them as the context requires.

"Good Faith Efforts" means (a) with respect to DBE, the efforts to meet the DBE Goal required under 49 CFR Part 26, Appendix A, (b) with respect to SBE, the efforts to meet the SBE Goal required by the Project Agreement, and (c) with respect to OJT, the effort to meet the OJT goals required under 23 CFR § 230.409(g)(4).

"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, supplier, maintenance provider or other contractor seeking in good faith to comply with its contractual obligations, complying with all Applicable Law and Governmental Approvals and engaged in the same type of undertaking under circumstances and conditions similar to those within the same geographic area as the Project.

"Governmental Activities" means the provision of governmental services and the conduct of all activities provided in connection or otherwise associated with the Project ROW and the Relevant Infrastructure by any Governmental Entity or Emergency Service Provider, and includes MDOT Activities.

"Governmental Approval" means any registration, required filing, permit, license, consent, concession, grant, franchise, authorization, waiver, variance or other approval, guidance, protocol, mitigation agreement, or memoranda of agreement/understanding, and any amendment or modification of any of them provided or issued by Governmental Authorities including State, local, or federal regulatory agencies, which authorize or pertain to the Work.

"Governmental Authority" means any nation, state, sovereign or government, any federal, regional, state or local government or political subdivision thereof or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and having jurisdiction over the Person or matters in question.

"Governmental Entity" means any federal, state, local or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than MDOT. Governmental Entity does not include MDOT.

"GWK" means George W. Kuhn Retention Treatment Facility.

"Handback" means the stage when Developer has done everything that the Project Agreement requires to enable Developer to handover the Relevant Infrastructure to meet the Handback Requirements at the end of the Term.

"Handback Account" has the meaning given in Section 18.3.1 of the Project Agreement.

"Handback Letter of Credit" means an Acceptable Letter of Credit delivered by the Company to MDOT under Section 18.4 of the Project Agreement in lieu of the establishing or funding of a Handback Account.

"Handback Period" means the period beginning on the date the Prefinal Project Handback Condition Report (as defined in the Project Agreement) is due to be delivered by the Company to MDOT.

"Handback Requirements" has the meaning given in Section 18.1 of the Project Agreement.

"Handback Work" has the meaning given in Section 18.2.1(c) of the Project Agreement.

"Handback Work Costs" has the meaning specified in the Project Agreement and includes such amounts that after the initial deposit of funds into the PA Handback Account, MDOT determines under the Project Agreement that the balance of funds held in the PA Handback Account may be insufficient to pay for the Handback Work (as amended and defined in the Project Agreement) yet to be performed or paid for necessary to replenish the PA Handback Account to make up the insufficiency.

"Handback Work Plan" has the meaning given in TR Article 25.2 of the Project Agreement.

"Hazardous Materials" means any element, chemical, compound, mixture, substance, product, waste or other material, whether solid, liquid or gaseous, which is or becomes defined, listed, classified, regulated, or addressed in any way under any Environmental Laws, or any other substances or conditions (including mold and other mycotoxins, fungi or fecal matter) that may create any unsafe or hazardous condition or pose any threat or harm to the environment or human health and safety. "Hazardous Materials" includes the following:

(a) Any substance, product, waste or other material of any nature whatsoever that may give rise to liability under any Environmental Law 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;

(b) Hazardous waste, hazardous materials, hazardous substances, hazardous constituents, and toxic substances, ignitable, corrosive and reactive substances or related materials, whether solid, liquid or gas, including substances defined as or included in the definition of "hazardous substance," "hazardous waste," "hazardous waste," "hazardous waste," "radioactive waste," "radioactive materials," "bio-hazardous waste," "orkic pollutant," "contaminant," "restricted hazardous waste," "infectious waste," "toxic substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "TCLP toxicity" or "EP toxicity" or words of similar import) under any applicable Environmental Law;

(c) Any petroleum or crude oil and any fraction thereof, including any refined petroleum product or any additive thereto or fraction thereof, and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto, but excluding petroleum and petroleum products contained within regularly operated motor vehicles;

(d) Any solvent, solvent waste, including any refined solvent product, and any waste solvent or waste solvent byproduct, including any additive, byproduct or fraction of any of the foregoing;

(e) Any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;

(f) Any flammable substances or explosives, including unexploded ordnance;

(g) Any radioactive materials;

(h) Any asbestos or asbestos-containing materials in structures and or other improvements on or in the Site (other than mineral asbestos naturally occurring in the ground);

(i) Silica;

(j) Any lead, cadmium, or lead-based paint or any other heavy metal-based paint or material, or any metal listed in or regulated by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.);

(k) Any radon or radon gas;

(l) Any methane gas or similar or regulated gaseous materials;

(m) Any urea formaldehyde foam insulation;

(n) Electrical equipment and components that contain any oil or dielectric fluid containing polychlorinated biphenyls;

(o) Pesticides, herbicides or fungicides;

(p) Any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety of any humans in the vicinity of the Project or to the environment; and

(q) Soil, surface water or groundwater containing any of the Hazardous Materials as defined above in amounts exceeding permitted criteria.

"Hazardous Materials Management" means sampling, characterization, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, collection, containment, clean-up, remediation, transportation, management in place and/or off-Site disposal of Hazardous Materials, whichever is the most technically appropriate and cost-effective approach authorized under Applicable Law, using Good Industry Practice.

"Hazardous Materials Relief Event" means Hazardous Materials in, over, under or emanating from the Planned ROW Limits or which has migrated onto the Planned ROW Limits from land or premises adjoining the Planned ROW Limits, excluding Hazardous Materials:

(a) which are Known or Suspected Hazardous Materials;

(b) that could have been reasonably avoided by use of available construction techniques or incorporation of anticipated or minor design changes which are consistent with Good Industry Practice;

(c) to the extent caused, contributed or exacerbated by any Developer-Related Entity;

(d) to the extent Developer is required and failed to manage or mitigate against the risk of in accordance with the Project Agreement, including as required under Section 8.5.2(a); or

(e) to the extent Contractor, acting in accordance with Good Industry Practice, would have taken preventative measures to prevent or minimize, and Developer has failed to take such preventative measures.

"Hazardous Waste" means waste as defined in 40 CFR 261 et seq.

"High Impact Ramp" means the On-Ramps and Off-Ramps to I-75 (Mainline) at 9 Mile Road, 11 Mile Road and I-696.

"HoldCo" means Oakland Corridor Partners HoldCo LLC, a limited liability company organized under the laws of the State of Delaware.

"Hours" means either Low-Priority Hours or Priority Hours.

"I-75 (Mainline)" means all freeway Lanes associated with I-75 (Segment 3) excluding High Impact Ramps, Ramps and service roads.

"I-75 (Segment 2)" means the entire physical infrastructure from north of 13 Mile Road to Coolidge Road, procurement by MDOT as a design-build project.

"I-75 (Segment 3)" means the entire physical infrastructure and capital improvements to the I-75 Modernization Project (Segment 3) to be designed, constructed, commissioned, completed and maintained by Developer on the Project ROW in accordance with the Project Agreement excluding as it relates to maintenance only, the Non-Maintained Work.

"I-75 Modernization Project" means a program of comprehensive corridor improvements including widening and reconstruction for I-75 from north of M-102 (8 Mile Road) to south of M-59.

"IFRS" means the International Financial Reporting Standards.

"Incident" means a localized disruption to the free flow of traffic or safety of Users on the Project.

"Incident Management Noncompliance Event" means those Noncompliance Events with NCE ID numbers 14.1 to 14.5 described in Appendix A and Appendix B of Attachment 4 (DB Payment Mechanism) of the Design-Build Contract.

"Incidental Utility Work" means, for all Utilities, all of the following work necessary for construction of the Project, including any necessary coordination with Utility Owners and property owners, furnishing design, performing construction, and obtaining and complying with all required Governmental Approvals:

(a) Service Line Relocations;

(b) The adjustment of Utility appurtenances (e.g., manholes, valve boxes and vaults) for line and grade upon completion of roadway work;

(c) Protection in Place of Utilities

(d) All work necessary to remove and dispose of any Utilities (whether or not in use as of the Proposal Due Date) in situations for which leaving the Utilities in place is not feasible or not permitted, or is required in order to accommodate or permit construction of the Project, regardless of whether replacements for such Utilities are being or have been installed in other locations;

(e) All work necessary to abandon in place any Utility in accordance with Applicable Law and proper Utility Owner and/or industry procedures (e.g., flushing, capping, slurry backfill, etc.) regardless of whether replacements for such Utilities are being or have been installed in other locations;

(f) Traffic control for Utility Relocation work;

(g) Resurfacing and re-striping of streets; reconstruction of curbs, gutters and sidewalks; reinstallation of signage; and reinstallation or replacement of traffic signals;

(h) Supplemental investigation, potholing, electronic detection, surveying and any other methods used to determine Utility locations, preparation of a Utility Conflict Matrix and other material information concerning Utilities;

- (i) Temporary Relocations; and
- (j) Earthwork trenching requested by a Utility Owner

"Indebtedness" of any Person means:

- (a) indebtedness of such Person for borrowed money,
- (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments,
- (c) all obligations of such Person to pay the deferred purchase price of property or services, other than current trade payables incurred in the ordinary course of business,
- (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person,
- (e) any lease which in accordance with GAAP or IFRS is required to be capitalized on the balance sheet of such Person (and the amount of these obligations shall be the amount so capitalized),

- (f) all obligations, contingent or otherwise, of such Person under acceptances issued or created for the account of such Person,
- (g) all unconditional obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any capital stock or other equity interests of such Person or any warrants, rights or options to acquire such capital stock or other equity interests,
- (h) all net obligations of such Person pursuant to hedges,
- (i) all guarantee obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (h) above, and
- (j) all Indebtedness of the type referred to in clauses (a) through (h) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any lien on property (including accounts and contractual rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

"Indenture" means that certain Indenture of Trust with the Trustee in respect of the Series 2018 Bonds, as amended, supplemented, amended and restated or otherwise modified from time to time.

"Indexed" means, with respect to an amount which is required to be indexed under the Project Agreement, that the amount is adjusted in accordance with the formula set out below and then rounded upwards or downwards to the nearest whole number:

Adjusted Amount = Indexation Factor x Original Amount

where:

<u>Indexation Factor</u> = the Consumer Price Index rate published immediately before the relevant adjustment date divided by the Consumer Price Index rate for the equivalent quarter in the previous year.

<u>Original Amount</u> = the amount (whether previously adjusted or not) applicable immediately prior to the relevant adjustment date (disregarding rounding (if any) applied to that amount at the previous adjustment date).

"Indirect Participants" means U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly.

"Insurance Policy" means any of the insurance policies and coverages any Developer-Related Entities are required to carry under Section 36 and Schedule 8 (Insurance Specifications) of the Project Agreement and "Insurance Policies" means all of them.

"Insurance Proceeds" means all payments and proceeds of insurance (other than proceeds of business interruption insurance, delay in start-up insurance or amounts under the Bond Insurance Policy) payable to or received by the Company (whether by way of claims, return of premiums, ex gratia settlements or otherwise), provided that in no event shall any Third Party Liability Insurance Proceeds constitute "Insurance Proceeds".

"Insured Series 2018 Bonds" means the Series 2018 Bonds maturing on June 30, 2035, December 31, 2038 and June 30, 2048 (having a rate of 4.500%).

"Insurer" or "AGM" means Assured Guaranty Municipal Corp. solely to the extent that as of the Closing Date Assured Guaranty Municipal Corp. has issued a Bond Insurance Policy.

"Intellectual Property" means all current and future legal and/or equitable rights and interests in knowhow (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, 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). Intellectual Property includes software used in connection with the Project, Project Data and trade secret information contained in any Proposal. Intellectual Property is distinguished from any physical embodiment of, and documentation disclosing, Intellectual Property including physical construction and equipment itself and from data, sketches, charts, calculations, plans, drawings, layouts, depictions, specifications, manuals, electronic files, artwork, correspondence and other documents or work product.

"Interest Payment" means, with respect to an Interest Payment Date for the Bonds, the interest (including the interest component of the Redemption Price due in connection with any mandatory redemption payment on any Bond) due on the Bonds on such date.

"Interest Payment Date" means (a) for the Series 2018 Bonds, the meaning specified in the Indenture, and (b) for any other Secured Obligations, the date or dates on which interest is payable on such Secured Obligations as set forth in the documents pursuant to which such Secured Obligations were incurred.

"Interface Parties" means MDOT Contractors, Utility Owners, the Segment 2 Contractor and the P3 Lighting Contractor.

"Interim Maintenance Work" means the maintenance, rehabilitation and other work to be performed and services to be provided by Developer during the time periods specified in Section 17.1 as described in the Project Agreement and TR Article 25 of the Project Agreement_related to the Roadway, the Existing Pump Stations and the Freeway Lighting System, as such work and services may from time to time be varied in accordance with the Project Agreement, but specifically excluding the Governmental Activities.

"Investment" in any Person means any loan or advance to such Person, any purchase or other acquisition of any equity interests or Indebtedness or the assets comprising a division or business unit or a substantial part or all of the business of such Person, any capital contribution to such Person or any other direct or indirect investment in such Person, including, without limitation, any acquisition by way of a merger or consolidation (or similar transaction) and any arrangement pursuant to which the investor incurs Indebtedness of the types referred to in (i) or (j) of the definition of "Indebtedness" in respect of such Person.

"IRS" means the Internal Revenue Service.

"Issuer" or "MSF" means the Michigan Strategic Fund a public body corporate and politic of the State of Michigan.

"Issuer Representative" means the Fund Manager or any other authorized officer or agent designed to act as such by the Issuer.

"Jay Dee" means Jay Dee Contractors, Inc.

"Junior Debt" mean indebtedness owing by Developer to any of its Equity Members or Affiliates of Equity Members which ranks subordinate in all respects to the Project Debt, excluding:

(a) all amounts not actually paid to Developer by cash advance, rights entitling Developer to a cash advance, or other consideration;

(b) all fees, including commitment fees, standby fees or other fees, paid or to be paid by Developer, other than to any Equity Member or any Affiliate of an Equity Member; and

(c) capitalized interest, and interest on overdue interest.

"KBRA" means Kroll Bond Rating Agency, Inc.

"**Key DB Personnel**" means those individuals appointed by Contractor and approved by Developer and MDOT from time to time to fill certain of the "Key Personnel" positions identified in TR Article 3 of the Project Agreement. The specific individuals appointed by Contractor and approved by Developer and MDOT to initially fill the relevant Key Personnel positions are identified in Attachment 2 (Project Specific Information) of the Design-Build Contract.

"Key DB Subcontract" has the meaning given in Section 2.1 of Attachment 12 (DB Subcontract Requirements) of the Design-Build Contract, and includes each Key DB Subcontract as defined in Part 1 Section 15.3(b) of the Design-Build Contract.

"Key DB Subcontractor" has the meaning given in Section 2.2 of Attachment 12 (DB Subcontract Requirements) of the Design-Build Contract, and includes each Key DB Subcontractor as defined in Part 1 Section 15.3(a) of the Design-Build Contract.

"**Key Personnel**" means those individuals appointed by Developer and approved by MDOT from time to time to fill the "Key Personnel" positions identified in TR Article 3. The specific individuals appointed by Developer and approved by MDOT to initially fill certain of the Key Personnel positions are identified in Schedule 2 (Project Specific Information).

"Key Subcontract" means:

(a) any D&C Contract;

(b) any Maintenance Contract;

(c) the Subcontract between Developer and the Lead Engineering Firm or Subcontract between the D&C Contractor and the Lead Engineering Firm, as applicable;

(d) the Subcontract between Developer and the Lead Tunnel Subcontractor or the Subcontract between the D&C Contractor and the Lead Tunnel Subcontractor, as applicable; or

- (e) any Subcontract which:
 - (i) exceeds \$25,000,000; or

(ii) when aggregated with the value of the works under each other Subcontract previously entered into by that the same Subcontractor (or any Affiliate) will result in the total value of those contracts exceeding \$25,000,000.

"Key Subcontractor" means each contractor under any Key Subcontract.

"Known or Suspected Hazardous Materials" means Hazardous Materials and Recognized Environmental Conditions that are known or reasonably suspected to exist as of the Setting Date based on information, data or analysis contained or referenced in the Reference Information Documents as of the Setting Date or which should have been known or reasonably suspected pursuant to a Reasonable Investigation prior to the Setting Date, including those listed in TR Article 19_of the Project Agreement. Known or Suspected Hazardous Materials include Hazardous Materials and Recognized Environmental Conditions arising in or from any of the Hazardous Materials sites listed in the NEPA Documents or Schedule 17 (Technical Requirements) of the Project Agreement.

"Lane" means any traffic lane including main lanes, shoulders, Ramps, direct connectors, Service Roads and Overpasses / Underpasses.

"Latent Defect Warranty Period" means the period commencing on the date on which the Completion Warranty Period expires and ending at 11:59 p.m. on the tenth anniversary of the Substantial Completion Date.

"Latent Defects" means as to the Design-Build Contract, Defects determined to have been present in the D&C Work prior to the expiry of the Completion Warranty Period that a reasonably competent Person, through the inspection in Part 1 Section 11.6 and Good Industry Practice, and the performance of the Maintenance Work (other than the Interim Maintenance Work and the Long Term Maintenance Work for the Tunnel and Pump Station prior to the Substantial Completion Date), would not have discovered prior to expiration of the Completion Warranty Period. A "Latent Defect" shall not include a fault or Error in an Element that manifests itself after: (a) if a Design Life for such Element is set forth in Table 3-6 of the Technical Requirements, such Design Life, except to the extent that such Design Life for such Element or a component thereof is modified by the Developer Requirements, in which case the Design Life in the Developer Requirements; (b) if no Design Life for such Element is set out in Table 3-6 of the Technical Requirements efforts in Table 3-6 of the Technical Requirements, the design life for such Element set forth in the Developer Requirements; or (c) if no Design Life or Design Life is so set forth in Table 3-6 of the Technical Requirements or in the Developer Requirements, the Design Life for such Element as determined in accordance with Good Industry Practice.

"Law" means any federal, state, local and municipal laws, rules and regulations, orders, codes, directives, permits, approvals, decisions, decrees, ordinances or by-laws having the force of law and any common or civil law, whether adopted or enacted prior to or after the date of the Project Agreement including binding court and judicial decisions having the force of law, and includes any amendment, extension or re-enactment of any of the same in force from time to time and all other instruments, orders and regulations made pursuant to statute, including those made by any Relevant Authority.

"Lead Engineering Firm" means the design professional primarily responsible to design and engineer the Project.

"Lead Tunnel Subcontractor" means the contractor primarily responsible to design and construct the Storage and Drainage Tunnel.

"Lenders" or "Lender" mean any person or entity that is a holder or beneficiary of Project Debt, together with their successors, assigns, participating parties, trustees and agents, including the Collateral Agent.

"Lenders' Liabilities" means, at the relevant time, the aggregate of (without double counting): all principal, interest, banking fees and premiums on financial insurance policies, costs and expenses and other amounts properly incurred owing or outstanding to the Lenders by Developer under the Financing Documents on the Expiration Date, including any prepayment costs, make-whole amounts or breakage costs.

"Lenders' Longstop Date" shall mean the date that occurs sixty (60) days prior to the Longstop Date.

"Lenders' Technical Advisor" or "WT" means WT Partnership or any other nationally recognized firm of consultants and engineers with relevant experience similar to the Project selected by the Company and reasonably acceptable to the Trustee.

"Liability" includes any debt, obligation, damage, losses, injury, liabilities, penalties, fines, assessments, claims, actions, obligation, costs, expenses (including attorneys', accountants' and expert witnesses' fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of the Project Agreement), loss (whether direct or indirect), proceedings, demands and charges whether arising under statute, contract or at common law), expense, loss (whether direct or indirect), compensation, charge or liability of any kind (including fines, judgments or penalties), actual, prospective, Third Party or contingent and whether or not currently ascertainable and whether arising under or for breach of contract, in tort (including negligence), restitution, under statute or otherwise at law. Liabilities include injury to or death of persons, damage or loss of property, and harm or damage to natural resources.

"Liquidated Damages" has the meaning given in Part 1 Section 10.3 of the Design-Build Contract.

"Local Agency" or "Local Agencies" means the Cities of Hazel Park, Madison Heights and Royal Oak; Wayne and Oakland Counties; and the Oakland County Water Resources Commissioner.

"Long Term Maintenance Work" means any and all management, administration, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement, including Routine Maintenance, Renewal Work and Handback Work, to be performed by Developer in connection with the I-75 (Segment 3) during the Maintenance Term, as such work and services may from time to time be varied in accordance with the Project Agreement, but specifically excluding the Governmental Activities.

"Longstop Date" means the date which is 12 months after the Substantial Completion Deadline.

"Loss Proceeds Account" means the "Loss Proceeds Account" established and created in the name of the Collateral Agent pursuant to the Collateral Agency Agreement.

"Low-Priority Hours" means any hour that is not a Priority Hour.

"Maintenance Commencement Date" means:

(a) in the case of the Tunnel and Pump Station, the 1st day after issuance of the Milestone Completion Certificate for Milestone 2 ("Tunnel Maintenance Commencement Date"); or

(b) in the case of the remainder of the I-75 (Segment 3) excluding the Tunnel and Pump Station, the 1st day after the later of the Substantial Completion Date and the Substantial Completion Deadline ("Project Maintenance Commencement Date"),

or both of them as the context requires.

"Maintenance Contract" means:

(a) the Project Agreement, where Developer will self-perform the Maintenance Work; or

(b) the contract for the Maintenance Work entered into between Developer and Maintenance Contractor dated on or about the date of the Project Agreement where Developer will not self-perform the Maintenance Work; and

(c) any other contract between Developer and a service provider to undertake the Maintenance Work.

"Maintenance Contractor" means Developer or the persons engaged by Developer in accordance with the Maintenance Contract being, at the date of the Project Agreement the Party specified in <u>Schedule 2</u> (Project Specific Information), or any other person who, in addition or substitution, is engaged by Developer to undertake all, or substantially all of the Maintenance Work.

"Maintenance Deduction" means a reduction to the Availability Payment in respect of a Maintenance Failure calculated in accordance with Sections 4.5 and 5.0 of Schedule 4 (Payment Mechanism) of the Project Agreement.

"Maintenance Expenditures" means all actual cash administrative, maintenance and operation costs and expenses (excluding costs of capital expenditures, Renewal Expenditures, and payments in respect of Indebtedness) incurred and paid (or if applicable forecast to be incurred and paid) in connection with the operation and maintenance of the Project and/or overhead and other administrative or corporate costs and expenses of the Company in any particular calendar or the Company fiscal year or period to which said term is applicable, including amounts incurred and paid pursuant to the Project Agreement, payments for Taxes (other than state or federal income taxes), insurance, consumables, advertising, marketing, payments under real property agreements pursuant to which the Company has rights in the Project, payments pursuant to the agreements for the management, operation or maintenance of the Project, reasonable legal fees, fees paid in connection with obtaining, transferring,

maintaining or amending any approvals from any Governmental Authority, costs incurred in connection with the performance of environmental mitigation work to be carried out by the Company, and amounts required for the acquisition of any hedge approved in accordance with the Finance Documents, 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.

"Maintenance Failure" means each Noncompliance Event identified in Appendix B of the NCP Table which relates to Long Term Maintenance Work performed after the Substantial Completion Date.

"Maintenance Limits" means the Storage and Drainage Tunnel Maintenance Limits and the Roadway Maintenance Limits.

"Maintenance Payment Bond" means a bond in the form of Schedule 7-D (Form of Maintenance Payment Bond) of the Project Agreement, with such non-material modifications acceptable to MDOT, in its sole discretion, in the amount of the Maintenance Performance Security Value.

"Maintenance Performance Bond 1" means a bond in the form of Schedule 7-E (Form of Maintenance Performance Bond 1) of the Project Agreement, with such non-material modifications acceptable to MDOT, in its sole discretion, in the amount of the Maintenance Performance Security Value.

"**Maintenance Performance Bond 2**" means a bond in the form of Schedule 7-F (Form of Maintenance Performance Bond 2) of the Project Agreement, with such non-material modifications acceptable to MDOT, in its sole discretion, in the amount as may be determined by Developer and/or the Lenders.

"Maintenance Performance Bonds" means the Maintenance Performance Bond 1 and the Maintenance Performance Bond 2.

"Maintenance Performance Security" means: (a) the Maintenance Performance Bonds; and (b) the Maintenance Payment Bond, or either of them as the context requires.

"Maintenance Performance Security Value" means 25% of the greater of (a) the budgeted annual expenditures for the applicable year for performing the Long Term Maintenance Work as set out in Schedule 3-I (Specific Proposal Elements) of the Project Agreement or (b) the budgeted annual expenditures for the applicable year for performing the Long Term Maintenance Work as indicated in the Maintenance Plan approved by MDOT.

"Maintenance Plan" has the meaning given in TR Article 2 of the Project Agreement.

"Maintenance Quality Manager" has the meaning given in TR Article 3 of the Project Agreement. The Maintenance Quality Manager is considered a Key Personnel position.

"Maintenance Rectification Costs" means, in respect of any termination of the Project Agreement that occurs after Substantial Completion, all Liability that MDOT determines, in its good faith discretion, that MDOT has is or may incur as a result of the termination of the Project Agreement, including:

(a) those costs (internal and external) of carrying out any process to request tenders from any parties interested in entering into a contract with MDOT to carry out Maintenance Work in respect of the Project (on similar terms contemplated herein), including all costs related to the preparation of tender documentation, evaluation of tenders and negotiation and execution of relevant contracts;

(b) those costs to be incurred by MDOT in relation to:

(i) remediation or, if remediation is not possible or would cost more than renewal or replacement, renewal or replacement of any Defect;

(ii) rectification or cure of any breach of the Project Documents by any Developer-Related Entity, or any other condition that, with the giving of Notice or the passage of time, would be a breach of the Project Agreement; and

(c) those costs to be incurred for the remainder of the Term (if the Project Agreement had not been terminated) in order to ensure that the Project complies with the requirements of the Project Agreement, but only to the extent such projected costs exceed the costs assumed in the Financial Model,

including, for the avoidance of doubt, any amount which, but for the termination of the Project Agreement, either should have been deposited with or paid to MDOT in accordance with the terms of the Project Agreement.

"Maintenance Reserve Account" means the "Maintenance Reserve Account" established and created in the name of the Company pursuant to the Collateral Agency Agreement.

"Maintenance Reserve Account Required Balance" means, as of the first Transfer Date and each Transfer Date thereafter, amounts at least equal to the next three (3) months of Maintenance Expenditures solely to the extent required for Maintenance Work.

"Maintenance Term" means the period commencing upon the Maintenance Commencement Date and ending on the Expiration Date.

"Maintenance Work" means each of the following:

- (a) the Interim Maintenance Work; and
- (b) the Long Term Maintenance Work,

or all of them as the context requires.

"Maintenance Work Value" means the value for performing the Maintenance Work (excluding any price for performing the Interim Maintenance Work) as set out in Schedule 2 (Project Specific Information) of the Project Agreement.

"Majority Holders" means the Owners owning a majority in the aggregate principal amount of the then Outstanding Bonds.

"Mandatory Prepayment Account" means the "Mandatory Prepayment Account" established and created in the name of the Company pursuant to the Collateral Agency Agreement.

"MAP Index" means a weighted index with the following components:

(a) CPI - CPI-U, US City Average, All Items Not Seasonally Adjusted, as reported by the Bureau of Labor Statistics of the United States Department of Labor (weight 25.0%);

(b) Labor Index - the Employment Cost Index for Total Compensation, Seasonally Adjusted, Civilian Workers, All Workers as reported by the Bureau of Labor Statistics of the United States Department of Labor (weight 50%); and

(c) Materials Index - Series ID WPU00000000 (PPI Commodity Data) not seasonally adjusted as published by the US Department of Labor, Bureau of Labor Statistics (weight 25.0%).

"Material Adverse Effect" means a material adverse effect on:

(a) the performance, results of operation or condition (financial or otherwise) of Company or the Project;

- (b) the legality, validity or enforceability of a material provision of any Transaction Document;
- (c) Company's ability to observe and perform its material obligations under any Transaction Document;
- (d) the validity, perfection or priority of the security created pursuant to the Security Documents; or
- (e) the rights of the Secured Parties under the Finance Documents, including the ability of the Secured Parties to enforce their rights and remedies under the Finance Documents,

provided that, no effect arising out of or in connection with or resulting from any of the following shall be deemed, either alone or in combination, to constitute or contribute to a Material Adverse Effect: (i) general economic conditions or changes therein, (ii) financial, banking, currency or capital markets fluctuations or conditions, including changes in interest rates, (iii) conditions affecting the transportation industry generally, (iv) any action, omission, change, effect, circumstance or condition contemplated by the Finance Documents or attributable to the execution, performance or announcement of the Finance Documents or the transactions contemplated thereby, or (v) events that are Delay Events or Relief Events.

"Material Project Contracts" means:

- (a) the Project Agreement;
- (b) the Design-Build Contract;
- (c) the Design-Build Guarantee; and
- (d) any maintenance contract for all or substantially all of the maintenance obligations of the Company with respect to the Project,

in each case as amended or replaced in accordance with the terms of the Finance Documents.

"**Maximum Availability Payment**" or "**MAP**" means the annual maximum Availability Payment to be made by MDOT to Developer calculated in accordance with <u>Section 2.2</u> of <u>Schedule 4</u> (Payment Mechanism).

"Maximum Liability Cap" has the meaning given in Part 1 Section 12.2 of the Design-Build Contract.

"MDOT" means the Michigan Department of Transportation.

"**MDOT Activities**" means the provision of governmental services by MDOT or a Governmental Entity and the conduct of all activities performed by MDOT or a Governmental Entity in or associated with roads under the jurisdiction of the State of Michigan and other services of a similar nature.

"**MDOT Authorized Representative**" means the Authorized Representative of MDOT appointed and replaced in accordance with Section 7.1.1 of the Project Agreement.

"**MDOT Change**" means a Change carried under a Work Order issued in response to a Request for Change Proposal under Section 1.2 of Schedule 9 (Change Procedure) of the Design-Build Contract, a Necessary Basic Configuration Change, MDOT direction under Section 12.8.4 of the Design-Build Contract, or any other Change deemed to be an MDOT Change under the Project Agreement, excluding any Change following a Change Request by Developer.

"MDOT Claim" has the meaning given in Part 1 Section 8.1 of the Design-Build Contract.

"**MDOT Contractors**" means MDOT, its nominees, the MDOT Authorized Representative, OCWRC and their respective subcontractors but excludes Utility Owners, the Segment 2 Contractor and the P3 Lighting Contractor.

"**MDOT DB Change**" means a DB Change carried out under a DB Work Order issued in response to a Request for DB Change Proposal under Section 1.2 of Attachment 9 (DB Change Procedure) of the Design-Build Contract, a Necessary Basic Configuration Change, MDOT direction under Part 2 Section 12.8.4 of the Design-Build Contract or any other DB Change deemed to be an MDOT DB Change under the Design-Build Contract, excluding any DB Change following a DB Change Request by Contractor.

"MDOT Default" means the occurrence of any one or more of the following events or conditions:

(a) MDOT fails to make any payment due to Developer under the Project Agreement when due to the extent such payment is not subject to a good faith Dispute;

(b) Any representation made by MDOT under Section 5.2 of the Project Agreement is false or materially misleading or inaccurate when made in each case in any material respect or omits material information when made; or

(c) MDOT commits a material breach of its obligations under the Project Agreement (other than as a consequence of any Developer Fault), which breach materially adversely affects the ability of Developer to perform its obligations under the Project Agreement for a continuous period of not less than 60 days after Notice is received from Developer.

"MDOT Fault" means:

(a) a breach by MDOT of any of its material obligations or any material representation or warranty under the Project Agreement (including MDOT's delay or failure to provide access to the Project ROW in accordance with Section 9.1 of the Project Agreement);

- (b) MDOT's violation of any Applicable Law; or
- (c) fraud, criminal conduct, willful misconduct or grossly negligent act or omission by MDOT.

"MDOT Indemnified Party" means MDOT, the State, Local Agencies, and each of their respective successors, assigns, officeholders, officers, directors, agents and employees.

"**MDOT Pass-Through Payments**" means amounts paid by MDOT pursuant to the Project Agreement on account of Delay Costs, Extra Work Costs, Compensable Delay Events and Compensable Relief Events.

"**MDOT Person**" means any of MDOT's agents, consultants, subconsultants, contractors, and subcontractors of any tier, whether or not engaged with the Project, and its or their directors, officers and employees, but excluding Developer-Related Entities.

"**MDOT-Caused Delay**" means any event falling under clauses (a), (b), (c), (e), (h), (k), (m), (o), (p), (q), (r) or (s) of the definition of Compensable Delay Event.

"**MDOT-Provided Property**" means the real property that MDOT intends to acquire for the Project as described in TR Article 6 and the ROW Work Maps.

"**Milestone**" means each of the milestones set out in the Milestone Table and described in Schedule 1 (Definitions and Interpretations) of the Project Agreement, or all of them as the context requires.

"Milestone 1" means "Milestone 1" as set out in the Milestone Table and described in Schedule 1 (Definitions and Interpretations) of the Project Agreement

"Milestone 1 Completion" means the stage when the TBM is in place ready to mine and the following conditions have been satisfied:

- (a) The Developer has submitted and MDOT has approved:
 - (i) The final geotechnical report for the Storage and Drainage Tunnel;
 - (ii) The final design of the Storage and Drainage Tunnel alignment, vertical and horizontal;

(iii) The final design of the Storage and Drainage Tunnel liner design including durability report;

(iv) A preliminary arrangement plan for all Storage and Drainage Tunnel appurtenances (shafts, adits, pump station, etc.);

(v) The shop drawings for the TBM;

(vi) A subsurface methods plan describing the Developer's approach to the tunneling activities including soil conditioning, grouting, preparatory works for tunneling activities, and tunnel operations;

- (vii) Final Construction Impact Assessment; and
- (viii) Final Construction Impact Assessment Report;

(b) The Developer has provided a copy of the "Advance Notice of Tunnel Excavation" submitted to the Michigan Department of Licensing and Regularity Affairs, Construction Safety and Health Division, in accordance with MIPOSHA, Part 14, R 408.41461;

- (c) The TBM has been operated to indicate its assembly is correct;
- (d) The facilities necessary for liner installation are in place and operational; and
- (e) The facilities necessary for soil modification and grouting are in place and operational.

"Milestone 2" means "Milestone 2" as set out in the Milestone Table and described in Schedule 1 (Definitions and Interpretations) of the Project Agreement

"Milestone 2 Completion" means the stage when the Storage and Drainage Tunnel is complete and the following conditions have been satisfied:

(a) The Developer has completed the construction of the Storage and Drainage Tunnel and all appurtenances such as shafts and adits, and MDOT has inspected and accepted same;

(b) The Storage and Drainage Tunnel meets the required performance criteria specified in Schedule 17 (Technical Requirements) of the Project Agreement;

(c) All Submittals required by the Project Management Plan or Project Documents to be submitted to MDOT prior to Milestone 2 have been submitted to and approved by MDOT in accordance with the Submittal Requirements, in the form and content required by the Project Management Plan or Project Documents, as applicable;

(d) The Developer has completed the construction of new surface drainage features and tied them into the tunnel system and any existing surface drainage features to remain have been tied into the tunnel system and MDOT has inspected and accepted same;

(e) The Developer has completed construction of the Pump Station including all mechanical, electrical, signal and communications systems and MDOT has inspected and accepted same. The Developer has completed all testing and commissioning activities for the operation of the Pump Station and MDOT and other relevant parties have witnessed and accepted same;

(f) There exists no uncured Developer Default that is the subject of a Notice and no event exists that would be a Developer Default with the giving of Notice or the passage of time, unless (i) Milestone 2 will effect its full and complete cure, (ii) with respect to any non-monetary default, Developer has a right to cure and is diligently pursuing cure within the applicable cure period or (iii) with respect to any monetary defaults, the amount in question is disputed and Developer has timely submitted such matter for resolution under Schedule 15 (Dispute Resolution Procedures) of the Project Agreement;

(g) if any Governmental Entity with jurisdiction requires any form of certification of design, engineering or construction with respect to the Storage and Drainage Tunnel or any portion thereof, including any certifications from the engineer of record and architect of record for the Project, Developer has caused such certificates to be executed and delivered and has concurrently issued identical certificates to MDOT;

(h) Developer has delivered to MDOT all manufacturer warranties required for the Storage and Drainage Tunnel under, and in the form and content specified by Schedule 17 (Technical Requirements) of the Project Agreement; and

(i) Developer has done everything which the Project Agreement requires Developer to do as a condition precedent to Milestone 2.

"Milestone 3" means "Milestone 3" as set out in the Milestone Table and described in Schedule 1 (Definitions and Interpretations) of the Project Agreement.

"Milestone 4" means "Milestone 4" as set out in the Milestone Table and described in Schedule 1 (Definitions and Interpretations) of the Project Agreement.

"Milestone Completion" means each of Milestone 1 Completion, Milestone 2 Completion, Substantial Completion, and Final Acceptance, or all of them as the context requires.

"Milestone Completion Certificate" means the certificate to be issued by the MDOT Authorized Representative in accordance with Section 15.2 of the Project Agreement.

"Milestone Due Date" has the meaning given in Part 1 Section 10.3 of the Design-Build Contract.

"Milestone Liquidated Damages" has the meaning given in Part 1 Section 10.3 of the Design-Build Contract.

"**Milestone Payment**" mean each of the amounts calculated in accordance with Section 1.0 of Schedule 4 (Payment Mechanism) of the Project Agreement, or all of them, as the context requires.

"Milestone Payment 1" means the Milestone Payment paid in connection with Milestone 1 as identified in Schedule 4 to the Project Agreement.

"Milestone Payment 2" means the Milestone Payment paid in connection with Milestone 2 as identified in Schedule 4 to the Project Agreement.

"Milestone Payment 3" means the Milestone Payment paid in connection with Milestone 3 as identified in Schedule 4 to the Project Agreement.

"Milestone Payment 4" means the Milestone Payment paid in connection with Milestone 4 as identified in Schedule 4 to the Project Agreement.

"Milestone Payment Sub-Account" means the "Milestone Payment Sub-Account" established and created in the name of the Company pursuant to Section 5.01 of the Collateral Agency Agreement.

"Milestone Table" means Table 1 in Schedule 4 (Payment Mechanism).

"Minimum Conditions" means:

(a) the relevant Element is in a state or condition that allows that Element to be used for the purpose designated under the Project Agreement, Applicable Law and Good Industry Practice;

(b) all Users who are entitled to enter, leave, occupy or use the Relevant Infrastructure (as applicable) are able to do so safely and conveniently using normal access routes, at all times including compliance with Applicable Law and Good Industry Practice; and

(c) there is no material impact on:

- (i) the performance of any MDOT Activities or Pump Station Operations;
- (ii) the function and performance of the Relevant Infrastructure; or
- (iii) the performance of Maintenance Work by Contractor or Developer.

"Minimum DSCR" has the meaning specified in Section 8.01(r) of the Senior Loan Agreement.

"Model Auditor" means WeiserMazars LLP or any other nationally recognized firm of auditors with relevant experience selected by the Company and reasonably acceptable to the Trustee.

"Moody's" means Moody's Investors Service, Inc. and its successors and permitted assigns.

"Multiemployer Plan" means a multiemployer plan as defined in section 4001(a)(3) of ERISA with respect to which the Company or any ERISA Affiliate has liability.

"National Highway System" means the National Highway System of the United States.

"Nationally Recognized Rating Agency" means S&P, Moody's, Fitch, DBRS, KBRA or any other nationally recognized statistical rating organization identified by the Securities and Exchange Commission.

"NCP Table" means each of the tables set out in <u>Appendix A</u> and <u>Appendix B</u> of <u>Schedule 4</u> (Payment Mechanism) of the Project Agreement, or both of them as the context requires.

"Necessary Basic Configuration Change" means a change in the Basic Configuration which is necessary to meet the requirements of the Project Agreement as the result of an Error in the ROW Work Map or Segment 3 Roadway Plans (with the understanding that a change shall be deemed "necessary" only if the Error creates a problem in which Developer is unable to meet the requirements of the Project Agreement without a material change in the elements of the ROW Work Map or Segment 3 Roadway Plans relevant to the Basic Configuration).

"NEPA Approval" means FHWA has conducted an administration Re-evaluation of Segment 3 per 23 CFR 771.129(c) and has determined that the Record of Decision is still valid for the project and that no additional NEPA documentation is necessary.

"NEPA Event" means:

(a) any new or modified NEPA Approval necessitated solely by an MDOT Change, a Delay Event or Relief Event;

(b) legal action being taken in respect of the NEPA Approval that results in a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of, or by complying with such temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction results in prohibiting the prosecution of, a material portion of the Project Work;

(c) review or revocation or change to, the NEPA Approval, by FHWA; or

(d) any review or revocation of, or change to, a NEPA Approval directly resulting from the circumstances specified in clauses (b) and (c),

except to the extent resulting from Developer's design or from any Developer Fault.

"Net Cash Flow" means, with respect to any period,

- (a) aggregate Project Revenues received during such period, less
- (b) operating and capital expenses, including the cost of any life-cycle maintenance work or federal or state tax liability, in each case paid by Company, during such period (other than (1) the cost of any work funded by funds withdrawn from the Maintenance Reserve Account, (2) the cost of any work funded by funds withdrawn from the PA Handback Account, or (3) any draws under any letter of credit or other performance security available for purposes of the Maintenance Reserve Account or the PA Handback Account, as the case may be, in accordance with the terms of the Collateral Agency Agreement and the Project Agreement, respectively, (4) any costs funded by insurance proceeds other than the proceeds of business interruption or loss of advance profits insurance, or (5) any costs funded by the principal amount of additional Permitted Indebtedness), less
- (c) deposits to the Maintenance Reserve Account and the PA Handback Account made during such period, plus
- (d) amounts withdrawn from the Maintenance Reserve Account or the PA Handback Account or drawn from any letter of credit or other performance security available for the purposes of the Maintenance Reserve Account or the PA Handback Account in accordance with the Collateral Agency Agreement and the Project Agreement, respectively, during in each case, such period, except to the extent used to pay for any work under clause (b)(1) or (2) above.

"Non-Arbitrage Certificate" means the non-arbitrage and tax compliance certificate dated as of the Closing Date by and between the Issuer and the Company containing detailed restrictions relating to tax-exempt facility bonds for projects similar to the Project, within the meaning of Section 142(a)(1) of the Code and compliance with arbitrage and rebate requirements of Section 148 of the Code.

"Non-Equity Member" means:

- (a) the D&C Contractor;
- (b) the Maintenance Contractor;
- (c) each Subcontractor; and

(d) employees, agents, officers, directors, shareholders (but excluding shareholders of publicly traded companies), representatives, consultants, successors, assigns and invitees of any of the parties in clauses (a) through (c).

"Non-Maintained Facilities" means the facilities and work described in TR Article 2.4.

"Non-Maintained Work" means each of the:

- (a) Non-Maintained Facilities;
- (b) the Freeway Lighting System; and
- (c) the Pump Station Operations,

to be completed and subject to turnover in accordance with the Project Agreement or all of them as the context requires.

"Non-Refundable Costs" has the meaning given in Section 1(b) of Attachment 27 (Milestone Liquidated Damages) of the Design-Build Contract.

"Noncompliance Adjustments" means Deductions for certain Noncompliance Events incurred by the Company and calculated under Schedule 4 (Payment Mechanism) of the Project Agreement.

"Noncompliance Event" means a D&C Failure and a Maintenance Failure or either of them, as the context requires.

"Noncompliance Points" means the points that may be assessed for certain Noncompliance Events by Developer, as set out in Section 4.5 of Schedule 4 (Payment Mechanism).

"Notice" has the meaning given in Section 42.7.1.

"Notice to Proceed" or "NTP" means a Notice issued by MDOT to Developer authorizing Developer to proceed with the Project Work described in Section 14

"Oakland County Water Resources Commissioner" or "OCWRC" means Oakland County Water Resources Commissioner, the owner and operator of the GWK.

"Off-Ramp" means Ramps that provide vehicular access from I-75 (Mainline) to local roads and interstate freeways.

"OJT" means the federal on-the-job training participation provisions in 23 CFR Part 230, FHWA Form 1273 (Attachment 2 to Schedule 13), Attachment 4 to Schedule 13, and the MDOT OJT Program Manual and Special Provision 12SP-108C-02.

"On-Ramp" means Ramps that provide vehicular access from local roads and interstate freeways to the I-75 (Mainline).

"Operating Account" has the meaning specified in Section 5.01(b)(i) of the Collateral Agency Agreement.

"Original Issue Discount Bond" means any Bond which is sold at an initial offering price (as set forth in the Bond Purchase Agreement) of less than par.

"Original Substantial Completion Deadline" means August 31, 2023.

"Other Permitted Senior Secured Indebtedness" means senior secured Indebtedness that is equal as to priority in payment and security with respect to the Collateral as the Series 2018 Bonds may be incurred as follows:

(a) To pay for Project completion if: (1) Lenders' Technical Advisor certifies that additional debt to complete the construction of the Project 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; and (2) the aggregate amount of Indebtedness incurred pursuant to this clause (a) may not exceed five percent (5%) percent of the principal amount of the Series 2018 Bonds; provided that no Specified Default or Event of Default has occurred and is continuing (unless proceeds are used to cure such Specified Default or Event of Default);

- (b) To pay to refurbish, upgrade, modify, expand or add to the Project, in connection with any Work Order or Change Order (each as defined in the Project Agreement) issued by MDOT (including a Change Order issued by MDOT following a Change Request by the Company) or Relief Event or to meet other costs necessary for the purpose of complying with the requirements of the Project Agreement if: (1) no Specified Default or Event of Default has occurred and is continuing, (2) the incurrence of such Indebtedness shall not result in a downgrade of the then-current rating on the Series 2018 Bonds by any Nationally Recognized Rating Agency then rating the Series 2018 Bonds, (3) the Lenders' Technical Advisor confirms that, after giving effect to such incurrence, amounts projected to be expended in the Company's operating and maintenance budget and lifecycle projections will continue to be satisfied, and (4) Company certifies to the Trustee that the DSCR for each 12-month period (beginning on the first day of the first month after the incurrence of such additional senior secured Indebtedness), is forecasted to be at least 1.15:1.00 for each year of the remaining term of the Senior Secured Obligations after giving effect to such Indebtedness; and
- (c) To refinance, replace or refund any or all of the Series 2018 Bonds ("**Refunding Bonds**"), provided that either:

(1) the Trustee shall have received certification from the Company that debt service in each year for the Refunding Bonds will not exceed the debt service which would have been payable in each year for the Series 2018 Bonds being refunded; or

(2) (A) for each 12-month period ending on a Calculation Date on and after the first Calculation Date after the delivery of such proposed Refunding Bonds and through the period ending on the maturity date of the then outstanding Senior Secured Obligations, the DSCR, calculated and certified by the Company, will be projected to be at least 1.15:1.00, taking the proposed Refunding Bonds into account, (B) the incurrence of such Indebtedness shall not result in a downgrade of the then-current rating on the Series 2018 Bonds by any Nationally Recognized Rating Agency then rating the Series 2018 Bonds, and (C) if all the then outstanding Senior Secured Obligations are to be refunded, prepaid or defeased prior to maturity, all necessary instructions or arrangements shall have been made in order to give effect to such refunding, prepayment or defeasance.

In each case of clauses (a), (b) and (c) herein, such Indebtedness must constitute "Project Debt" as defined under the Project Agreement.

"Outstanding" means, as of any date of determination, all Bonds that have been executed, authenticated and delivered under the Indenture, except:

(a) any Bond, or portion thereof, on which all principal and interest due or to become due on or before maturity has been paid;

(b) any Bond, or portion thereof, on which the Redemption Price due or to become due has been paid in accordance with the redemption provisions applicable to such Bond;

(c) Bonds in lieu of which other Bonds have been executed, authenticated and delivered pursuant to the provisions of the Indenture relating to the transfer and exchange of Bonds or the replacement of mutilated, lost, stolen or destroyed Bonds;

(d) Bonds that have been canceled by the Trustee or that have been surrendered to the Trustee for cancellation; and

(e) Bonds that have been defeased pursuant to and in accordance with Article XI of the Indenture.

"Overpass/Underpass" means a vehicular crossing either below or above I-75 (Mainline).

"P3 Lighting Contract" means that certain Metro Region Freeway Lighting DBFOM Project Agreement dated as of August 24, 2015, by and between MDOT and P3 Lighting Contractor, as amended.

"P3 Lighting Contractor" means Freeway Lighting Partners, LLC.

"**PA Direct Agreement**" means the Direct Agreement, dated as of November 20, 2018, by and among MDOT, the Company and the Collateral Agent.

"PA Handback Account" has the meaning specified in Section 5.01(b)(ii) of the Collateral Agency Agreement.

"PA Handback Required Balance" means an amount equal to the Handback Work Costs.

"Parent Guaranty" has the meaning given in Part 1 Section 14.2(a) of the Design-Build Contract.

"Party" means either MDOT or Developer, and "Parties" means both MDOT and Developer.

"**Pension Plan**" means any employee pension benefit plan, as defined in Section 3(2) of ERISA, other than a Multiemployer Plan, which is subject to the provisions of Title IV of ERISA and with respect of which the Company or any ERISA Affiliate has liability.

"Performance Requirements" means for each Element of the Project during the Maintenance Term, the requirements in the Performance and Measurement Tables of the Project Agreement.

"Performance Security" means:

- (a) the D&C Performance Bonds;
- (b) the D&C Payment Bond;
- (c) the Maintenance Performance Bonds; and
- (d) the Maintenance Payment Bond,

or each of them as the context requires.

"Periodic MDOT Report" has the meaning specified in Section 6.01(b)(1) of the Senior Loan Agreement.

"Permitted Disposition" means:

- (a) the replacement of obsolete, worn out or defective property in the ordinary course of business,
- (b) the sale, transfer or other disposition of Permitted Investments,
- (c) the sale, transfer or other disposition of any assets in a transaction that would constitute Permitted Indebtedness,

- (d) the disposition of surplus property not required for the operation of the Project in the ordinary course of business,
- (e) the sale, lease, assignment, transfer or other disposition of any of Company's property, business or assets having a value not exceeding \$5,000,000 in the aggregate in any fiscal year; provided that, such property (if not replaced within one hundred and eighty (180) days by substantially equivalent replacement property) is not required for Company to comply with its obligations under the Material Project Contracts and the Finance Documents and the proceeds from such sale, lease, assignment, transfer or disposition shall not be less than the fair market value of such property; or
- (f) the sale, lease, assignment, transfer or other disposition of any of Company's property, business or assets otherwise approved by the Trustee.

"Permitted Distribution" means any Restricted Payment permitted pursuant to satisfaction or waiver of the Restricted Payment Conditions.

"Permitted Indebtedness" means:

- (a) Indebtedness of Company incurred under the Finance Documents;
- (b) Other Permitted Senior Secured Indebtedness issued pursuant to the Indenture or an indenture supplemental thereto or the holders of which accede to the Indenture;
- (c) senior secured Indebtedness (other than the Indebtedness under the initial Indenture) otherwise incurred in connection with the Project, and hedging arrangements in respect thereto, which has been approved by the Trustee and the holders of which accede to the Indenture;
- (d) Secured Indebtedness subordinate to the Senior Secured Obligations in an amount not to exceed \$5,000,000 (excluding indebtedness under any subordinated debt owing to any Affiliate of Company); *provided* that such subordinated indebtedness is subject to a subordination agreement containing terms substantially similar to those set forth on Exhibit I to the Collateral Agency Agreement;
- (e) unsecured Indebtedness of Company to a Sponsor (or an Affiliate of a Sponsor) as a result of shareholder loans made to Company and repayable solely subject to the Restricted Payment Conditions;
- (f) purchase money obligations in an amount not to exceed \$10,000,000 incurred to finance discrete items of equipment not comprising an integral part of the Project that extend to, and are secured by, only the equipment being financed, as long as such indebtedness does not exceed the purchase price paid for such equipment;
- (g) current accounts payable arising, and accrued expenses incurred, in the ordinary course of business which are payable in accordance with customary practices that are not overdue by more than ninety (90) days (unless subject to a good faith contest); and
- (h) reimbursement obligations of Company incurred in connection with the issuance of any letter of credit or bond insurance policy either (1) required to be provided by the Company pursuant to the Project Agreement or (2) in connection with the Project and permitted by the Transaction Documents that do not in the aggregate have face amounts exceeding \$10,000,000.

"Permitted Investments" means:

- (a) Non-callable direct obligations of, or obligations the payment of the principal of and interest on which are unconditionally guaranteed as to full and timely payment by, the United States of America;
- (b) Obligations of a state of the United States, the District of Columbia or any possession of the United States, or any political subdivision thereof, which are described in Section 103(a) of the Code and are rated in one of the highest three major grades as determined by at least one Nationally Recognized Rating Agency or are secured, as to payments of principal and interest, by a letter of credit provided by a financial institution or insurance provided by a bond insurance company which itself or its debt is rated in one of the highest three major grades as determined by at least one Nationally Recognized Rating Agency;
- (c) Banker's acceptances, commercial accounts, certificates of deposit, or depository receipts issued by a bank, trust company, savings and loan association, savings bank, credit union or other financial institution whose deposits are, as appropriate, insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration or any successor entities and whose reported capital and surplus equal at least \$500,000,000;
- (d) Commercial paper rated at the time of purchase within the two highest classifications established by at least one Nationally Recognized Rating Agency, and which matures within 270 days after the date of issue;
- (e) Repurchase agreements against obligations itemized in paragraph (a) above, and executed by a bank or a trust company or by members of the Association of Primary Dealers or other recognized dealers in United States government securities, the market value of which must be maintained at levels at least equal to the amounts advanced and which must be held in the custody of the Collateral Agent or the Collateral Agent's agent;
- (f) Any fund or other pooling arrangement which exclusively purchases and holds the investments itemized in paragraphs (a) through (e) above, including those for which the Collateral Agent or an affiliate performs services for a fee, whether as a custodian, transfer agent, investment advisor or otherwise;
- (g) An investment agreement or guaranteed investment contract with a provider whose unsecured long-term debt is rated within the two highest rating classifications established by at least one Rating Agency or an investment agreement or guaranteed investment contract which is guaranteed by an entity meeting the provider requirements described in this paragraph (g); or
- (h) Solely with respect to the Bond Proceeds Sub-Account, the Series 2018 GIC.

"Permitted Lane Closure" means where Developer:

- (a) fully or partially closes a Lane to facilitate Project Work;
- (b) fully or partially blocks ingress or egress from a Lane to facilitate Project Work; or
- (c) closes or blocks ingress or egress from a Lane in response to Incidents or Emergencies,

and where, in the case of either clause (a) or clause (b), (i) MDOT approves the closure or blockage in advance and in accordance with TR Article 18 of the Project Agreement, and (ii) the closure otherwise complies with the requirements in TR Article 18 of the Project Agreement,

and where, in the case of clause (c), (1) the closure shall be considered a Permitted Lane Closure only until such time as threat to safety, infrastructure, or environment has been mitigated, and (2) the Incident or Emergency was not caused by any Developer Fault.

"Permitted Letter of Credit Provider" means any bank, financial institution or trust company:

(a) with a Qualifying Rating from any of S&P, Moody's or Fitch or, in the case of DBRS and KBRA, has a Qualifying Rating from both (with the lower rating applying thereto);

- (b) having a capital and surplus of not less than \$500,000,000;
- (c) authorized to engage in the banking business; and

(d) organized under or licensed as a branch or agency under the laws of the United States or any state thereof.

"Permitted Security Interest" means:

- (a) any Security Interest arising by operation of law or in the ordinary course of business in connection with or to secure the performance of bids, tenders, contracts, leases, statutory obligations, surety bonds or appeal bonds;
- (b) any mechanic's, materialmen's, workmen's, repairmen's, employees', warehousemen's, carriers' or any like lien or right of set-off arising in the ordinary course of business or under applicable law, securing obligations incurred in connection with the Project which are not overdue by more than sixty (60) days or are being contested in good faith;
- (c) any right of title retention in connection with the acquisition of assets in the ordinary course of business that does not exceed \$1,000,000;
- (d) any Security Interest for Taxes, assessments or governmental charges not yet due or being contested in good faith;
- (e) any Security Interest arising out of judgments or awards fully covered by insurance or with respect to which an appeal or proceeding for review is being prosecuted, enforcement has been stayed or bonded;
- (f) any Security Interest created pursuant to or contemplated by the Finance Documents or to secure Bond Obligations, the Other Permitted Senior Secured Indebtedness or the Permitted Subordinated Indebtedness;
- (g) any right of set-off arising under a Material Project Contract or Finance Document;
- (h) any other lien granted over assets with a value not exceeding \$1,000,000 (or its equivalent) in the aggregate;
- (i) any Security Interest securing Permitted Subordinated Indebtedness;
- (j) any Security Interest incurred or deposit made in the ordinary course of business in connection with workers' compensation, unemployment insurance or other forms of governmental insurance or benefits;
- (k) any Security Interest arising solely by virtue of any statutory or common law provision relating to banker's liens, rights to set-off or similar rights;

- (l) licenses or sublicenses of intellectual property granted in the ordinary course of business;
- (m) with respect to rights to property on the Project provided by MDOT pursuant to the Project Agreement, any easements, covenants, conditions, rights-of-way or other exceptions or defects or irregularities to title with respect to the Project that exist as of the Closing Date;
- (n) any Security Interest created pursuant to the Project Agreement; and
- (o) Any other Security Interest approved in writing by the Trustee.

"Permitted Subordinated Indebtedness" has the meaning specified in the clause (d) of the definition of "Permitted Indebtedness".

"Persistent Contractor Default" means:

(a) with respect to Noncompliance Events (excluding Incident Management Noncompliance Events), Contractor incurs: (i) in any twelve (12) consecutive Months, 225 Noncompliance Points, or (ii) in any thirty-six (36) consecutive Months, 563 Noncompliance Points; or

(b) with respect to Incident Management Noncompliance Events, Contractor incurs: (i) in any twelve (12) consecutive Months, 75 Noncompliance Points, or (ii) in any thirty-six (36) consecutive Months, 188 Noncompliance Points.

"Persistent Developer Default" means:

(a) with respect to Noncompliance Events (excluding Incident Management Noncompliance Events), Developer incurs: (i) in any twelve (12) consecutive Months, 300 Noncompliance Points, or (ii) in any thirty-six (36) consecutive Months, 750 Noncompliance Points; or

(b) with respect to Incident Management Noncompliance Events, Developer incurs: (i) in any twelve (12) consecutive Months, 100 Noncompliance Points, or (ii) in any thirty-six (36) consecutive Months, 250 Noncompliance Points.

"Person" means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"**Plan**" means only when capitalized, the plan, profiles, typical cross-sections, and supplemental drawings prepared by or on Contractor's behalf, that show the locations, character, dimensions, and details of the Contractor Obligations to be done.

"Planned ROW Limits" means Existing MDOT ROW and MDOT-Provided Property.

"Pledge Agreement" means that certain pledge agreement, dated as of the date of the Collateral Agency Agreement, by and between HoldCo and the Collateral Agent.

"**Pre-Refinancing Equity IRR**" means the blended nominal post-tax Equity IRR calculated immediately prior to the Refinancing on a version of the Financial Model updated for the actual revenue and cost performance of the Project up to the Refinancing date.

"Prefinal Project Handback Condition Report" has the meaning given in Section 18.2.2 of the Project Agreement.

"Preliminary Project Handback Condition Report" has the meaning given in Section 18.2.1 of the Project Agreement.

"**Premium Bonds**" means the Series 2018 Bonds that are subject to a bond premium causing their initial public offering prices to be greater than the principal amounts thereof payable at maturity or on an earlier call date.

"Principal Payment" has the meaning specified in the Indenture.

"**Principal Payment Date**" means (a) for the Series 2018 Bonds, the meaning specified in the Indenture and (b) for any other Secured Obligations, the date or dates on which principal of such Secured Obligations is due and payable as set forth in the documents pursuant to which such Secured Obligations was incurred.

"Priority Hours" means the hours between 6 am and 10 pm on a Business Day.

"**Proceeds**" means "proceeds" as such term is defined in the UCC or under other relevant law and, in any event, shall include, but shall not be limited to, (a) any and all proceeds of, or amounts (in whatsoever form, whether cash, securities, property or other assets) received under or with respect to, any insurance, indemnity, warranty or guaranty payable to the Company from time to time, and claims for insurance, indemnity, warranty or guaranty effected or held for the benefit of the Company, in each case with respect to any of the Collateral, (b) any and all payments (in any form whatsoever, whether cash, securities, property or other assets) made or due and payable to the Company from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any Governmental Authority (or any person acting under color of Governmental Authority), and (c) any and all other amounts (in any form whatsoever, whether cash, securities, property or other assets) from time to time paid or payable under or in connection with any of the Collateral (whether or not in connection with the sale, lease or other disposition of the Collateral).

"Project" means the design, construction, financing, and maintenance of the I-75 (Segment 3) Project.

"**Project Accounts**" means, collectively, (a) each of the Securities Accounts, (b) the PA Handback Account, and (c) such other accounts to be specified as being "Project Accounts" in the Collateral Agency Agreement, including any sub-accounts thereto, from time to time.

"**Project Agreement**" means the Public-Private Partnership (P3) Design-Build-Finance-Maintain Agreement, dated as of October 12, 2018, as amended and restated from time to time, between the Company and MDOT.

"Project Costs" means all costs and expenses incurred in connection with the design, demolition, construction, commissioning, site acquisition and financing of the Project, including, without limitation, the Design-Build Contract Price, amounts payable under all construction, engineering, technical and other contracts (including the TAMSAs) entered into by Company in connection with performing its obligations under the Project Agreement, all Maintenance Expenditures and Renewal Expenditures incurred prior to Final Acceptance, financing costs, including debt service payments, costs of issuance, fees (including fees payable to legal, tax, accounting and other advisors), interest during construction, current interest on Series 2018 Bonds prior to Final Acceptance, any amounts payable under any interest rate hedging agreement, initial working capital costs, and funding of reserves (including the Maintenance Reserve Account and Senior Debt Service Reserve Account), all development costs incurred prior to the Closing Date, mobilization payments in respect of maintenance activities, all administrative costs, including budgeted overhead and operating expenses, any Taxes, assessments or governmental charges payable by the Sponsors in connection with the Project, fees and expenses payable in connection with letters of credit of Company (other than Acceptable Letters of Credit except to the extent of amounts included therefor in the Base Case Model), and any fees, administrative costs or expenses and indemnification payments due to (a) the Secured Parties or other parties under the Finance Documents, (b) to other parties under any documentation relating to any Other Permitted Senior Secured Indebtedness or Permitted Subordinated Indebtedness, if any, and (c) to the payment of any rating agency fees and expenses, but excluding any payments to any Affiliates of the Company other than the payments described in clauses (c), (d), (e) and (f) of the proviso in the definition of Restricted Payment.

"Project Data" means:

(a) all design data;

(b) all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the performance of the Maintenance Work; and

(c) any other materials, documents and or data acquired, brought into existence or used in relation to the Project Work or the Design-Build Contract, other than the Developer Intellectual Property and Third Party Intellectual Property, such as CAD software, that is used only in the process of design and construction.

"**Project Debt**" means bona fide indebtedness (including subordinated indebtedness) for or in respect of funds borrowed (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, including 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, lease financing obligations, make-whole amounts, and breakage costs but excluding:

(a) indebtedness of Developer or any shareholder, member, partner or joint venture member of Developer that is secured by anything less than the entire Developer interest, such as indebtedness secured only by an assignment of economic interest in Developer or of rights to cash flow or dividends from Developer;

(b) any increase in indebtedness to the extent resulting from an agreement or other arrangement Developer enters into or first becomes obligated to repay after it was aware (or should have been aware, using reasonable due diligence) of the occurrence or prospective occurrence of an event of termination, including Developer's receipt of a Notice of termination for convenience under Section 33.1 and occurrence of an MDOT Default of the type entitling Developer to terminate the Project Agreement; and

(c) any debt for which Notice has not been given from the Collateral Agent to MDOT (together with the related Financing Documents).

"Project Documents" means:

- (a) the Project Agreement;
- (b) the Performance Security;
- (c) the Direct Agreement; and

(d) any other document or agreement entered into under or for the purposes of supplementing, replacing, amending or novating, any of them or any other documents as the Parties agree is a Project Document.

"Project Management Plan" or "PMP" has the meaning given in TR Article 3 of the Project Agreement as updated or amended in accordance with the Project Agreement and includes all Sub-Plans.

"**Project Proceeds**" means any (a) delay-related liquidated damages compensation received by the Company pursuant to or in connection with any Material Project Contract, including without limitation, all Delay Liquidated Damages; and (b) the proceeds of any delay in start-up and contingent business interruption insurance and loss of advance profits insurance received by the Company (net of any applicable Taxes in respect of the Company).

"**Project Proceeds Sub-Account**" means the "Project Proceeds Sub-Account" established and created in the name of the Company pursuant to Section 5.01 of the Collateral Agency Agreement.

"**Project Recovery Schedule**" means the schedule required to be prepared by Developer under TR Article 3.3.2.6 of the Project Agreement.

"**Project Revenues**" means the aggregate amount of all revenues received by Company under the Project Agreement, the interest on any Project Accounts received by Company (to the extent transferred to the Revenue Account), the revenues received by Company under any Material Project Contracts, Project Proceeds, the revenues received by Company from any third parties, including Additional Equity Contributions (solely for the purposes of determining compliance with the Minimum DSCR pursuant to Section 8.01(r) of the Senior Loan Agreement on the applicable Calculation Date and any subsequent period that includes such Calculation Date as set forth in Section 8.07 of the Senior Loan Agreement), the proceeds from any business interruption or delay in start-up insurance, the insurance proceeds, if any, remaining following restoration of the Project to its original condition preceding an insurable loss event, amounts transferred to the Revenue Account from the Bond Proceeds Sub-Account or the Construction Account and all other amounts received and otherwise retainable by the Company arising or derived from or paid in respect of the Project; *provided* that in no event shall Project Revenues include any mandatory equity contributions, equity investment or any extension of credit or loan made to Company.

"**Project Right of Way**" or "**Project ROW**" means, except as provided below, the following real property (which term is inclusive of all estates, easements, leases and other interests in real property, permanent or temporary):

(a) Planned ROW Limits; and

(b) any other permanent interests in real property that MDOT acquires in connection with an MDOT Change or Necessary Basic Configuration Change,

including all air space, surface rights and subsurface rights within the boundaries of the Project ROW but excluding, (i) real property for Temporary Work Areas outside the Planned ROW Limits, and (ii) after Final Acceptance, any real property for city streets or other areas included in the Maintenance Work that are outside the Maintenance Services Limits.

"Project Schedule" means:

(a) with respect to the D&C Work, the most current MDOT- approved version of the logic-based Critical Path schedules (the (i) Baseline Schedule, (ii) Revised Project Schedule, (iii) Project Recovery Schedule, and (iv) Final Updated Schedule, as applicable) in accordance with TR Article 3 of the Project Agreement for all D&C Work leading up to and including Final Acceptance, and for tracking the performance of such D&C Work; and

(b) with respect to the Maintenance Work, the most current MDOT-approved (i) Maintenance Schedule and (ii) Renewal Work Schedule for all Maintenance Work during the Maintenance Term in accordance with TR Article 24 of the Project Agreement as revised and updated in accordance with the Project Agreement.

"Project Work" means:

- (a) the performance of the D&C Work;
- (b) the performance of the Maintenance Work; and
- (c) the performance of all other obligations of Developer under the Project Agreement.

"Proposal" means the proposal submitted by the Developer in response to the RFP.

"Proposal Due Date" means August 21, 2018.

"Protection in Place" or "Protect in Place" means any activity undertaken to avoid damaging a Utility that does not involve removing or Relocating that Utility, including staking the location of a Utility, avoidance of a Utility's location by construction equipment, 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 Protection in Place; whereas temporarily moving power lines to another location after cutting them would be considered a temporary Relocation. The term Protection in Place includes both temporary measures and permanent installations meeting the foregoing definition.

"**Pump Station**" means the pump station shaft, all miscellaneous structures, pumps, and piping, electrical, mechanical and signaling systems necessary for the pump station to function as intended, to be designed, constructed and maintained in accordance with TR Article 22.

"**Pump Station Operations**" means those operational activities associated with the Tunnel and Pump Station that are the responsibility of Oakland County and the OCWRC.

"**Punch List**" means the list of Project Work items which remain to be completed after achievement of Milestone Completion and Substantial Completion, as applicable, generally limited to minor incidental items of Project Work which have no adverse effect on the safety or operability of the Project and which can be performed without shutting down a traffic lane or shoulder.

"Punch List Items" means:

(a) any Defect which occurs after Developer submits Notice under Section 15.1; and

(b) notwithstanding clause (a) and whether the Defect has been previously identified, any Defects and items of outstanding work (including in relation to seasonal work) in connection with the work required to achieve a Completion Milestone which would not result in a Minimum Condition being breached.

"Qualified Insurer" has the meaning given in Section 36.2 of the Project Agreement.

"Qualifying Rating" means, in the case of any bank or financial institution, a rating of its senior unsecured debt by at least one Rating Agency at the following level:

- (a) A- or higher by S&P;
- (b) A- or higher by Fitch;
- (c) A3 or higher by Moody's;
- (d) A(low) or higher by DBRS; or
- (e) A- or higher by KBRA.

"Qualifying Refinancing" means any Refinancing that will give rise to a Refinancing Gain excluding any Exempt Refinancing.

"Quality Manager" has the meaning given in TR Article 3 of the Project Agreement. The Quality Manager is considered a Key Personnel position.

"Quarter" means:

(a) the period commencing on the Maintenance Commencement Date for the full I-75 (Segment 3) and ending on the day before the first Quarterly Date during the Maintenance Term (for the full I-75 (Segment 3));

(b) each 3 month period commencing on a Quarterly Date; and

(c) the period commencing on the last Quarterly Date during the Maintenance Term for the full I-75 (Segment 3) and ending on the Expiration Date.

"Quarterly Date" means every January 1, April 1, July 1 and October 1 during the Maintenance Term (for the full I-75 (Segment 3)).

"Quarterly Maximum Availability Payment" or "Quarterly MAP" means the amount calculated under Section 2.1 of Schedule 4 (Payment Mechanism) of the Project Agreement.

"Quarterly Noncompliance Adjustments" means the amount calculated under Section 2.1 of Schedule 4 (Payment Mechanism) of the Project Agreement.

"Quarterly Renewal Work Payment" means the amount calculated under Section 2.1 of Schedule 4 (Payment Mechanism) of the Project Agreement.

"Quarterly Total Maximum Availability Payment" means the sum of the Quarterly Maximum Availability Payment and the Quarterly Renewal Work Payment, calculated under Schedule 4 (Payment Mechanism) of the Project Agreement.

"Quarterly Unavailability Adjustments" means the adjustment calculated under Section 3.1 of Schedule 4 (Payment Mechanism) of the Project Agreement.

"**Ramp**" means a connecting roadway between two intersecting roadways, usually at grade separations and includes all Off-Ramps and On-Ramps.

"Rating Agency(ies)" means any of S&P, Moody's, Fitch, DBRS, or KBRA.

"**Reasonable Investigation**" means the following activities by appropriate, qualified professionals prior to the Proposal Due Date:

(a) Visit and visual, non-intrusive inspection of the Site and adjacent locations, except areas to which access rights have not been made available by the Setting Date;

(b) Review and analysis of all Reference Information Documents;

(c) Review and analysis of NEPA Approval;

(d) Reasonable inquiry with Utility Owners, including request for and review of Utility plans provided by Utility Owners;

(e) Review and analysis of material Applicable Law to the Project or the Project Work as of the Setting Date; and

(f) Other activities consistent with Good Industry Practice sufficient to familiarize Developer with surface and subsurface conditions, including the presence of Utilities, Hazardous Materials, archeological, paleontological and cultural resources, and Threatened or Endangered Species, affecting the Site or surrounding locations,

except that (i) none of the activities listed in clauses (a) and (d) through (f) above includes conducting field studies or geotechnical or other intrusive investigations, and (ii) none of the foregoing activities include original research of private records not contained or referenced in the Reference Information Documents or Schedule 17 (Technical Requirements) of the Project Agreement.

"Recognized Environmental Conditions" has the meaning given in ASTM E-1527-13.

"**Redemption Price**" means the principal, interest and premium, if any due on a Bond on the date on which it is redeemed prior to maturity pursuant to the redemption provisions applicable to such Bond.

"**Reference Information Documents**" means all drawings, reports, studies, data, documents, or other information, provided or made available to any Developer-Related Entity by MDOT or any MDOT Person, or which was obtained from or through any other sources prior to the Proposal Due Date. Reference Information Documents include those items made available at https://mdotpbid.com/I75ModDBFM/SitePages/Home.aspx.

"Refinancing" means:

(a) any amendment, variation, novation, supplement or replacement of any Financing Document (other than any Equity Member Funding Agreement);

(b) the exercise of any right, or the grant of any waiver or consent, under any Financing Document (other than any Equity Member Funding Agreement);

(c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, any Financing Document (other than any Equity Member Funding Agreement) or the creation or granting of any other form of benefit or interest in either a Financing Document (other than any Equity Member Funding Agreement) or the contracts, revenues or assets of the Developer whether by way of security or otherwise; or

(d) any other arrangement put in place by the Developer or another person which has a similar effect or has the effect of limiting the Developer's ability to carry out any of clauses (a) through (c) above.

"Refinancing Gain" means an amount equal to the greater of zero and {(A-B)-C}, where:

A = the net present value using the Base Case Equity IRR as the discounting rate of the Distributions projected at the time immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made over the remaining term of the Project Agreement following the Refinancing;

B = the net present value using the Base Case Equity IRR as the discounting rate of the Distributions projected at the time immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made over the remaining term of the Project Agreement following the Refinancing; and

C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Base Case Equity IRR.

"Refundable Costs" has the meaning given in Section 1(a) of Attachment 27 (Milestone Liquidated Damages) the Design-Build Contract.

"Release of Hazardous Materials" means 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 or disturbance of an existing release or condition involving Hazardous Materials, including off-site migration or deposition.

"Relevant Authority" means the government of the United States of America, the State, the cities and counties within the State and any other agency, or subdivision of any of the foregoing, including any federal, state or municipal government, and any court, agency, special district, commission or other authority exercising executive, legislative, judicial, regulatory, administrative or taxing functions of, or pertaining to, the government of the United

States of America, the State or the cities and counties within the State. "Relevant Authority" shall not include MDOT.

"Relevant Change in Law" means a discriminatory Change in Law which principally affects or principally relates only to the design, supply, construction (including installation) and maintenance of the Project.

"Relevant Event" has the meaning given in Section 24.1.1 of the Project Agreement.

"Relevant Infrastructure" means:

(a) during the D&C Term, the Project ROW, the D&C Work and the Interim Maintenance Work; and

(b) during the Maintenance Term, the Project ROW, the I-75 (Segment 3) and the Long Term Maintenance Work but excluding the Non-Maintained Work.

"**Relief Event**" means any of the following events or circumstances and to the extent, in each case, that it interferes directly and adversely with, or causes a failure of, the performance of the Punch List or Long Term Maintenance Work and occurs after the Substantial Completion Date:

- (a) a Force Majeure Event; and
- (b) any Compensable Relief Event.

"Relocation" or "Relocate" means, a Utility Relocation.

"**Relocation Standards**" means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities (comparable to those being Relocated on account of the Project) constructed by the Utility Owner (or for the Utility Owner by its contractors), at its own expense. Unless the context requires otherwise, references in the Project Documents to a Utility Owner's "applicable Relocation Standards" refer to those that are applicable under Section 10 and TR Article 5 of the Project Agreement.

"**Renewal Expenditures**" means any amounts payable by the Company with respect to the performance of Renewal Work (including work needed to satisfy the Performance Requirements (as defined in the Project Agreement)) and Handback Work.

"**Renewal Work**" means maintenance, repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element of the Project that is not normally included as an annually recurring cost in maintenance and repair budgets for transportation facilities of similar natures and in similar environments as the Project.

"**Renewal Work Schedule**" means the schedule for Renewal Work to be prepared and updated by Developer under Section 17.4 of the Project Agreement.

"Replacement Conditions" has the meaning specified in Section 6.28(c) of the Senior Loan Agreement.

"**Report of Property Damage**" means a report in the form of Schedule 19 (Report of Department Property Damage) of the Project Agreement.

"**Request for Change Proposal**" means a Notice issued by MDOT to Developer setting forth a proposed MDOT Change and requesting Developer's assessment of cost, financial, schedule, Schedule 17 (Technical Requirements) and other impacts in Section 1.2 of Schedule 9 (Change Procedure) of the Project Agreement.

"Request for DB Change Proposal" means a Notice issued by Developer to Contractor (on the basis of a Request for Change Proposal issued by MDOT to Developer) setting forth a proposed MDOT DB Change and requesting Contractor's assessment of cost, financial, schedule, Attachment 17 (Technical Requirements) of the

Project Agreement and other impacts in Section 1.2 of Attachment 9 (DB Change Procedure) of the Project Agreement.

"Required Non-Defaultor" has the meaning specified in Section 8.01(s)(1)(D) of the Senior Loan Agreement.

"Reserve Account" means each of (i) each Senior Debt Service Reserve Account; (ii) the Maintenance Reserve Account, and (iii) the PA Handback Account.

"Reserved Right" means the rights of the Issuer to:

(a) enter into Supplemental Indentures as provided in Article IX;

(b) to receive payments or reimbursement of Issuer costs and expenses as provided in the Indenture, any Supplemental Indenture, Sections 4.01(b) and 8.05 of the Series 2018 Loan Agreement and/or any Additional Parity Bonds Loan Agreements;

(c) be held harmless and indemnified pursuant to Section 7.02 of the Series 2018 Loan Agreement and/or as provided in any Additional Parity Bonds Loan Agreement;

(d) receive notices and other documents as required under the Indenture, any Supplemental Indenture, the Series 2018 Loan Agreement and/or any Additional Parity Bonds Loan Agreements to be delivered to the Issuer;

(e) enforce and to give or withhold, in accordance with Article X of the Indenture, consent to any amendment, change or modification to:

(i) any provision of the Series 2018 Loan Agreement except those provisions set forth in (A) Section 2.02 thereof (other than any amendment, change or modification to clauses (a) through (e) of Section 2.02), (B) Article VI thereof (other than any amendment, change or modification to Sections 6.10 or 6.27 thereof); (C) Article VIII thereof (other than any amendment, change or modification to clauses (a), (b) or (c) of Section 8.01 thereof, to the extent of any Events of Default relating to the Company's failure to make any payment to the Issuer, a misrepresentation referred to clauses (a) through (e) of Section 2.02, or a breach of Sections 6.10 or 6.27);

(ii) any provision of an Additional Parity Bonds Loan Agreement except for the provisions therein substantially similar to, or having the same effect as the sections and clauses excluded from being Reserved Rights pursuant to subclauses (A) through (C) in clause (i) above with respect to the Series 2018 Loan Agreement for which the Issuer's consent shall not be required but provided further with the same exception that the Issuer's consent shall always be required for any amendment, change or modification to any section in an Additional Parity Bonds Loan Agreement regarding use of proceeds and tax covenants to the extent those Additional Parity Bonds are federally tax-advantaged; and

(iii) any other term or provision designated to be a Reserved Right pursuant to any Supplemental Indenture and/or any Additional Parity Bonds Loan Agreement; and

(f) give or withhold in accordance with Article IX or Article X of the Indenture consent to any amendment, change or modification to the Indenture, any Supplemental Indenture, the Series 2018 Loan Agreement and/or any Additional Parity Bonds Loan Agreements that has the effect of narrowing or limiting the scope of the Reserved Rights enumerated in clauses (a) through (e) above.

"Residual Life" means, for an Element (other than Non-Maintained Facilities and any other Elements for which Developer will not perform Routine Maintenance during the Maintenance Term), 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 Developer as reflected in the Financial Model and (b) Developer has performed the Routine Maintenance of the Element, 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.

"**Residual Life Methodology**" means the methodology used to determine the Residual Life of an Element, in accordance with the minimum requirements specified in TR Article 25.5.

"Restricted Payment" means:

- (a) any payment of a dividend or other equity distribution of property in respect of any capital stock of the Company, and
- (b) any payment of any amounts in respect of Shareholder Loans;

provided that, notwithstanding anything contained herein, the following shall not constitute Restricted Payments:

(i) any amount distributed from the Distribution Account or otherwise distributed after satisfaction of the Restricted Payment Conditions,

(ii) any funds transferred from any Project Account following substitution of an Acceptable Letter of Credit for cash on deposit in such Project Account in accordance with the terms of the Finance Documents,

(iii) amounts as and when required to be paid by Company to the Design-Build Contractor under the Design-Build Contract,

(iv) Maintenance Expenditures incurred in the ordinary course of business in an amount not to exceed 115% as set forth in the Base Case Model (without double counting increases in the annual operating budget over amounts in the Base Case Model),

(v) any TAMSA Services Fees to the extent set forth in the Base Case Model, and

(vi) any development fees or letter of credit fees payable to the Sponsors or to any future equity owners of Company to the extent set forth in the Base Case Model.

"Restricted Payment Conditions" means:

- (a) the Senior Debt Service Reserve Account has been fully funded up to the Senior Debt Service Reserve Required Balance;
- (b) All transfers required to have been made pursuant to clause "First," through clause "Eleventh," of Section 5.03(b) of the Collateral Agency Agreement as of the applicable Calculation Date have been satisfied in full, and any Reserve Account required to be established and funded as of such date has been fully funded to its required level as of such date or replaced with an Acceptable Letter of Credit;
- (c) The DSCR as of the applicable Calculation Date is not less than 1.10:1.00 for the Calculation Period ending on such applicable Calculation Date, as set forth in a certificate provided by the Company to the Collateral Agent setting forth such DSCR;
- (d) No Default or Event of Default has occurred and is continuing under the Finance Documents, and would not exist from making the requested Restricted Payment;

- (e) Substantial Completion has been achieved and the Company has received Milestone Payment 3;
- (f) MDOT has not exercised its right to terminate the Project Agreement or it has rescinded any notice of termination;
- (g) all required Equity Contributions have been made; and
- (h) an Authorized Representative of the Company delivers to the Collateral Agent and the Insurer (i) in the case of a transfer of funds from the Revenue Account to the Distribution Account, a Funds Transfer Certificate certifying that each Restricted Payment Condition was satisfied on the immediately preceding Calculation Date, (ii) in the case of a transfer of funds from the Equity Lock-Up Account to the Distribution Account, certification that each Restricted Payment Condition was satisfied on the immediately preceding Calculation Date, in the case of a transfer of funds from the Equity Lock-Up Account to the Distribution Account, certification that each Restricted Payment Condition was satisfied on the immediately preceding Calculation Date, and (iii) a Senior Coverage Certificate with respect to the applicable Calculation Date.

"**Restricted Payment Date**" means the 10th day following any Calculation Date (or such day is not a Business Day, the immediately preceding Business Day), or at the Company's election, the first Transfer Date following any Calculation Date.

"Revenue Account" means the "Revenue Account" established and created in the name of the Company pursuant to the Collateral Agency Agreement.

"Revised Project Schedule" has the meaning given in TR Article 3.3.2.5 of the Project Agreement.

"Roadway" means all Project Elements associated with I-75 (Segment 3), including service drives, pedestrian bridges, cross roads and interchanges excluding the Tunnel and Pump Station and the Existing Pump Station.

"Roadway D&C Limits" means the areas to which the Developer will have access during the D&C Term, as delineated in the drawings entitled "Design and Construction Limits" found in the Reference Information Documents and as further described in TR Articles 11 and 21 of the Project Agreement.

"**Roadway Maintenance Limits**" means the areas to which the Developer will have access for Roadway Maintenance Work during the period from the Substantial Completion Date to the end of the Term, as described in TR Articles 2.3 and 24.5.1 of the Project Agreement.

"Routine Maintenance" means all Maintenance Work other than Renewal Work.

"**ROW Work Maps**" means the "I-75 DBFM Segment 3 Parcel Acquisition Map" found in the Reference Information Documents. The ROW Work Maps shall not be considered to be part of the Project Agreement except to the extent expressly referenced in the Project Agreement.

"Rule" means Rule 15c2-12(b)(5) under the Securities Exchange Act of 1934, as amended.

"S&P" or "Standard & Poor's" means S&P Global Ratings, a business unit of Standard & Poor's Financial Services LLC, and its successors and permitted assigns.

"Sanctions" means economic or financial sanctions or trade embargoes that (a) are imposed, administered or enforced from time to time by (i) the U.S. government (including the U.S. Departments of State, Treasury, or Commerce), or (ii) the United Nations Security Council; and (b) result in Persons being listed on a Sanctions List.

"Sanctions List" means any of the lists of specially designated nationals or designated blocked Persons or equivalent promulgated by (i) the U.S. government and administered by OFAC or the U.S. Departments of State, Treasury, or Commerce, (ii) the United Nations Security Council, or (iii) the government or governmental

institutions of any jurisdiction in which the Company or any Sponsor has operations or conducts business, each as amended, supplemented, or substituted from time to time.

"Satisfactory Completion" means:

(a) the Subcontractor has fulfilled the Subcontract requirements set forth in Schedule 12 (Subcontract Requirements) of the Project Agreement and the requirements under the Project Agreement for the subcontracted Project Work, including the submission of all submittals required by the Subcontract and the Project Agreement; and

(b) the Project Work done by the Subcontractor has been inspected and approved by Developer and the final quantities of the Subcontractor's Project Work have been determined and agreed upon.

"SBE Goal" has the meaning given in Section 11.7.1 of the Project Agreement.

"Scheduled Expiration Date" means the date which is 25 years after the Substantial Completion Deadline.

"Scheduled Withdrawal Amount" means the principal amount of the Series 2018 GIC scheduled to be withdrawn from the Series 2018 GIC for deposit to the Bond Proceeds Sub-Account on each date as set forth on Exhibit J to the Collateral Agency Agreement.

"Seasonal Suspension" means from November 15th through March 1st, unless a shorter time period is approved by MDOT. A Seasonal Suspension applies to the Project Work as provided in Schedule 17 (Technical Requirements) of the Project Agreement, excluding certain Project Work as described in TR Article 18.5 of the Project Agreement.

"Secured Obligations" means Senior Secured Obligations and, to the extent that any Permitted Subordinated Indebtedness is secured, the Permitted Subordinated Indebtedness.

"Secured Parties" means the Senior Secured Parties and, to the extent that any Permitted Subordinated Indebtedness is secured, the holders of Permitted Subordinated Indebtedness.

"Securities" means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit sharing agreement or arrangement, options, warrants, bonds, debentures, notes or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as 'securities' or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire any of the foregoing.

"Securities Accounts" has the meaning specified in Section 5.01(a) of the Collateral Agency Agreement.

"Securities and Exchange Commission" or "SEC" means the United States Securities and Exchange Commission.

"Securities Intermediary" means U.S. Bank National Association, as securities intermediary on behalf of itself and the other Secured Parties.

"Security Agreement" means the Security Agreement between the Company and the Collateral Agent, as amended, supplemented, restated and/or otherwise modified and in effect from time to time, pursuant to which the Company has granted a security interest in, to and under the Collateral as security for the payment and performance of all Secured Obligations.

"Security Documents" means the collective reference to (a) the Collateral Agency Agreement; (b) the Security Agreement; (c) the Pledge Agreement; (d) each Control Agreement, if any, (e) any other agreement, document or instrument hereafter entered into or delivered by the Company or any other Person which purports to

create a Security Interest in favor of the Collateral Agent for the benefit of the Secured Parties and (f) all UCC financing statements and other filings, recordings or registrations required by the Finance Documents to be filed or made in respect of any such Security Document.

"Security Interest" means:

- (a) any mortgage, pledge, lien charge, assignment, hypothecation, security interest, title retention arrangement, preferential right, trust arrangement or other arrangement having the same or equivalent commercial effect as a grant of security; or
- (b) any agreement to create or give any arrangement referred to in clause (a) of this definition.

"Segment 2 Contractor" means Walsh/Toebe JV.

"Segment 3 Roadway Plan" means the Plan entitled "Segment 3 Roadway Plan" found in the Reference Information Documents. The Segment 3 Roadway Plan shall not be a Project Document except to the extent expressly referenced in the Project Agreement.

"Segment 3 Storage and Drainage Tunnel Plan" means the Plan entitled "Segment 3 Storage and Drainage Tunnel Plan" found in the Reference Information Documents. The Segment 3 Storage and Drainage Tunnel Plan shall not be a Project Document except to the extent expressly referenced in the Project Agreement.

"Segment 3 Tunnel Plan" means the Plan entitled "Segment 3 Tunnel Plan" found in the Reference Information Documents. The Segment 3 Roadway Plan shall not be a Project Document except to the extent expressly referenced in the Project Agreement.

"Senior Coverage Certificate" means a certificate signed by the Company's Authorized Representative, calculating the DSCR as of the applicable Calculation Date for the most recent Calculation Period ending on such Calculation Date.

"Senior Debt Service" means scheduled mandatory principal and interest payments on Senior Secured Obligations.

"Senior Debt Service Account" means the "Senior Debt Service Account" established and created in the name of the Company pursuant to the Collateral Agency Agreement.

"Senior Debt Service Amount" means the debt service payments that are senior to all other debt obligations in the cash flow waterfall.

"Senior Debt Service Reserve Account" means the "Senior Debt Service Reserve Account" established and created in the name of the Company pursuant to the Collateral Agency Agreement.

"Senior Debt Service Reserve Required Balance" means, (a) as of the date of receipt of Milestone Payment 3 and the first Transfer Date, an amount equal to the maximum amount of principal and interest on the Series 2018 Bonds (as calculated on such date), the Additional Parity Bonds and the Other Permitted Senior Secured Indebtedness payable during any six (6) month period commencing from such date until 12 months from such date, (b) on each Transfer Date thereafter until the date which is 12 months prior to the period during which the Handback Account or Handback letter of credit is in effect, an amount equal to the principal and interest on the Series 2018 Bonds (as calculated on such date), the Additional Parity Bonds and the Other Permitted Senior Secured Indebtedness payable during the six (6) month period commencing from such date, and (c) commencing on the date which is 12 months prior to the period during which the Handback Account or Handback Letter of Credit is in effect, an amount equal to the greater of the existing balance and the principal and interest on the Series 2018 Bonds (as calculated on such date), the Additional Parity Bonds and the Other Permitted Senior Secured Indebtedness payable during the six (6) month period commencing from such date, and (c) commencing on the date which is 12 months prior to the period during which the Handback Account or Handback Letter of Credit is in effect, an amount equal to the greater of the existing balance and the principal and interest on the Series 2018 Bonds (as calculated on such date), the Additional Parity Bonds and the Other Permitted Senior Secured Indebtedness payable during the six (6) month period commencing from such date; provided, however, in no event shall the Senior Debt Service Reserve Required Balance exceed the least of ten (10) percent of the stated principal amount of the Series 2018 Bonds, the maximum annual principal and interest requirements on the Series 2018 Bonds, or 125 percent of the average annual principal and interest requirements on the Series 2018 Bonds.

"Senior Interest Payment Sub-Account" means the "Senior Interest Payment Sub-Account" of the Senior Debt Service Account established and created in the name of the Company pursuant to the Collateral Agency Agreement.

"Senior Loan Agreement" has the meaning specified in the recitals to the Collateral Agency Agreement.

"Senior Principal Payment Sub-Account" means the "Senior Principal Payment Sub-Account" of the Senior Debt Service Account established and created in the name of the Company pursuant to the Collateral Agency Agreement.

"Senior Secured Obligations" means all payment obligations of the Company incurred pursuant to the Senior Loan Agreement or any Additional Parity Bonds Loan Agreement and any payment obligations equal in priority in payment and security with respect to the Collateral constituting Other Permitted Senior Secured Indebtedness, including the Bonds.

"Senior Secured Parties" means the Collateral Agent, the Trustee, the Issuer, the Securities Intermediary, the Bondholders and the Bondholders of the Additional Parity Bonds, if any, and any holders of (and any representatives of) any Other Permitted Senior Secured Indebtedness, if any, and the Insurer, if any.

"Series 2018 Bonds" means the Michigan Strategic Fund Limited Obligation Revenue Bonds (I-75 Improvement Project), Series 2018.

"Series 2018 Debt Service Fund" means the "Series 2018 Debt Service Fund" created by and designated as such in Section 5.1(a) of the Indenture.

"Series 2018 Debt Service Reserve Sub-Account" means the "Series 2018 Debt Service Reserve Sub-Account" established and created in the name of the Company pursuant to the Collateral Agency Agreement.

"Series 2018 GIC" means that certain Time Deposit Investment Agreement to be entered into by the Company, the Collateral Agent and SMBC, a banking corporation organized under the laws of Japan and acting through its New York branch, which as of the date hereof is a financial institution having an Acceptable Credit Rating (at the time the investment is entered into) and pursuant to which interest will be paid to the Collateral Agent for deposit in the Bond Proceeds Sub-Account in arrears on each date identified as a payment date in accordance with a specified amortized payment schedule as set forth in Exhibit J of the Collateral Agency Agreement.

"Series 2018 Interest Account" means the "Series 2018 Interest Account" created by and designated as such in Section 5.1(a) of the Indenture.

"Series 2018 Loan" means the loan of the entire amount of the proceeds of the Series 2018 Bonds pursuant to the Senior Loan Agreement.

"Series 2018 Principal Account" means the "Series 2018 Principal Account" created by and designated as such in Section 5.1(a) of the Indenture.

"Series 2018 Rebate Fund" means the Series 2018 Rebate Fund created and designated as such in Section 5.1(b) of the Indenture.

"Series 2018 Redemption Account" means the "Series 2018 Redemption Account" created by and designated as such in Section 5.1(a) of the Indenture.

"Service Line" (also referred to as a service lateral or lateral) means (a) any Utility line, the function of which is to directly connect 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, and (b) any cable or conduit that supplies an active feed from a Utility Owner's facilities to activate or energize a Local Agency's lighting and electrical systems, traffic control systems, communication systems or irrigation systems. The term also includes any Utility on public or private property that services structures located on such property. The term "Service Line" also includes any Utility on public or private property that services structures located on such property.

"Setting Date" means the date 30 days prior to the Proposal Due Date identified in Section 1.7.1 of the ITP, which date is July 20, 2018.

"Shareholder Loans" means any Indebtedness of Company described in clause (e) of the definition of "Permitted Indebtedness".

"Sinking Fund Installments" means, as of any date of calculation, the amount of money required hereby to be paid on a single future date for the retirement of any Outstanding Bonds, but does not include any amount payable by the Issuer by reason only of the maturity of a Bond, and said future date is deemed to be the date when a Sinking Fund Installment is payable and said Outstanding Bonds are deemed to be the Bonds entitled to such Sinking Fund Installments.

"Site" means the Project ROW, together with those areas designated in writing by MDOT for performance of the Project Work and such additional areas as may, from time to time, be designated in writing by MDOT for Developer's use in performance of the Project Work. For purposes of insurance (subject to any notification and other requirements imposed by the insurer(s) for approval), indemnification, safety and security requirements, the prevailing wage requirements, and payment for use of equipment, the term "Site" shall also include (a) the field office sites, (b) any property used for bonded storage of material for the Project, (c) staging areas dedicated to the Project, and (d) areas where activities incidental to the Project are being performed by Developer or Subcontractors covered by the worker's compensation policy included in the insurance described in Section 36 of the Project Agreement, but excluding any permanent locations of Developer or such covered Subcontractors.

"SMBC" means Sumitomo Mitsui Banking Corporation, acting through its New York Branch.

"Special Record Date" means a special date fixed to determine the names and addresses of Owners of Bonds for purposes of paying defaulted interest on Bonds in accordance with Section 4.4 of the Indenture.

"Specified Default" means the occurrence of a Default as described in:

(a) Section 8.01(a) of the Senior Loan Agreement relating to payments;

(b) Section 8.01(c) of the Senior Loan Agreement relating to covenant defaults but only as it relates to the covenants set forth in Section 6.06 of the Senior Loan Agreement relating to existence, Section 6.09 of the Senior Loan Agreement relating to insurance (but only to the extent that a failure to insure or maintain insurance of the lapse or termination of insurance would have a Material Adverse Effect), Section 6.01(a) of the Senior Loan Agreement relating to taxes, Section 6.12 of the Senior Loan Agreement relating to waterfall, Section 6.19 of the Senior Loan Agreement relating to abandonment;

(c) Section 8.01(d) of the Senior Loan Agreement relating to Bankruptcy Events with respect to the Company or HoldCo;

(d) Section 8.01(1) of the Senior Loan Agreement relating to Equity Transfers;

(e) Section 8.01(o) of the Senior Loan Agreement relating to Equity contributions and Equity Letters of Credit;

(f) Section 8.01(f) of the Senior Loan Agreement and Section 8.01(p) of the Senior Loan Agreement relating to the unenforceability and termination of Finance Documents and Security Documents;

(g) Section 8.01(i) of the Senior Loan Agreement and Section 8.01(j) of the Senior Loan Agreement relating to the unenforceability and termination of Material Project Contracts; and

(h) Section 8.01(g) of the Senior Loan Agreement relating to judgements.

"Sponsor" means each of AECOM Capital, John Laing, Jay Dee, Ajax and Dan's, together with their respective successors and permitted assigns, and "Sponsors" means all of them collectively.

"Sponsor Cash Collateral Account" means the "Sponsor Cash Collateral Account" established and created in the name of the Company pursuant to the Collateral Agency Agreement.

"Standard Specifications" means Michigan Department of Transportation 2012 Standard Specifications for Construction, as modified in the Project Documents.

"State" means the State of Michigan.

"Step-In Event" has the meaning given in Section 20.1.1 of the Project Agreement.

"Step-In Rights" mean MDOT's step-in rights in the case of a Step-In Event as set out in Section 20 of the Project Agreement.

"Storage and Drainage Tunnel" means the bored tunnel and permanent shafts and adits necessary for the storage and drainage tunnel to function as intended.

"Storage and Drainage Tunnel D&C Limits" means the areas to which the Developer will have access during the period from NTP to Milestone 2, as delineated in the drawings entitled "Design and Construction Limits" found in the Reference Information Documents and as further described in TR Articles 11 and 21 of the Project Agreement.

"Storage and Drainage Tunnel Maintenance Limits" means the areas to which the Developer will have access during the period from Milestone 2 to the end of the Term, as further described in TR Article 24.5.1 of the Project Agreement.

"Sub-Plans" means the chapters of the PMP listed in Table 3-1 of TR Article 3 of the Project Agreement.

"Subcontract" means any agreement entered into by Developer with any Subcontractor in connection with the Project Work, or any such agreement, supplement or amendment at a lower tier, between Subcontractor and its lower tier Subcontractor or a supplier and its lower tier supplier, at all tiers, except purchase orders for the supply of off the shelf items that do not involve installation services on the Project ROW.

"Subcontractor" means any Person with whom Developer has entered into any Subcontract to perform any part of the Project Work or provide any materials, equipment or supplies for the Project, on behalf of Developer, and any other Person with whom any Subcontractor has further subcontracted any part of the Project Work, at all tiers. The term "Subcontractor" includes the D&C Contractor and the Maintenance Contractor, if any.

"Submittal" means any document, design, plan, written work product or other written or electronic end product or item required under the Project Agreement to be delivered or submitted to MDOT. "Submittal" does not include Notice of a Delay Event or Relief Event or Notices with respect to Disputes.

"Submittal Requirements" means the submittal requirements set out in Section 41 of the Project Agreement.

"Substantial Completion" means the stage when all of the following have occurred:

(a) the D&C Work is complete in accordance with the Project Agreement, except for Punch List Items for the full I-75 (Segment 3);

(b) Punch List Items associated with Milestone 1 Completion and Milestone 2 Completion are complete;

(c) the Project meets the required performance criteria specified in TR Article 1.3 of the Project Agreement;

(d) all Submittals required by the Project Management Plan or Project Documents to be submitted to MDOT prior to Substantial Completion (including the Maintenance Plan) have been submitted to and approved by MDOT in accordance with Schedule 10 (Submittal Requirements) of the Project Agreement, in the form and content required by the Project Management Plan or Project Documents, as applicable;

(e) all Insurance Policies required for the Maintenance Term under the Project Agreement have been obtained and are in full force and effect;

(f) Developer has delivered to MDOT the Maintenance Performance Security;

(g) Developer has received, and paid all associated fees for, all applicable Governmental Approvals and other third-party approvals required for use and operation of the Maintenance Work, such Governmental Approvals and other third-party approvals are in full force and effect, and there exists no uncured material violation of the terms and conditions of any such Governmental Approvals or other thirdparty approvals;

(h) there exists no uncured Developer Default that is the subject of a Notice and no event exists that would be a Developer Default with the giving of Notice or the passage of time, unless (i) Substantial Completion will effect its full and complete cure, (ii) with respect to any non-monetary default, Developer has a right to cure and is diligently pursuing cure within the applicable cure period or (iii) with respect to any monetary defaults, the amount in question is disputed and Project has timely submitted such matter for resolution under Schedule 15 (Dispute Resolution Procedures) of the Project Agreement;

(i) if any Governmental Entity with 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, Developer has caused such certificates to be executed and delivered and has concurrently issued identical certificates to MDOT;

(j) Developer has delivered to MDOT all manufacturer warranties required under, and in the form and content specified by Schedule 17 (Technical Requirements) of the Project Agreement and Section 14.10.4 of the Project Agreement; and

(k) Developer has done everything which the Project Agreement requires Developer to do as a condition precedent to Substantial Completion.

"Substantial Completion Certificate" means the certificate to be issued by the MDOT Authorized Representative in accordance with Section 15.2 of the Project Agreement.

"Substantial Completion Date" means the date on which Substantial Completion is achieved as such date is evidenced by the Substantial Completion Certificate.

"Substantial Completion Deadline" means August 31, 2023, as such date is extended in accordance with the Project Agreement.

"Substituted Entity" means any Person selected by Lenders and approved by MDOT in accordance with the Project Agreement to perform all or a portion of Developer's obligations and succeed to the Developer's rights under the Project Agreement.

"Supplemental Indenture" means any indenture supplementing or amending the Indenture that is entered into pursuant to Article IX of the Indenture.

"Supplier" means any Person not performing work which supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the Project to Developer or to any Subcontractor in connection with the performance of the Project Work. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons for the Project shall not be deemed to be performing Project Work.

"**Taking**" means any condemnation, confiscation or seizure of, or requisition of title to, the Project, the Site or any material portion thereof (including pursuant to the power of eminent domain).

"TAMSA" means any technical assistance and management services agreement entered into between the Company and the Sponsors (or Affiliates thereof); <u>provided</u> that any TAMSA Services Fees shall be as set forth in the Base Case Model at the Closing Date, or as set forth in any Annual Operating Budget certified as reasonable by the Lenders' Technical Advisor.

"TAMSA Services Fees" means any compensation owed by the Company pursuant to the TAMSA for technical assistance and managerial services provided to the Company.

"**Taxes**" means any and all present or future income, stamp, transfer, turnover and other taxes, levies, imposts, duties, charges, fees, deductions or withholdings now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, and any and all interest, penalties, claims or other liabilities arising under or relating thereto, including those on any of the Secured Parties or on payments to be made to or received by any of them from the Company under the Collateral Agency Agreement.

"**Technical Advisor Certificate**" means a certificate prepared by the Lenders' Technical Advisor in the form of Exhibit F of the Collateral Agency Agreement.

"Technical Requirements" or "TR" means Schedule 17 (Technical Requirements) of the Project Agreement.

"**Temporary Construction Easement**" means a temporary easement, if any, identified in TR Article 6 of the Project Agreement, to be provided by MDOT in accordance with TR Article 6.

"**Temporary Work Areas**" means areas in which Company carries out the Project Work, on a temporary basis, but not within the Planned ROW Limits, such as construction work sites, staging areas, storage areas, laydown areas, earth work material borrow sites, and other locations for the convenience of Company. Temporary Work Areas may include construction easements or rights to use property for borrow pits and storage, as well as any property needed for any temporary utility facilities being constructed by the Company.

"Term" has the meaning given in Section 4.1 of the Project Agreement.

"**Termination Amount**" means the Adverse Event Termination Amount, Extended Force Majeure and Unobtainable Coverage Event Termination Amount, the Termination for Convenience and MDOT Default Termination Amount or the Developer Default Termination Amount (as applicable).

"**Termination for Convenience**" means a termination of the Project Agreement by MDOT under Section 33.1.1 of the Project Agreement.

"Third Party" means any Person unrelated to Developer or MDOT.

"**Third Party Intellectual Property**" means any Intellectual Property owned by any Person unrelated to Contractor or Developer, and which is incorporated into the Relevant Infrastructure.

"Third Party Liability Insurance Proceeds" means insurance proceeds, if any, payable to or received by the Company under workers' compensation, unemployment insurance or other similar forms of governmental insurance or benefits or to compensate third party liability claims.

"**Threatened or Endangered Species**" means any species listed by the USFWS as threatened or endangered pursuant to the Endangered Species Act, as amended, 16 U.S.C. §§ 1531 et seq., or any species listed as threatened or endangered under the Applicable Law of the State.

"TIFIA" means the Transportation Infrastructure Finance and Innovation Act.

"Transaction Documents" means the Finance Documents and the Material Project Contracts.

"**Transfer Date**" means the third Business Day occurring quarterly after the receipt of an Availability Payment following the End of Funding Date.

"Trust Estate" means the property and rights granted to the Trustee pursuant to Section 2.1 of the Indenture.

"Trustee" means U.S. Bank National Association as trustee under the Indenture.

"Tunnel and Pump Station" means the Storage and Drainage Tunnel and the Pump Station or each of them as the context requires.

"**Tunnel Boring Machine**" or "**TBM**" means a shield with excavation, ground control, steering, lining assembly and propulsion equipment, including trailing gear and support equipment required for performing tunnel excavation. A general term comprising the class of tunneling machines which is fully shielded, utilizes a full-diameter rotating cutterhead equipped with cutting tools, and it advances using propulsion cylinders that thrust against a tunnel lining erected as a ring of segments within the shield tail.

"Unavailability Adjustment" means a reduction to a Milestone Payment or Availability Payment calculated in accordance with Section 3.0 of Schedule 4 (Payment Mechanism) of the Project Agreement.

"Unavailability Event" means where Developer (a) fully or partially closes a Lane for any purpose and such closure is not a Permitted Lane Closure, or (b) fully or partially blocks ingress to or egress from a Lane for any purpose and such blockage is not a Permitted Lane Closure.

"Unavailability Factor" means the applicable unavailability factor for each 15 minutes for which an Unavailability Event persists as set out in Table A of Section 3.2(b)(ii) of Schedule 4 (Payment Mechanism) of the Project Agreement.

"Underwriters" means Merrill Lynch, Pierce, Fenner & Smith Incorporated and Wells Fargo Bank, N.A.

"Uniform Commercial Code" or "UCC" means the Uniform Commercial Code, as in effect from time to time in the applicable state.

"Units" means units or other equity interests of any class in the capital of the Developer.

"Unknown Unidentified Utility" means an underground Utility owned or operated by a Utility Owner that is located within the Project ROW which requires Relocation, Protection in Place or abandonment as a result of the Project and such Utility (a) was not identified, or was misidentified in the Utility Information, (b) was not identified in the Utility Conflict Matrix and (c) could not have been discovered by Developer through use of Michigan's MISS DIG 811 system. "Unobtainable Coverage Event" means a risk that is required to be insured in accordance with the Project Agreement and for which insurance coverage is available prior to the performance of any Project Work but:

(a) becomes unobtainable in the recognized international insurance market in connection with that risk by a Qualified Insurer; or

(b) Commercially Reasonable Insurance Rates become unobtainable from a Qualified Insurer in the recognized international insurance market in connection with that risk,

provided that the unobtainable coverage in accordance with clause (a) or (b) is not caused by any act or omission of a Developer-Related Entity.

"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.

"Users" means any and all persons who drive on a Project roadway or access the Project ROW. Users include MDOT personnel, contracted personnel, contractors, and the general public.

"Utility" or "utility" means a privately, publicly, or cooperatively owned line, facility or system (including municipal and/or government lines, facilities and systems) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, waste, or any other similar commodity, including any irrigation system and any fire or police signal system as well as streetlights. The necessary appurtenances to each Utility facility (including fire hydrants as appurtenances to water lines) shall be considered part of such Utility. Without limitation, any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line.

"Utility Conflict Matrix" means the Utility conflict matrix prepared in accordance with Section 10.4.2 of the Project Agreement or Part 2 Section 10.4.2 of the Design-Build Contract and TR Article 5 of the Project Agreement.

"Utility Delay" means a failure by a Utility Owner to complete design, construction and/or materials procurement for a Relocation on or before the later of (a) the date determined using the Anticipated Durations and (b) March 1, 2020 but in each instance, subject to Developer (i) having timely complied with the monitoring and notification requirements of Section 10.7, (ii) satisfying the "Conditions to Assistance" requirements and (iii) providing evidence satisfactory to MDOT that (x) Developer took advantage of Float available early in the Project Schedule for coordination activities with respect to the Utility(ies) to which such Utility Delay relates, (y) Developer has fulfilled its obligation to coordinate with the Utility Owner to prevent or reduce such delays, and (z) Developer has otherwise made diligent efforts to obtain timely performance by the Utility Owner but has been unable to obtain such timely performance. The commencement of a Utility Delay shall be the later of the dates set forth in clause (a) and (b) of this definition.

"Utility Information" means the files included in the Reference Information Documents with the names "I-75 Segment 3 DBFM Utility Drawings.pdf" and "I-75 Segment 3 DBFM Combined Potholing Data.pdf."

"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 Relief Event" means:

(a) subject to Section 10.5, the notice provisions in Section 25 of the Project Agreement, including Section 25.2.1 of the Project Agreement, and the limitations on relief in Section 25.9 of the Project Agreement, any Utility located within the Planned ROW Limits which requires Relocation, Protection in Place or abandonment as a result of the Project that is not identified or is misidentified in the Utility

Information but is timely identified by the Developer in the Utility Conflict Matrix prepared in accordance with Section 10.4.2 of the Project Agreement; or

(b) Subject to the limitations on relief in Section 25.9 of the Project Agreement, an Unknown Unidentified Utility.

"Utility Relocation" means each relocation (temporary or permanent), abandonment and or dormancy, Protection in Place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate construction, operation, maintenance and/or use of the Project (each a separate "type" of Utility Relocation). For any Utility crossing the Project ROW, the Project Work associated with the Utility Relocation for each crossing of the Project ROW by that Utility shall be considered a separate Utility Relocation. For any Utility installed longitudinally within the Project ROW, the Utility Relocation Work for each continuous segment of that Utility located within the Project Right of Way shall be considered a separate Utility Relocation.

"Utility Relocation Work" means all efforts and costs necessary to accomplish each and every required Utility Relocation, including all coordination, design, design review, permitting, construction, inspection, and maintenance of records. The term also includes any payments to or reimbursement of Utility Owners that is Company's responsibility pursuant to Section 10.2 and TR Article 5 of the Project Agreement. Any Utility Relocation Work furnished or performed by Company is part of the Project Work; any Utility Relocation Work furnished or performed by a Utility Owner is not part of the Project Work.

"Utility Work" means Utility Relocation Work, Incidental Utility Work, all potholing and other investigative work necessary to conduct the supplemental utility investigation or perform the Utility Relocation Work and any Betterments added to the Work pursuant to Section 10.6 of the Project Agreement.

"Vehicle Damage" means any loss or damage to the Relevant Infrastructure directly caused by a vehicle accident involving a third party, MDOT Contractor, the Segment 2 Contractor, or the P3 Lighting Contractor that:

(a) could not reasonably be expected to have been avoided or mitigated by Company as part of Company's obligations under the Project Agreement;

(b) does not arise from or was not contributed to, directly or indirectly, by any snow and ice removal activities undertaken by MDOT or MDOT Contractors; and

(c) does not arise from or was not contributed to, directly or indirectly, by any Developer Fault.

"Video Inspection Report" means an inspection of the condition of existing structures performed prior to the start of Construction Work in accordance with TR Article 24.3.2 of the Project Agreement.

"Voluntary Prepayment Account" means the "Voluntary Prepayment Account" established and created in the name of the Company pursuant to the Collateral Agency Agreement.

"Warning Notice" has the meaning given in Section 30.4.1 of the Project Agreement.

"Warranty Period" has the meaning given in Section 14.10.1 of the Project Agreement.

"Work" means Project Work.

"Work Order" means the letter described in Section 1.2 of Schedule 9 (Change Procedure) of the Project Agreement.

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APPENDIX B

SUMMARY OF CERTAIN PROVISIONS OF THE PROJECT AGREEMENT

Summary of the Project Agreement between the Michigan Department of Transportation, a public agency of the State of Michigan, and Oakland Corridor Partners LLC

The following is a summary of the Project Agreement relating to the Project and is not a full statement of the terms of such agreement. Accordingly, the following summaries are qualified in their entirety by reference to such agreement and are subject to the full text of such agreement. A copy of the Project Agreement is available, free of charge, upon request from the Company or the Trustee. The following summary should be read in conjunction with the section "RISK FACTORS." For the purposes of the following section, the term "Project" has the meaning provided to such term in the Project Agreement and included in "Appendix A –DEFINITIONS OF TERMS." Unless otherwise stated, any reference in herein to any agreement means such agreement and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof.

Principal Rights and Responsibilities of the Company and MDOT

Project Work. Pursuant to the Project Agreement, subject to the terms and conditions of the Project Documents, the Company has the obligation to perform the Project Work, being:

- (a) the D&C Work, consisting of:
 - (i) design, redesign, engineering or architecture for the Project;
 - (ii) all work to build or construct, make, form, manufacture, furnish, install, supply, deliver, or equip the Project;
 - (iii) design and construction of Non-Maintained Facilities, which will be turned over to others upon Substantial Completion, being:
 - (A) service drive signals and signage owned and maintained by the municipalities;
 - (B) MDOT's "intelligent transportation systems" (ITS) equipment: and
 - (C) Elements outside the Maintenance Limits;
 - (iv) design and construction of Non-Maintained Work, which will be turned over to others as set out in the Project Agreement, being:
 - (A) the Non-Maintained Facilities described above;
 - (B) the Freeway Lighting Work, the work for the lighting Elements of the I-75 Segment 3; and
 - (C) the Pump Station Operations, the operational activities associated with the Tunnel and Pump Station, each of which are part of the design and construction of the Project; and
 - (v) all other work necessary for the design, supply, construction (including installation) and commissioning of the Project;
- (b) the Maintenance Work, consisting of:
 - (i) the Interim Maintenance Work, being the maintenance, rehabilitation and other work to be performed and services to be provided by the Company:
 - (A) for the Existing Pump Stations, from issuance of Notice to Proceed until issuance of the Milestone Completion Certificate for Milestone 2 Completion or demolition of the Existing Pump Stations, whichever is earlier; and
 - (B) for the Roadway, Existing Freeway Lighting System and Freeway Lighting System, from issuance of Notice to Proceed until the Substantial Completion Date; and

- (ii) the Long Term Maintenance Work, being any and all management, administration, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement, including Routine Maintenance, Renewal Work and Handback Work, to be performed in connection with the I-75 Segment 3 during the Maintenance Term, including Long Term Maintenance Work for the Tunnel and Pump Station, which commences on the first day after issuance of the Milestone Completion Certificate for Milestone 2; and
- (c) all other obligations of the Company under the Project Agreement, including to finance the Project.

Except for specific elements thereof at specific times as part of the Interim Maintenance Work, each as set out in the Project Agreement, the Company has no obligation to maintain the Non-Maintained Work during either Maintenance Term. However, the Non-Maintained Work is covered by specific Warranty Periods of (x) in the case of the Pump Station Operations, two years from issuance of the Milestone Completion Certificate for Milestone 2 Completion; (y) in the case of other Non-Maintained Work, two years from the Substantial Completion Date; and (z) in the case of warranty work performed on either of the foregoing, a further period of one year from the date of correction of the relevant defect in same.

Term

The term of the Project Agreement is 25 years measured from the Substantial Completion Deadline.

The Project Agreement will become effective on the Commercial Close Date and will remain in effect until the Scheduled Expiration Date unless terminated earlier in accordance with its terms.

Governmental Approvals

MDOT has obtained the NEPA Approval, and has agreed to obtain and maintain any new or modified NEPA Approval necessitated solely by a Relief Event or a Delay Event. The Company is responsible to obtain and maintain all other Governmental Approvals for the Project, and is responsible to comply with all Governmental Approvals related to the Project.

If a new or modified Governmental Approval becomes necessary for any reason other than any new or modified NEPA Approval necessitated solely by a Relief Event or a Delay Event, including if the Company pursues Additional Properties or Temporary Work Areas not addressed by the NEPA Approval, or any other modification of or deviation from any Governmental Approvals, as between MDOT and the Company, the Company shall be fully responsible for: (i) all risk, cost and schedule impacts of obtaining such Governmental Approval and any related approvals; and (ii) any litigation or other challenge that might arise in connection with such Governmental Approvals.

A NEPA Event is both a Delay Event and a Relief Event for which the Company may seek time and/or compensatory relief. A NEPA Event means:

- (a) any new or modified NEPA Approval necessitated solely by a MDOT Change, a Delay Event or a Relief Event;
- (b) legal action being taken in respect of the NEPA Approval that results in a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of, or by complying with such temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction results in prohibiting the prosecution of, a material portion of the Project Work;
- (c) review or revocation or change to, the NEPA Approval, by FHWA; or
- (d) any review or revocation of, or change to, a NEPA Approval directly resulting from the circumstances specified in <u>clauses (b)</u> and <u>(c)</u>,

except to the extent that the foregoing results from Company's design or from any: (x) breach by any Developer-Related Entity of any of its obligations or any representation, warranty or covenant under the Project Documents; (y) a breach of Applicable Law or any governmental approval by any Developer-Related Entity; and (z) fraud, criminal conduct, intentional misconduct, recklessness, bad faith, gross negligence, negligence or other culpable act or omission of any Developer-Related Entity.

Project Right of Way

MDOT will provide the Company with access to each Planned ROW Limits parcel on or before the latest date that construction is scheduled to start on such parcel in the Project Schedule. MDOT is not required to provide access to, and the Company shall not schedule construction to commence in, the Planned ROW Limits earlier than the applicable date prescribed in the Project Agreement.

In the case of Temporary Construction Easements included in property to be provided by MDOT, MDOT will provide the Company with access to each for the time specified in the Project Agreement, and if the Company requires use of any such Temporary Construction Easement beyond such specified time, MDOT shall reasonably attempt to secure access through the applicable property owner at the Company's sole cost and the risk of acquisition, including any delay in acquisition, any inability to acquire such interests and any schedule impact. Otherwise, MDOT has no obligation to take any action to acquire temporary interests in property but may, in its sole discretion, agree to do so following receipt of request from the Company.

With respect to property to be provided by MDOT, MDOT will provide notice to the Company within 15 days after it becomes apparent to MDOT that it will not be able to obtain any particular parcel(s) and shall provide a Work Order or Change Order requiring the Company to take action as necessary to accommodate the change.

The Company's right of access is non-exclusive and has been granted by MDOT solely for purpose of the Company performing its obligations under the Project Agreement.

In addition to provision of access to the Planned ROW Limits, MDOT will provide access to the Additional Properties, being certain other parcels not owned by MDOT, so long as the Company provides notice and can demonstrate that the property is required for permanent improvements for the Project or relocations of Utilities, acquisition of the property is otherwise consistent with Applicable Law and Governmental Approvals, and the Company is in compliance with the provisions of the Project Agreement relating to the request for Additional Properties. The Company shall pay directly all costs in connection with acquiring Additional Properties, including acquisition services and document preparation; condemnation proceedings; purchase prices, court awards or judgments in connection with the acquisition; permitting; closing costs; relocation assistance payments; separate property survey(s); and claims for good will, severance damages or inverse condemnation in connection with the acquisition.

The Company is responsible to acquire, maintain and dispose of all Temporary Work Areas in its own name and in accordance with all applicable governmental approvals and bears the risk of acquisition, including any delay in acquisition, any inability to acquire Temporary Work Areas and any schedule impact.

Hazardous Materials

Subject to the provisions of the Project Agreement relating to Delay Events, Relief Events and a Hazardous Materials Relief Event, each as described in more detail below, the Company is the party required to manage, treat, handle, store, remediate, remove, transport (where applicable), document and dispose of all Hazardous Materials and Recognized Environmental Conditions, including Contaminated Groundwater, and perform all other aspects of Hazardous Materials Management as appropriate, in accordance with Applicable Law, Governmental Approvals, the approved plans relating to same required under the Project Agreement and the other applicable terms and conditions of the Project Agreement.

Except where management, treatment, handling, storage, remediation, transport, documentation or disposing of Hazardous Materials or Recognized Environmental Conditions constitutes a Hazardous Materials Relief Event, the Company shall pay all penalties, expenses (including attorneys' fees and costs), costs, suits, judgments, claims, actions, damages (including damages to natural resources, property or Persons), delays and liability associated with, in connection with any Hazardous Materials used or encountered in connection with the Relevant Infrastructure or the Project.

A Hazardous Materials Relief Event, which is both a Delay Event and a Relief Event, means Hazardous Materials in, over, under or emanating from the Planned ROW Limits or which have migrated onto the Planned ROW Limits from land or premises adjoining the Planned ROW Limits, excluding Hazardous Materials:

(a) that are Known or Suspected Hazardous Materials, being Hazardous Materials and Recognized Environmental Conditions that are known or reasonably suspected to exist as of the Setting Date based on information, data or analysis contained or referenced in the Reference Information Documents as of the Setting Date or which should have been known or reasonably suspected pursuant to a Reasonable Investigation prior to the Setting Date, including those listed in the Technical Requirements;

- (b) that could have been reasonably avoided by use of available construction techniques or incorporation of anticipated or minor design changes which are consistent with Good Industry Practice;
- (c) to the extent caused, contributed or exacerbated by any Developer-Related Entity;
- (d) to the extent Company is required and failed to manage or mitigate against the risk of in accordance with the Project Agreement; or
- (e) to the extent a contractor, acting in accordance with Good Industry Practice, would have taken preventative measures to prevent or minimize, and Company failed to take such preventative measures.

As between MDOT and the Company, MDOT will be the generator and assume generator responsibility and comply with the applicable standards for generators for Hazardous Materials other than Developer Release of Hazardous Materials. The Company shall be considered the generator with respect to any Developer Release of Hazardous Materials.

Notice to Proceed with the Project Work

Promptly, but in any event within 15 days after satisfaction of the conditions set forth below, MDOT will issue the Notice to Proceed. Conditions to the issuance of NTP are as follows:

- (a) all conditions of Financial Close have been achieved;
- (b) the Company has obtained and provided to MDOT copies of all requisite licenses, registrations, certifications and the like that will be immediately necessary for Developer-Related Entities to perform the D&C Work following Financial Close;
- (c) the Company has provided to MDOT evidence that the Company has satisfied all applicable preconstruction requirements contained in the NEPA Approval or any other Governmental Approval for the relevant portion of the Project Work;
- (d) MDOT has approved all elements or subchapters of the Project Management Plan designated in the Project Agreement as requiring such approval as a condition to issuance of NTP;
- (e) the Company has provided and MDOT has approved the Company's Video Inspection Report;
- (f) the Company has provided to MDOT all Governmental Approvals that will be immediately necessary for the D&C Work and Interim Maintenance Work following issuance of NTP;
- (g) the Company is not then in receipt of any notice of Default from MDOT unless any such default has been cured; and
- (h) the Company is not then in receipt of any notice of default from any Senior Secured Party unless such noticed default has been cured, and no Senior Secured Party has otherwise indicated that it is unwilling or unable to presently fund the Company's costs for executing the Project Work.

Before Notice to Proceed has been issued, the Company shall only perform the obligations required to satisfy the conditions for Financial Close and issuance of NTP in the Project Documents. Except for such obligations, the Company shall not commence any Project Work until Notice to Proceed has been issued, and any such work performed by the Company prior to issuance of Notice to Proceed shall be at the Company's sole risk and expense.

The Company shall not commence any Construction Work until issuance of Notice to Proceed.

Project Work Completion

Tunnel Boring Machine and Milestone 1. As soon as reasonably practicable and, in any event, no later than 21 days after MDOT's receipt of Company's notice that it has completed same, MDOT will issue a written certificate that the Company has achieved Milestone 1 Completion upon satisfaction of all of the following conditions:

- (a) the Company has submitted and MDOT has approved:
 - (i) the final geotechnical report for the Storage and Drainage Tunnel;
 - (ii) the final design of the Storage and Drainage Tunnel alignment, vertical and horizontal;
 - (iii) the final design of the Storage and Drainage Tunnel liner design including durability report;
 - (iv) a preliminary arrangement plan for all Storage and Drainage Tunnel appurtenances;
 - (v) the shop drawings for the TBM;
 - (vi) a subsurface methods plan describing the Company's approach to the tunneling activities including soil conditioning, grouting, preparatory works for tunneling activities, and tunnel operations;
 - (vii) Final Construction Impact Assessment; and
 - (viii) Final Construction Impact Assessment Report;
- (b) the Company has provided a copy of the "Advance Notice of Tunnel Excavation" submitted to the Michigan Department of Licensing and Regularity Affairs, Construction Safety and Health Division, in accordance with MIPOSHA, Part 14, R 408.41461;
- (c) the TBM has been operated to indicate its assembly is correct;
- (d) the facilities necessary for liner installation are in place and operational; and
- (e) the facilities necessary for soil modification and grouting are in place and operational.

Immediately upon achievement of Milestone 1 Completion, the Company shall expeditiously and diligently correct all of the Punch List Items specified in MDOT's completion certificate, if any, and complete such work by the Substantial Completion Deadline.

Tunnel and Pump Station (Milestone 2). As soon as reasonably practicable and, in any event, no later than 21 days after MDOT's receipt of Company's notice that it has completed same, MDOT will issue a written certificate that the Company has achieved Milestone 2 Completion upon satisfaction of all of the following conditions:

- (a) the Company has completed the construction of the Storage and Drainage Tunnel and all appurtenances such as shafts and adits, and MDOT has inspected and accepted same;
- (b) the Storage and Drainage Tunnel meets the required performance criteria specified in the Project Agreement's Technical Requirements;
- (c) all Submittals required by the Project Management Plan or Project Documents to be submitted to MDOT prior to Milestone 2 have been submitted to and approved by MDOT in accordance with the Submittal Requirements, in the form and content required by the Project Management Plan or Project Documents, as applicable;
- (d) the Company has completed the construction of new surface drainage features and tied them into the tunnel system and any existing surface drainage features to remain have been tied into the tunnel system and MDOT has inspected and accepted same;
- (e) the Company has completed construction of the Pump Station including all mechanical, electrical, signal and communications systems and MDOT has inspected and accepted same. The Company has completed all testing and commissioning activities for the operation of the Pump Station and MDOT and other relevant parties have witnessed and accepted same;

- (f) there exists no uncured Developer Default that is the subject of a notice from MDOT and no event exists that would be a Developer Default with the giving of notice or the passage of time, unless:
 (i) Milestone 2 will effect its full and complete cure; (ii) with respect to any non-monetary default, the Company has a right to cure and is diligently pursuing cure within the applicable cure period; or (iii) with respect to any monetary defaults, the amount in question is disputed and the Company has timely submitted such matter for resolution under the Project Agreement's Dispute Resolution Procedures;
- (g) if any Governmental Entity with jurisdiction requires any form of certification of design, engineering or construction with respect to the Storage and Drainage Tunnel or any portion thereof, including any certifications from the engineer of record and architect of record for the Project, the Company has caused such certificates to be executed and delivered and has concurrently issued identical certificates to MDOT;
- (h) the Company has delivered to MDOT all manufacturer warranties required for the Storage and Drainage Tunnel under, and in the form and content specified by, the Project Agreement's Technical Requirements; and
- (i) the Company has done everything which the Project Agreement requires the Company to do as a condition precedent to Milestone 2.

Immediately upon achievement of Milestone 2 Completion, the Company shall expeditiously and diligently correct all of the Punch List Items specified in MDOT's completion certificate, if any, and complete such work by the Substantial Completion Deadline.

Freeway Lighting Work. The Company's Freeway Lighting Work is to be handed over to MDOT upon achievement of Substantial Completion.

The Company shall provide MDOT and the P3 Lighting Contractor with notice when the Company believes it has achieved Freeway Lighting Work Completion.

No later than 10 days after MDOT receives such notice, MDOT shall determine and notify the Company whether Freeway Lighting Work Completion has been achieved.

Non-Maintained Facilities. Completion of the Non-Maintained Facilities is a condition precedent to achievement of Substantial Completion. The Non-Maintained Facilities are to be handed over to their respective owners upon achievement of Substantial Completion.

Substantial Completion. As soon as reasonably practicable and, in any event, no later than 21 days after MDOT's receipt of Company's notice that it has completed same, MDOT will issue a written certificate that the Company has achieved Substantial Completion upon satisfaction of all of the following conditions:

- (a) the D&C Work is complete in accordance with the Project Agreement, except for Punch List Items for the full I-75 (Segment 3);
- (b) Punch List Items associated with Milestone 1 Completion and Milestone 2 Completion are complete;
- (c) the Project meets the required performance criteria specified in the Project Agreement's Technical Requirements;
- (d) all Submittals required by the Project Management Plan or Project Documents to be submitted to MDOT prior to Substantial Completion (including the Maintenance Plan) have been submitted to and approved by MDOT in accordance with the Project Agreement in the form and content required by the Project Management Plan or Project Documents, as applicable;
- (e) all Insurance Policies required for the Maintenance Term under the Project Agreement have been obtained and are in full force and effect;
- (f) the Company has delivered the Maintenance Performance Security to MDOT;
- (g) the Company has received, and paid all associated fees for, all applicable Governmental Approvals and other third-party approvals required for use and operation of the Maintenance Work, such Governmental Approvals and other third-party approvals are in full force and effect,

and there exists no uncured material violation of the terms and conditions of any such Governmental Approvals or other third-party approvals;

- (h) there exists no uncured Developer Default that is the subject of a notice from MDOT and no event exists that would be a Developer Default with the giving of notice or the passage of time, unless:
 (i) Substantial Completion will effect its full and complete cure; (ii) with respect to any non-monetary default, the Company has a right to cure and is diligently pursuing cure within the applicable cure period; or (iii) with respect to any monetary defaults, the amount in question is disputed and the Company has timely submitted such matter for resolution under the Project Agreement's Dispute Resolution Procedures;
- (i) if any Governmental Entity with 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, the Company has caused such certificates to be executed and delivered and has concurrently issued identical certificates to MDOT;
- (j) the Company has delivered to MDOT all manufacturer warranties required under, and in the form and content specified by the Project Agreement's Technical Requirements; and
- (k) the Company has done everything which the Project Agreement requires the Company to do as a condition precedent to Substantial Completion.

Immediately upon achievement of Substantial Completion, the Company shall expeditiously and diligently correct all of the Punch List Items specified in MDOT's completion certificate, if any, and complete such work by the Final Acceptance Deadline.

Final Acceptance. Within 21 days after MDOT's receipt of Company's notice that it has completed same, MDOT shall inspect the D&C Work, and within 15 days after such inspection, will issue a written certificate that the Company has achieved Final Acceptance upon satisfaction of all of the following conditions:

- (a) the balance of the D&C Work not completed as part of Substantial Completion has been completed, including correcting all Punch List Items specified in the Substantial Completion Certificate or notified to the Company by MDOT;
- (b) the Company has acquired and properly stored, or arranged for immediate availability, a reasonable inventory of all spare parts, spare components, spare equipment, special tools, materials, expendables and consumables necessary for operation and maintenance of the Project during the Maintenance Term as identified in the Maintenance Plan;
- (c) all Submittals required by the Project Management Plan or Project Documents to be submitted to MDOT prior to Final Acceptance have been submitted to and approved by MDOT in accordance with the Project Agreement in the form and content required by the Project Management Plan or Project Documents, as applicable;
- (d) MDOT has received a complete set of the As-Built Drawings and any as-built survey sheets for the Project in form and content required by the Project Agreement's Technical Requirements;
- (e) MDOT has received the final certifications regarding suspension or debarment required by the Project Agreement;
- (f) there exists no uncured Developer Default that is the subject of a Default Notice from MDOT and no event exists that would be a Developer Default with the giving of a Default Notice or the passage of time, except any Developer Default for which Final Acceptance will effect its full and complete cure; and
- (g) the Company has done everything which the Project Agreement requires the Company to do as a condition precedent to Final Acceptance.

Project Management

Project Management Plan. The Company is responsible to prepare, update, submit and comply with the current approved version of the Project Management Plan. The Project Management Plan is an umbrella document that may include various sub-plans that describes the Company's managerial approach, strategy and quality procedures to design, build and maintain the Project, comply with the Handback Requirements at the end of the Term, and achieve all requirements of the Project Documents.

Quality Manager. The Company must appoint a Quality Manager, who will be responsible for the overall quality of the D&C Work and life-cycle quality during the construction phase of the D&C Term, implementing quality planning and training, and managing the Company's quality management processes. The Quality Manager must be independent of the Company's production team and will have the authority to stop Project Work. At the commencement of the Maintenance Term, the duties of the Quality Manager shall be assumed by the Maintenance Quality Manager, or the Quality Manager, if suitably qualified, may transition into the position of the Maintenance Quality Manager.

Design and Construction. In performing the D&C Work, the Company is faced with a number of prescribed deadlines. The key deadlines are the Substantial Completion Deadline, the Final Acceptance Deadline and the Longstop Date. These dates are subject to change in accordance with the Project Agreement and as explained in greater detail in "–Relevant Events" below.

The key dates from a possible termination perspective are: failing to commence D&C Work within 30 days following issuance of NTP; failing to begin Interim Maintenance Work within 120 days following issuance of NTP; failing to begin Long Term Maintenance Work associated with the Tunnel and Pump Station within 30 days following issuance of the Milestone Completion Certificate for Milestone 2; failing to begin all other Long Term Maintenance Work within 30 days following issuance of the Long Term Maintenance of the Substantial Completion Certificate; and failing to achieve Substantial Completion by the Longstop Date.

In addition, if MDOT believes in good faith that (x) the Project Schedule shows any schedule completion date having 30 days or more of negative Float (including delays for which the Company may be entitled to a Substantial Completion Deadline adjustment); (y) actual progress of Critical Path activities of the D&C Work has significantly fallen behind the Project Schedule; or (z) the Company will not achieve Substantial Completion by the Substantial Completion Deadline, then Company must provide a report identifying the reasons for such delay and a specific schedule for the D&C Work showing the steps that are to be taken to eliminate or reduce the delay to achieve Substantial Completion by the Substantial Completion Deadline.

Under the Design-Build Contract, the Company will pass through to Design-Build Contractor all of its material obligations under the Project Agreement with respect to the D&C Work, all Maintenance Work to be performed prior to the Substantial Completion Date (being all Interim Maintenance Work and the Long Term Maintenance Work to be performed prior to Substantial Completion) and all other matters so specified in the Design-Build Contract. This will include compliance with these key construction deadlines. The risks relating to obtaining NTP are also passed down to Design-Build Contractor. See Appendix C—"SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT."

Defects. The Company will rectify all Defects during the Term regardless of whether or not such Defects are the subject of a notice from MDOT under the Project Agreement. If a notice is given, then the Company will rectify the Defect within the time specified in such notice, and if not so rectified within such time period, then MDOT may rectify the Defect itself or engage a third party to rectify the Defect and the cost of any such rectification work will be a debt due and payable by the Company to MDOT.

Performance Security.

<u>D&C Performance Security.</u> On or before the Financial Close Date, the Company will deliver or cause the Design-Build Contractor to deliver the D&C Performance Security to MDOT, comprised of D&C Performance Bond 1, D&C Performance Bond 2 and the D&C Payment Bond.

MDOT is the sole obligee under D&C Performance Bond 1, which has a value equal to 25% of the D&C Contract Price, and MDOT may only claim under this bond (i) to the extent that the Company or the Collateral Agent is entitled to make a claim under D&C Performance Bond 2; or (ii) as otherwise permitted under the Project Agreement, which is subject to the rights of the Collateral Agent under the Direct Agreement.

The Company is the primary obligee under D&C Performance Bond 2, and each of the Collateral Agent and MDOT is an additional obligee under D&C Performance Bond 2, which has a value equal to 75% of the D&C Contract Price.

The Company is the primary obligee under the D&C Payment Bond, and each of the Collateral Agent and MDOT is an additional obligee under the D&C Payment Bond, which as a value equal to 100% of the D&C Contract Price.

The D&C Performance Bonds shall remain in full force and effect until:

- (a) the Final Acceptance Date;
- (b) there exists no Developer Default with respect to the D&C Work, Interim Maintenance Work or any Long Term Maintenance Work performed prior to the Substantial Completion Date (to the extent such Long Term Maintenance Work is performed under the Design-Build Contract); and
- (c) no event has occurred that, with the giving of notice or passage of time, or both, would constitute a Developer Default with respect to the D&C Work, Interim Maintenance Work or any Long Term Maintenance Work performed prior to the Substantial Completion Date (to the extent such Long Term Maintenance Work is performed under the Design-Build Contract).

The D&C Payment Bond shall remain in full force and effect until:

- (a) receipt of evidence satisfactory to MDOT that all persons eligible to file a claim under Applicable Law against the D&C Payment Bond have been fully paid;
- (b) receipt of unconditional releases of claims and stop notices from all Subcontractors who have filed preliminary notices of claims against the D&C Payment Bond; and
- (c) expiration of the statutory period for Subcontractors to file a claim against the D&C Payment Bond, if no claims have been filed.

Maintenance Performance Security

On or before the Substantial Completion Date, the Company will deliver the Maintenance Performance Security to MDOT, comprised of Maintenance Performance Bond 1, Maintenance Performance Bond 2 (if required by the Company and/or the Senior Secured Parties) and the Maintenance Payment Bond.

The Maintenance Performance Bond(s) shall remain in full force and effect until:

- (a) the Expiration Date;
- (b) there exists no Developer Default; and
- (c) no event has occurred that, with the giving of notice or passage of time, or both, would constitute a Developer Default.

The Maintenance Payment Bond shall remain in full force and effect until:

- (a) the Expiration Date has occurred;
- (b) receipt of evidence satisfactory to MDOT that all persons eligible to file a claim against the Maintenance Payment Bond have been fully paid;
- (c) receipt of unconditional releases of claims and stop notices from all Subcontractors who have filed preliminary notices of claims against the Maintenance Payment Bond; and
- (d) expiration of the statutory period for Subcontractors to file a claim against the Maintenance Payment Bond, if no claims have been filed.

The Maintenance Performance Security shall be issued on an annual basis throughout the Maintenance Term for the full I-75 (Segment 3) in the amount required under the Project Agreement. On or before 30 days prior to the expiration date of any Maintenance Performance Security, the Company shall procure a replacement Maintenance Performance Security and deliver the same to MDOT.

If the Company fails to procure any replacement Maintenance Performance Security in the amount and by the date required under the Project Agreement, MDOT will be entitled to deduct the value of the Maintenance Performance

Security from payments owing to the Company under the Project Agreement, and hold the cash as security for performance of the Company's obligations under the Project Agreement. Such amounts will be released by MDOT to the Company upon receipt by MDOT of a replacement Maintenance Performance Security which satisfies the requirements of the Project Agreement.

Requirements Common to the Performance Security

Each Performance Security shall be issued by an Eligible Surety or panel of Eligible Sureties. Each D&C Performance Security shall be issued by the same Eligible Surety or panel of Eligible Sureties. Each Maintenance Performance Security for any particular annual period during the Maintenance Term shall be issued by the same Eligible Surety or panel of Eligible Sureties.

Utilities The Company is to: (w) carry out all Utility Work necessary to accommodate the Project, excluding any efforts and costs that the Project Agreement identifies as the responsibility of MDOT or Utility Owners or otherwise specifically excludes from the Project Work; (x) coordinate with, monitor and use commercially reasonable efforts to cause Utility Owners performing Utility Relocation Work to perform such work in a timely manner and in compliance with the Project Agreement; (y) schedule all Utility Relocations so as to meet all applicable Project Agreement deadlines, without regard to whether a Utility Relocation is performed by the Company or a Utility Owner; and (z) be responsible to MDOT for proper and timely completion of all Utility Work required for the Project regardless of the arrangements made between the Utility Owners and the Company and regardless of whether the Company or a Utility Owner is performing the Utility Relocation Work.

"Utility Work" means:

- (a) Utility Relocation Work, or efforts and costs necessary to accomplish each and every required relocation (temporary or permanent), abandonment and/or dormancy, protection in place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation and/or modification of existing Utilities necessary to accommodate construction, operation, maintenance and/or use of the Project, including all coordination, design, design review, permitting, construction and inspection;
- (b) relocations of Utility service lines; adjustments of Utility appurtenances on completed roads; protection of Utilities in place; work to remove and dispose of Utilities where leaving them in place is not feasible or permitted or removal is required to permit construction of the Project; work to abandon a Utility in place in accordance with Applicable Law; traffic control for Utility Relocation Work; resurfacing roads, reconstructing curbs, gutters and sidewalks, and reinstalling signs and signals; supplemental investigations of Utility locations; temporary relocations of Utilities and earthwork trenching requested by a Utility Owner;
- (c) potholing and other investigative work necessary to conduct the supplemental utility investigation or perform the Utility Relocation Work; and
- (d) any upgrading of a Utility in the course of a Utility Relocation 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 such Utility.

The Project Agreement has allocated responsibility for Utility Relocation cost and for performance of Utility Relocation work for known Utilities between the Company and relevant Utility Owners. Subject to that allocation and to provisions of the Project Agreement relating to Relevant Events, the Company is responsible for all costs of Utility Relocation Work, including any compensation due to the Utility Owner and all costs and expenses associated with any Utility Relocation. Where a Utility Owner is responsible for a Utility Relocation's cost, the Company must collect directly from the Utility Owner and MDOT shall not be responsible for those amounts.

A Utility Owner may request that the Company design and/or construct an upgrade described in clause (d) above. The Company is under no obligation to perform any such requested upgrade, but no such upgrade forms part of the Project Work, and the Company may not proceed with any such upgrade that is incompatible with the Project, the Project Work, the Project Schedule, Applicable Law, Governmental Approvals or the Project Agreement. No compensatory or time relief is available under the Project Agreement in connection with any such upgrade unless a MDOT Change is agreed in respect of same.

MDOT's obligations relating to Utilities are limited to: (a) provision of relief under a Utility Delay that is a Delay Event in the Project Agreement; (b) provision of relief under a Utility Relief Event that is a Delay Event in the Project Agreement; and (c) in its discretion, providing assistance to the Company when requested in circumstances where a Utility Owner has not responded within two weeks of Company's initial notice to it or to multiple communications from the Company, provided that the Company has evidence that: (i) the relevant Utility Relocation is necessary; (ii) time for completion of same in the Project Schedule was reasonable in its inception; (iii) the Company has made diligent efforts to obtain the Utility Owner's cooperation; and (iv) the Utility Owner is not cooperating.

Each Utility Relocation has an "Anticipated Duration" for design and construction of same in the Project Agreement. If a Utility Owner fails to complete design, construction and/or materials procurement for a Relocation on or before the later of the relevant Anticipated Duration and March 1, 2020, then that results in a Utility Delay that is a Delay Event under the Project Agreement. Subject to the other provisions relating to a Delay Event under the Project Agreement, a Utility Delay is only available if the Company (a) timely complied with the monitoring and notification requirements for Utility performance/non-performance under the Project Agreement, (b) met the conditions for MDOT to provide assistance described in clause (c) above, and (c) provides evidence that the Company: (x) used Float that was available early in the Project Schedule for coordination activities with respect to the Utility Owner to which such Utility Delay relates, (y) as fulfilled its obligation to coordinate with the Utility Owner to prevent or reduce such delays, and (z) otherwise made diligent efforts to obtain timely performance by the Utility Owner but has been unable to obtain such timely performance.

Prior to submission of the Proposal, MDOT provided certain information on the location of Utilities impacting the Project and for which Utility Relocation might be required. During the first 180 days following the issuance of NTD, the Company will conduct additional investigations towards generating a Utility Conflict Matrix that identifies the existence of any and all Utilities likely to be impacted by the Project and verifies or identified inaccuracies in MDOT's pre-Proposal Utility information.

The "Utility Relief Event" Delay Event arises when: (a) any Utility located within the Planned ROW Limits for the Project requires Relocation, protection in place or abandonment as a result of the Project but was not identified or was misidentified in MDOT's pre-Proposal Utility information but is timely identified by the Company in its Utility Conflict Matrix; or (b) an underground Utility owned or operated by a Utility Owner is located within the Project ROW and requires Relocation, protection in place or abandonment as a result of the Project and such Utility (i) was not identified, or was misidentified in MDOT's pre-Proposal Utility information, (ii) was not identified in the Utility Conflict Matrix and (iii) could not have been discovered by the Company through use of Michigan's MISS DIG 811 underground Utilities mapping/search system.

Environmental Compliance. The Company is responsible for:

- (a) establishing environmental plans for the Project Work as required under the Project Agreement;
- (b) performing the Project Work in compliance with applicable Environmental Laws;
- (c) except in respect of the NEPA Approval to the extent outlined above, obtaining all Environmental Approvals;
- (d) performing all environmental mitigation measures for the Project, including all requirements of Environmental Approvals, other governmental approvals and all other requirements under the Project Agreement; and
- (e) monitor the progress of performance of environmental mitigation measures and reporting on same to MDOT.

Contracting and Labor Practices

The Company cannot, without the prior consent of MDOT:

- (a) terminate a Key Subcontract; or
- (b) permit or suffer any substitution or replacement of a Key Subcontractor,

unless the Key Subcontractor: (y) is no longer in business, is unable to fulfill its legal, financial, or business obligations, or can no longer meet the terms of its teaming arrangement with the Company; or (z) fails to timely cure a material default under the applicable Key Subcontract. The Key Subcontracts for the Company are: (1) the Design-

Build Contract; (2) the Design-Build Contractor's subcontract with Jay Dee, the Lead Tunnel Subcontractor for the Project; and (3) the Design-Build Contractor's subcontract with AECOM Great Lakes, Inc., the Lead Engineering Firm for the Project.

Schedule 2 to the Project Agreement lists the firms and organizations that have been prequalified for their roles in the Project. Each of the Design-Build Contractor, the Lead Tunnel Subcontractor and the Lead Engineering Firm are so listed in Schedule 2 to the Project Agreement. The Company can otherwise only issue Subcontracts for the Project Work to Subcontractors prequalified by MDOT.

The Company will appoint or procure the engagement of the individuals listed in Schedule 2 to the Project Agreement to fill the corresponding Key Personnel positions listed therein. The Company cannot change, or permit any change in, Key Personnel without the prior written consent of MDOT. MDOT has the right to review the qualifications and character of each individual recommended for a Key Personnel position in giving or withholding its consent.

If MDOT determines in good faith that an individual filling a Key Personnel role is not available for, or actively involved in, the performance of the Project Work as required by the Project Agreement, then the Company is liable to pay MDOT the following amount as liquidated damages for each position held by such individual:

Category 1 Key Personnel (Company's Project Manager, Design- Build Contractor's Project and Construction Managers, Tunnel Construction Manager, Maintenance Manager)	\$150,000
Category 2 Key Personnel (Design Manager, Quality Manager, Environmental Compliance Manager, Tunnel Safety Manager)	\$100,000
Category 3 Key Personnel	\$75,000

An additional liquidated damages amount for all Key Personnel equal to 50% of the relevant amount listed above is payable for each six-month period where any Key Personnel position is vacant or not being fulfilled in accordance with the Project Agreement.

Such liquidated damages amounts are not payable where the Company removes or replaces Key Personnel at the direction of MDOT or where Key Personnel is unavailable due to the application of Applicable Law, death, disability, family leave, retirement, injury or no longer being employed by the applicable Developer-Related Entity, all so long as the Company proposes a replacement within thirty (30) days of unavailability.

Under the Design-Build Contract, the Design-Build Contractor is responsible for such liquidated damages payments to the extent that the relevant individual is a Design-Build Contractor appointee to such Key Personnel position.

The Company must comply with, and require that all Subcontractors and Suppliers comply with, the specific State and federal requirements attached to the Project Agreements, in addition to all applicable federal and State labor, occupational safety and health standards, rules and regulations and federal and State orders in performing the Project Work.

The Company must remove or cause a Subcontractor to remove any employee that is not performing the Project Work in a proper, safe and skillful manner, and MDOT has the right to direct removal of such a person. If the Company is notified of the existence of any such employee and the Company fails to remove such individual or if the Company fails to ensure skilled and experienced personnel are furnished for the proper performance of the Project Work, MDOT may suspend the affected portion of the Project Work, without relief for the Company of any of its obligations contained in the Project Agreement or entitlement to any additional compensation, time extension or other claim.

The prescribed prevailing rates of wages as provided in State and federal statutes applicable to public construction projects will apply.

The Company must pay each first-tier Subcontractor (including the Design-Build Contractor) no later than thirty (30) days from Satisfactory Completion of the relevant Project Work by such Subcontractor or from the end of the month in which the relevant Project Work was satisfactorily performed, whichever results in the earliest payment. Delay in or postponement of payment from this requirement may only occur with the written approval of MDOT. The Company must require that each Subcontractor (including the Design-Build Contractor), in turn, incorporates deadlines of ten (10) days for payment of lower-tier Subcontractors from the date such Subcontractor receives payment.

DBE/SBE Requirements. MDOT has established a DBE Goal for the D&C Work and Renewal Work of 3%. The DBE Goal for the Project, which the Company has committed to achieve or use Good Faith Efforts to achieve, is calculated and credited in relation to the portion of the total D&C Contract Price and Maintenance Work Value allocated to D&C Work and Renewal Work (as applicable).

MDOT has established a SBE Goal for the D&C Work and Renewal Work of 2%. The SBE Goal for the Project, which the Company has committed to achieve or use Good Faith Efforts to achieve, is calculated and credited in relation to the portion of the total D&C Contract Price and Maintenance Work Value, allocated to D&C Work and Renewal Work (as applicable).

Payments to the Company

The Company is compensated by MDOT pursuant to the Project Agreement through the Milestone Payments and Availability Payments.

Milestone Payment. Milestone Payments will be paid to the Company as partial consideration for Construction Work and all obligations relating thereto that have been carried out by the Company in accordance with the Project Agreement. The maximum amounts of scheduled Milestone Payments and the payment dates are set out in the table below.

Milestone Payment	Payment Date	Maximum Amount (\$)
Milestone 1	Within 30 days after the Company's delivery of an invoice following the issuance of a Milestone Completion Certificate for Milestone 1.	20,000,000
Milestone 2	Within 30 days after the Company's delivery of an invoice following the issuance of a Milestone Completion Certificate for Milestone 2.	40,000,000
Milestone 3	Within 30 days of receipt by MDOT of an invoice following the issuance of the Substantial Completion Certificate.	40,000,000
Milestone 4	Within 30 days of receipt by MDOT of an invoice following the issuance of the Final Acceptance Certificate.	1,000,000

The maximum amount of each Milestone Payment is subject to reduction by: (a) if the Company's invoice does not provide evidence of incorporating D&C Work into the relevant portion of the Project or supplying equipment to the Site with a value at least equal to the scheduled maximum payment, an amount equal to the difference between the amount of the scheduled maximum payment minus the value of the D&C Work or equipment evidenced in the invoice; (b) D&C Deductions, being the amounts prescribed in the Project Agreement for each Noncompliance Event that occurs prior to the Substantial Completion Date and relates to the Interim Maintenance Work or the Long Term Maintenance Work for the Tunnel and Pump Station; and (c) Unavailability Adjustments, being prescribed amounts in the Project Agreement for each circumstance (occurrence and time) where the Company (i) fully or partially closes a Lane for any purpose and such closure is not a Permitted Lane Closure, or (ii) fully or partially

blocks ingress to or egress from a Lane for any purpose and such blockage is not a Permitted Lane Closure. The resulting net amount owed to the Company is the applicable Milestone Payment.

Availability Payments. Availability Payments are payable by MDOT to the Company each Quarter from the later of the Substantial Completion Date and the Original Substantial Completion Deadline. Payments are subject to a MAP for each payment year. Quarterly Availability Payments are calculated pursuant to Schedule 4 of the Project Agreement and are subject to deductions for: (a) Unavailability Adjustments noted above; and (b) Quarterly Noncompliance Adjustments, being the amounts prescribed in the Project Agreement for Noncompliance Points assessed against the Company for certain Noncompliance Events.

The Quarterly Availability Payment ("AP") for Quarter "q" of Contract Year "y" after the Substantial Completion Date shall be calculated using the following formula:

 $AP_{q,y} = QTMAP_{q,y} - QUA_{q,y} - QNCA_{q,y}$

Where:

 $QTMAP_{q,y}$ = the Quarterly Total MAP for Quarter "q" in Contract Year "y"

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¹ / ₄ of the MAP for Contract Year "y"
the Quarterly Renewal Work Payment, or the relevant Base Renewal Work Payment set out in the related payment schedule applicable to Quarter "q" in Contract Year "y" indexed for inflation using the factor Iy / Ibase

QUA _{q,y} =	the Quarterly Unavailability Adjustment for Quarter "q" in Contract Year "y"
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QNCA_{q,y} = the Quarterly Noncompliance Adjustment equal to the monetary deduction for the total cumulative Noncompliance Points awarded in Quarter "q" in Contract Year "y"

The MAP for each Contract Year is determined as follows:

$$MAP_{y} = BaseMAP \times \left(10\% \times \frac{Iy}{IBase}\right) + BaseMAP \times (1 - 10\%)$$

Where:

BaseMAP	=	\$50,621,793.41
10%	=	the indexed payment portion of the BaseMAP per Contract Year that is subject to the MAP Index
Iy	=	the MAP Index as of the month of the later of the Substantial Completion Date and the Substantial Completion Deadline in the year that is immediately prior to the commencement of such Contract Year
IBase	=	the MAP Index as of 1 August, 2018

Refinancing Gain

The Company is required to notify MDOT of any intended Refinancing. MDOT is entitled to share in the Company's gain from any Qualifying Refinancing, but not from an Exempt Refinancing.

MDOT is entitled to a 50% share of any Refinancing Gain arising from a Qualifying Refinancing other than a Refinancing utilizing TIFIA. For a Qualifying Refinancing utilizing TIFIA, MDOT is entitled to a 75% share of any Refinancing Gain.

An "Exempt Refinancing" means:

(a) any Refinancing identified and taken into account in the Financial Model and calculation of the Availability Payment;

- (b) minor and non-monetary amendments, modifications, supplements or consents to the Finance Document, and the exercise by a Senior Secured Party of rights, waivers, consents and similar actions;
- (c) movement of monies between the Company's project accounts in accordance with the terms of the Finance Documents;
- (d) syndication by a Senior Secured Party; grant of participation rights by a Senior Secured Party or disposition of its rights as a Senior Secured Party; grant by a Senior Secured Party of any other form of benefit or interest in the Finance Document or the revenues or assets of the Company; or
- (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.

A "Qualifying Refinancing" is any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.

Relevant Events

The Project Agreement provides for Delay Events, which occur during the D&C Term, and Relief Events, which occur after the Substantial Completion Date. Delay Events and Relief Events (together with other events as a result of which the Company considers that it is entitled to claim an extension of time, compensation or relief from performance of its obligations under the Project Agreement, "Relevant Events") are customary for this type of transaction.

Delay Events. A Delay Event is either: (a) a Force Majeure Event; or (b) a Compensable Delay Event.

Force Majeure Events are any of the following events or circumstances that directly cause either the Company or MDOT to be unable to perform all or a material part of its obligations under the Project Agreement:

- (a) war (including civil war or revolution), invasion, violent act of foreign enemy or armed conflict, military or armed blockade, or military or armed takeover of the Project, occurring within the State;
- (b) any act of terrorism, riot, insurrection, civil commotion or sabotage that causes direct physical damage to, or otherwise directly causes interruption to construction or direct losses during maintenance of the Project;
- (c) national strikes not specific to the Company, embargoes, unavailability or shortages of materials, that, in each case, directly causes interruption to construction or direct losses during maintenance of the Project;
- (d) nuclear, radioactive, or biological contamination of the Project unless the source or cause of the contamination is brought to or near the Project by Developer-Related Entities;
- (e) a "flood" (as defined by the Federal Emergency Management Agency) where flood waters at the Site reach two (2) or more acres of normally dry land measured at or in excess of the one percent annual recurrence interval flood event (or its equivalent, successor measurement), for each water crossing of the Project; fire, explosion, a tornado with an enhanced Fujita Score Rating of EF2, sinkhole caused by natural events, or landslide caused by natural events, in each case directly impacting and damaging the physical improvements of the Project or performance of Project Work;
- (f) a seismic event, where such earthquakes, ground shaking, liquefaction, settlement, or ground movements directly impact, and cause damage to, temporary or permanent works of the Project; and
- (g) any governor-declared emergency within the limits of the Project ROW, except one consisting of or arising out of traffic accidents or Vehicle Damage.

Compensable Delay Events are any of the following events or circumstances to the extent, in each case, that it directly and adversely impacts the D&C Work, Interim Maintenance Work or the Long Term Maintenance Work for the Tunnel and Pump Station during the D&C Term:

- (a) the implementation of a MDOT Change, excluding any Change following a Change Request;
- (b) MDOT Fault;
- (c) a Hazardous Materials Relief Event (as described above);
- (d) a (i) Relevant Change in Law or (ii) Change in Law occurring during the D&C Term which interferes directly and adversely with, or causes a failure of, the performance of the Long Term Maintenance Work;
- (e) a NEPA Event;
- (f) compliance by the Company with an order or direction of an Emergency Service Provider in an Emergency;
- (g) the preemption, confiscation, diversion, destruction or other interference in possession or performance of substantial materials or services by a Governmental Entity in connection with an Emergency or any condemnation or other taking by eminent domain of any material portion of the Project ROW or the D&C Work;
- (h) failure of MDOT to provide responses to proposed schedules, plans, design documents, and other Submittals and matters submitted to MDOT after Commercial Close for which response is required under the Project Agreement as an express prerequisite to the Company's right to proceed or act, within the time periods indicated in the Project Agreement, or if no time period is indicated, within a reasonable time, taking into consideration the nature, importance and complexity of the Submittal or matter; provided, however, that the foregoing shall apply only following delivery of notice after the expiration of the applicable time period from the Company requesting such action in accordance with the terms and requirements of the Project Agreement;
- discovery at, near or on the Project ROW of any archeological, paleontological or cultural resources (including historic properties), excluding any such substance or resources known or disclosed to the Company as of the Setting Date (or which should have been known to the Company pursuant to a Reasonable Investigation);
- discovery at, near or on the Project ROW of any Threatened or Endangered Species (regardless of when the species was listed as threatened or endangered), excluding any such presence of species known or disclosed to the Company as of the Setting Date (or which should have been known to the Company pursuant to a Reasonable Investigation);
- (k) loss or damage to the Project directly caused by MDOT Fault;
- (l) issuance of a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of, or by complying with such temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction results in prohibiting the prosecution of, any material portion of the D&C Work, Interim Maintenance Work, or Long Term Maintenance Work;
- (m) subject to the Company promptly notifying MDOT in writing upon discovery and before the conditions are disturbed or before the affected Project Work is performed, discovery of:
 - (i) actual subsurface or latent physical conditions within two (2) feet of boring holes identified in the Geotechnical Data Reports that differ materially from the subsurface conditions indicated in such report at such boring holes, excluding any such conditions known or disclosed to the Company prior to the Setting Date or that could have been reasonably anticipated as potentially present by an experienced global civil works contractor based on the information contained in such Geotechnical Data Reports (for avoidance of doubt, encountering conditions more than two (2) feet away from the actual boring holes that differ from conditions extrapolated from such boring data is not a Compensable Delay Event); or
 - (ii) discovery of actual subsurface physical conditions within the Planned ROW Limits of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Project Agreement,

excluding any such conditions known or disclosed to the Company prior to the Setting Date or that would become known to the Company by undertaking a Reasonable Investigation;

- (n) any order of MDOT to suspend for convenience exceeding 24 hours in total for a single suspension or 144 cumulative hours in total across multiple suspensions;
- (o) subject to the Company complying with its obligations under the Project Agreement, performance of work, other than snow and ice removal, in the vicinity of the Project Right of Way by MDOT Contractors or the P3 Lighting Contractor that materially and directly disrupts and interferes with the D&C Work or Interim Maintenance Work;
- (p) subject to the Company complying with its obligations under the Project Agreement, performance of work in the vicinity of the Project Right of Way by the Segment 2 Contractor that materially and directly disrupts and interferes with the D&C Work or Interim Maintenance Work;
- (q) subject to limitations provided in the Project Agreement, loss or damage to the Project directly caused by Vehicle Damage;
- (r) a Utility Relief Event (as described above); and
- (s) a Utility Delay (as described above).

Delay Event Relief. Upon the occurrence of a Delay Event, subject to compliance with the provisions of the Project Agreement relating to claims for Relevant Events, the Company shall be entitled to an extension of the Substantial Completion Deadline or the Final Acceptance Deadline, as applicable, arising out of the Delay Event, equal to the delay to the Critical Path directly caused by the Delay Event.

The Company is not entitled to any such extension of the Substantial Completion Deadline or Final Acceptance Deadline, as applicable, to the extent and for so long as the Delay Event is concurrent with any other unrelated delay to a Critical Path for which any Developer-Related Entity is responsible under the Project Agreement.

Any failure by the Company to perform: (y) the Interim Maintenance Work; or (z) the Long Term Maintenance Work until the Substantial Completion Date, to the extent directly arising out of any Delay Event will:

- (a) not constitute a breach of the Project Agreement by the Company;
- (b) not result in accrual of Noncompliance Points, Deductions or Unavailability Adjustments;
- (c) relieve the Company of its obligations to perform the affected Interim Maintenance Work or Long Term Maintenance Work for the duration and to the extent directly prevented by the Delay Event; and
- (d) not result in a Developer Default or right of termination or other claim by MDOT, other than either party's right to terminate the Project Agreement for a prolonged Force Majeure Event.

If the Delay Event is a Compensable Delay Event, then subject to compliance with the provisions of the Project Agreement relating to claims for Relevant Events, MDOT will reimburse the Company for:

- (a) Extra Work Costs directly attributable to such Compensable Delay Event;
- (b) Delay Costs attributable to such Compensable Delay Event, but only where an extension of time described above is made by MDOT for a MDOT-Caused Delay; and
- (c) Financing Delay Costs, but only where an extension of time described above is made by MDOT and provided:
 - (i) in the case of Milestone 3, the Company is unable to achieve Substantial Completion by the Original Substantial Completion Deadline; and
 - (ii) in the case of all other Milestones, the Company is unable to achieve Milestone Completion by the applicable original date for Milestone Completion shown in the Final Interim Schedule.

If the Compensable Delay Event is Vehicle Damage, then the Extra Work Costs payable to the Company are subject to the following thresholds and deductibles for each Contract Year during the D&C Term:

Extra Work Costs for loss or damage to Project in any Contract Year as a result of Vehicle Damage	MDOT Compensation to the Company
Up to and including \$100,000	0% of Extra Work Costs
Greater than \$100,000, up to and including \$200,000	50% of Extra Work Costs
Greater than \$200,000	100% of Extra Work Costs

If the Compensable Delay Event is a Hazardous Materials Relief Event, then compensation for Extra Work Costs payable to the Company shall be limited to Extra Work performed under the approved plans required to be provided under the Project Agreement relating to Hazardous Materials Management.

If the Compensable Delay Event is a Utility Relief Event under clause (a) of the definition thereof and if the Company did not include an impacted Utility in the Utility Conflict Matrix or provide timely notice of such Utility in accordance with the Project Agreement, then the Company is deemed to have waived any right to later claim for alleged inaccuracies in MDOT's pre-Proposal Utility information. This deemed waiver shall not impact the Company's right to claim the existence of an Unknown Unidentified Utility.

In addition, the Company is not entitled to any compensation for a Utility Relief Event for increased costs of the D&C Work attributable to unidentified or misidentified Utilities, to the extent that the existence of the facility was known to the Company as of the Proposal Due Date or could have been inferred from the presence of other facilities (such as buildings, meters, junction boxes, manholes or identifying markers) visible during a surface inspection of the area conducted prior to the Proposal Due Date.

If a time extension was made by MDOT for a Delay Event that is a Force Majeure Event which is not insured against and is not required to be insured against under the Project Agreement, MDOT will reimburse the Company for Financing Delay Costs so long as:

- (a) in the case of Milestone 3, the Company is unable to achieve Substantial Completion by the Original Substantial Completion Deadline; and
- (b) in the case of all other Milestones, the Company is unable to achieve Milestone Completion by the applicable original date for Milestone Completion shown in the Final Interim Schedule.

Extra Work Costs are the incremental increase in the Company's cost of labor, material, equipment and other direct and indirect costs directly attributable to any Project Work in the nature of additional work, altered work or deleted work which is directly attributable to a Change as a result of a Delay Event (or Relief Event) and, absent the Delay Event (or Relief Event), would not be required by the Project Agreement. Extra Work Costs are calculated in accordance with Schedule 5 to the Project Agreement.

Delay Costs are direct costs and Extra Work Costs incurred by the Company relating to Controlling Work Items, or activities or work items on the Critical Path of the D&C Work having the least amount of total Float, that result solely and directly from a Delay Event. Delay Costs are limited to those costs identified in and calculated in accordance with Schedule 5 to the Project Agreement. No payment for delays occurring during the period from November 15 to March 1 will be made unless the Company's approved Project Schedule depicts work on the controlling operation during this period.

Financing Delay Costs are:

- (a) in the case of Delay Events, an amount equal to interest payments on the Company's senior debt accrued and paid, or which became payable, by the Company in accordance with the Finance Documents that accrued during the period of Critical Path delay as a direct result of the Delay Event; and
- (b) in the case of MDOT-Caused Delay only, such other amounts so as to result in the Company achieving the same Equity IRR (with reference to the Base Case Equity IRR) as if such Compensable Delay Event had not occurred.

A MDOT-Caused Delay is any of the events described in clause (a), (b), (c), (e), (h), (k), (m), (n), (o), (p), (q), (r) or (s) of the definition of Compensable Delay Event above.

Extra Work Costs and/or Delay Costs are payable by MDOT within one month after the date of the receipt from the Company of the related Change Order or Work Order, subject to rights of dispute.

Financing Delay Costs are payable by MDOT on the date on which MDOT would have paid the Milestone Payment or Availability Payment relating to those days of delay had the Milestone Completion or Substantial Completion not been delayed by the relevant Compensable Delay Event.

Relief Events. A Relief Event is either: (a) a Force Majeure Event (as described above); or (b) a Compensable Relief Event.

Compensable Relief Events are any of the following events or circumstances to the extent, in each case, that it interferes directly and adversely with, or causes a failure of, the performance of the Punch List or Long Term Maintenance Work after the Substantial Completion Date:

- (a) the implementation of a MDOT Change, excluding any Change following a Change Request;
- (b) MDOT Fault;
- (c) a Hazardous Materials Relief Event (as described above);
- (d) a NEPA Event;
- (e) compliance by the Company with an order or direction of an Emergency Service Provider in an Emergency;
- (f) a change in standards materially impacting the Punch List or Long Term Maintenance Work or the Project with which MDOT directs the Company to comply;
- (g) any Change in Law;
- (h) failure of MDOT to provide responses to proposed schedules, plans, design documents, and other Submittals and matters submitted to MDOT after Commercial Close for which response is required under the Project Agreement as an express prerequisite to the Company's right to proceed or act, within the time periods indicated in the Project Agreement, or if no time period is indicated, within a reasonable time, taking into consideration the nature, importance and complexity of the Submittal or matter; provided, however, that the foregoing shall apply only following delivery of notice after the expiration of the applicable time period from the Company requesting such action in accordance with the terms and requirements of the Project Agreement;
- discovery at, near or on the Planned ROW Limits of any archeological, paleontological or cultural resources (including historic properties), excluding any such substance or resources known or disclosed to the Company as of the Setting Date (or which should have been known to the Company pursuant to a Reasonable Investigation);
- (j) discovery at, near or on the Planned ROW Limits of any Threatened or Endangered Species (regardless of when the species was listed as threatened or endangered), excluding any such presence of species known or disclosed to the Company as of the Setting Date (or which should have been known to the Company pursuant to a Reasonable Investigation);
- (k) loss or damage to the Project directly caused by MDOT Fault;
- (l) issuance of a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of a material portion of the Punch List or Long Term Maintenance Work;
- (m) discovery of actual subsurface or latent physical conditions within two (2) feet of boring holes identified in the Geotechnical Data Reports included among the Reference Information Documents that differ materially from the subsurface conditions indicated in such report at such boring holes, excluding any such conditions known to the Company prior to the Setting Date or that could have been reasonably anticipated as potentially present by an experienced global civil works contractor based on the information contained in such Geotechnical Data Reports (for

avoidance of doubt, encountering conditions more than two (2) feet away from the actual boring holes that differ from conditions extrapolated from such boring data is not a Compensable Relief Event); or discovery of actual subsurface physical conditions within the Project ROW, including Additional Properties required due to MDOT Changes, but excluding any other Additional Properties, of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Project Agreement, excluding any such conditions known or disclosed to the Company prior to the Setting Date or that would become known to the Company by undertaking a Reasonable Investigation;

- (n) any order of MDOT to suspend for convenience exceeding 24 hours in total for a single suspension or 144 cumulative hours in total across multiple suspensions;
- (o) subject to the Company complying with its obligations under the Project Agreement, performance of work, other than snow and ice removal, in the vicinity of the Project Right of Way by a MDOT Contractor or the P3 Lighting Contractor that materially and directly disrupts and interferes with the Punch List or Long Term Maintenance Work occurring on the Project Right of Way; and
- (p) subject to limitations provided in the Project Agreement, loss or damage to the Project directly caused by Vehicle Damage.

Relief Event Relief. If a Relief Event is a Compensable Relief Event, then MDOT will reimburse the Company for all Extra Work Costs incurred by the Company as a direct result of the Compensable Relief Event.

If the Compensable Relief Event is Vehicle Damage, then the Extra Work Costs payable to the Company are subject to the following thresholds and deductibles for each Contract Year during the Maintenance Term:

Extra Work Costs for loss or damage to Project in any Contract Year as a result of Vehicle Damage	MDOT Compensation to the Company
Up to and including \$100,000	0% of Extra Work Costs
Greater than \$100,000, up to and including \$200,000	50% of Extra Work Costs
Greater than \$200,000	100% of Extra Work Costs

If the Compensable Delay Event is a Hazardous Materials Relief Event, then compensation for Extra Work Costs payable to the Company shall be limited to Extra Work performed under the approved plans required to be provided under the Project Agreement relating to Hazardous Materials Management.

If a Relief Event is a Force Majeure Event that: (y) is not insured against and is not required to be insured against under the Project Agreement, and (z) directly and adversely impacts the Long Term Maintenance Work after Substantial Completion, then MDOT is entitled to make Deductions, provided that such Deductions shall not exceed, in the aggregate, the amount that would reduce payments to the Company to an amount below the sum of the debt service amount on the senior debt and 75% of the Company's Fixed Maintenance Costs.

Any failure by the Company to perform the Long Term Maintenance Work after the Substantial Completion Date, to the extent directly arising out of any Relief Event will:

- (a) not constitute a breach of the Project Agreement by the Company;
- (b) not result in accrual of Noncompliance Points or Deductions with respect to any Compensable Relief Event;
- (c) result in accrual of Noncompliance Points and Deductions with respect to any Force Majeure Event as described above;
- (d) relieve the Company of its obligations to perform the affected Long Term Maintenance Work for the duration and to the extent directly prevented by the Relief Event; and
- (e) not result in a Developer Default or right of termination or other claim by MDOT, other than either party's right to terminate the Project Agreement for a prolonged Force Majeure Event.

Provisions Applicable to Relevant Events Generally

Mitigation. If a Relevant Event or any other event occurs as a result of which the Company considers that it is entitled to claim an extension of time, compensation or relief from performance of its obligations under the Project Agreement, the Company shall and shall require all Developer-Related Entities to use and commercially reasonable efforts to (a) eliminate or mitigate the Liability, damages, schedule impact and other consequences of such event on the performance of the Company's obligations under the Project Agreement, including by re-sequencing, rescheduling, reallocating or redeploying forces to other work, (b) continue to perform and remain liable and responsible for its obligations under the Project Agreement notwithstanding such event, and (c) resume performance of its obligations under the Project Agreement affected by such event as soon as practicable and in no event later than promptly after the cessation of such event.

To the extent that the Company does not comply with its mitigation obligations then its entitlement to claim an extension of time, compensation or relief from performance of its obligations under the Project Agreement with respect to such event will be reduced to the extent of such failure.

Limits on or Reductions in Relief. Compensation payable to the Company with respect to a Relevant Event will be reduced by (a) any amount that a Developer-Related Entity recovers under any Insurance Policy, or would have recovered if it had complied with the requirements of the Project Agreement in respect of any Insurance Policy in respect of such event (excluding any excess or deductibles or any amount over the maximum amount insured under any such Insurance Policy), and (b) the amount of any costs avoided or otherwise reduced as a result of such event. In the case of a Relevant Change in Law, such costs avoided or otherwise reduced are equal to the saving of the capital costs and operating costs which would otherwise be required to be incurred or payable by the Company that are or are likely to be decreased from the relevant amounts (if any) assumed in the then current Financial Model.

The Company's entitlement to claim an extension of time, compensation or relief from performance of its obligations under the Project Agreement with respect to a Relevant Event will be reduced to the extent that such event arises out of, relates to or was caused or contributed to by any Developer Fault.

The Company has specific deliverables in connection with a claim relating to Vehicle Damage (including details of the accident and Vehicle Damage, a police report in the case of an at-fault insured driver, invoicing and a prescribed Report of Property Damage, as well as all necessary supporting documentation reasonably required by MDOT in support of the Company's related Request for Change Proposal). If the Company fails to comply with such deliverables obligations, then the Company will not be entitled to reimbursement and will not otherwise be entitled to make any claim for any liability in connection with the relevant Vehicle Damage (including recovery against any third parties in connection with Vehicle Damage).

If the Company has made a claim for an extension of time in relation to a Delay Event, then the Company is not entitled to an extension of time to the Substantial Completion Deadline or Final Acceptance Deadline, as applicable, to the extent and for so long as the Delay Event is concurrent with any other unrelated delay to a Critical Path for which any Developer-Related Entity is responsible under the Project Agreement.

Notification Process for Delay Events. Initial notice of a Delay Event must be provided to the MDOT Authorized Representative within the time period provided in Section 104.10(A)(1) of MDOT's Standard Specifications if practicable, but in no event later than the time period provided in Section 104.10(A)(2) of MDOT's Standard Specifications, regardless of whether or not the Company seeks compensation for the Delay Event. Waiver and forfeiture of the Company's rights in respect of a Delay Event not notified within prescribed timelines is also governed by Section 104.10(A)(A) of MDOT's Standard Specifications.

In the case of a Delay Event under clause (a) of the definition of Utility Relief Event, the commencement of the time period for filing initial notice commences on the date on which the Company submits its Utility Conflict Matrix, and separate notices are required for each separate Utility claimed to be misidentified or unidentified.

Within 30 days after its initial notice to the MDOT Authorized Representative, the Company must provide further details to the MDOT Authorized Representative, including:

(a) a summary of the provisions of the Project Agreement that entitles the Company to relief, and if relief is sought for MDOT's alleged breach of the Project Agreement, then also identify the provisions of the Project Agreement alleged to have been breached and the actions or failures to act constituting such breach;

- (b) details of the Delay Event, the circumstances from which the Delay Event arises including its nature, the date of its occurrence, its duration (to the extent that the Delay Event and the effects thereof have ceased or estimated duration to the extent that the Delay Event and the effects thereof have not ceased), the portions of the Project affected;
- (c) details of records the Company will maintain to substantiate its claim for extra time and the substance of any oral communications, if any, relating to the Delay Event and the name of the person or persons making such material oral communications;
- (d) analysis of consequences (whether direct or indirect, financial or non-financial) the Delay Event may have upon achieving each Milestone, the Substantial Completion Deadline or the Final Acceptance Deadline, as applicable, including an impacted delay analysis indicating all activities represented or affected by the change, and with a narrative report, in form satisfactory to MDOT, which compares the proposed new schedule to the Project Schedule, as appropriate (and the Company will reschedule activities not otherwise affected by the event in order to take advantage of additional Float available as the result of the time extension);
- (e) where the Delay Event is also a Compensable Delay Event, an itemized estimate of all amounts claimed for Extra Work Costs, Delay Costs and/or Financing Delay Costs, with Extra Work Costs and Delay Costs broken down in accordance with Schedule 5 to the Project Agreement;
- (f) where the Delay Event is also a Force Majeure Event, an itemized estimate of any Financing Delay Costs claimed, broken down in accordance with Schedule 5 to the Project Agreement;
- (g) the type and amount of insurance that may be applicable and amounts that have been or are anticipated to be collected under such insurance; and
- (h) details of any mitigation measures that the Company has taken to date and proposes to adopt.

As soon as possible, but in any event, within 7 days of the Company receiving, or becoming aware of, any supplemental information which may further substantiate or support the Company's claim, the Company must submit further particulars based on such information to the MDOT Authorized Representative.

Notification Process for Relief Events. Notice of the occurrence of a Relief Event must be provided to the MDOT Authorized Representative within 15 days of the Company becoming aware of same (or, if earlier, on such date that the Company should have discovered same in the exercise of reasonable prudence).

Within 30 days after its initial notice to the MDOT Authorized Representative, the Company must provide further notice to the MDOT Authorized Representative, including:

- (a) a summary of the provisions of the Project Agreement that entitle the Company to relief, and if relief is sought for MDOT's alleged breach of the Project Agreement, then also identify the provisions of the Project Agreement alleged to have been breached and the actions or failures to act constituting such breach;
- (b) details of the Relief Event, the circumstances from which the Relief Event arises including its nature, the date of its occurrence, its duration (to the extent that the Relief Event and the effects thereof have ceased or estimated duration to the extent that the Relief Event and the effects thereof have not ceased), the portions of the Project affected;
- (c) details of records the Company will maintain to substantiate its claim for relief or compensation and the substance of any oral communications, if any, relating to the Relief Event and the name of the person or persons making such material oral communications;
- (d) where the Relief Event is also a Compensable Relief Event, an itemized estimate of all amounts claimed for Extra Work Costs, broken down in accordance with Schedule 5 to the Project Agreement;
- (e) the type and amount of insurance that may be applicable and amounts that have been or are anticipated to be collected under such insurance; and
- (f) details of any mitigation measures that the Company has taken to date and proposes to adopt.

As soon as possible, but in any event, within 7 days of the Company receiving, or becoming aware of, any supplemental information which may further substantiate or support the Company's claim, the Company must submit further particulars based on such information to the MDOT Authorized Representative.

Changes

MDOT Changes. MDOT may, at any time and for any reason, authorize and/or require: (a) with respect to the D&C Work, a change to the Project Agreement's Technical Requirements, including any addition, decrease, omission, deletion, removal or modification from the D&C Work resulting from such change; (b) with respect to the Maintenance Work, a change to the Project Agreement's Technical Requirements, including any addition, decrease, omission, deletion, removal or modification from the Maintenance Work resulting from such change; and (c) any change to the Project, including any addition, decrease omission, deletion, removal or modification to or from Project. Such Changes are effected pursuant to a Change Order or a Work Order.

A Work Order may be issued by MDOT at any time with respect to a change or in the event of a dispute relating to the Project Work. A Work Order will provide a written, detailed description of the change, detail any Extra Work Costs payable and any extension of time to the Substantial Completion Deadline or the Final Acceptance Deadline, as applicable, and state that either (i) the Project Work is within the Company's original scope under the Project Agreement or necessary to comply with the Project Agreement; or (ii) the Company is directed to implement a MDOT Change.

A Work Order is effective upon issuance by MDOT, and the Company shall proceed immediately to implement the directed work in accordance with the Work Order, pending execution of a formal Change Order. If a Work Order states that the directed work is within the Company's original scope of Project Work and does not constitute a Change, then the Company shall proceed with the Project Work as directed, but may advise MDOT that it considers the directed Project Work to constitute a Change and request that MDOT issue a Change Order.

If MDOT wishes to issue a MDOT Change or to evaluate whether to initiate such a change, then MDOT first issues a Request for Change Proposal to the Company setting out the nature, extent and details of the proposed MDOT Change. The Company is not required to respond to a Request for Change Proposal or to perform any work associated with a Change if the Company demonstrates, and MDOT agrees, that (y) implementation of the Request for Change Proposal would breach Applicable Law or result in revocation of an existing Governmental Approval or require a new Governmental Approval not readily or reasonably obtainable, or (z) implementation of the Request for Change Proposal would threaten the safety of any Person.

As soon as possible, and in any event within 20 days, following MDOT's delivery of a Request for Change Proposal to the Company, the Company is to provide MDOT with a written Change Response. The Change Response is to include:

- (a) whether, in the Company's opinion, the MDOT Change constitutes a Compensable Delay Event, Compensable Relief Event or Force Majeure Event in which case any entitlement to an extension of time, Extra Work Costs, Delay Costs, Financing Delay Costs or relief in accordance with the Project Agreement would need to be claimed separately by the Company under the provisions of the Project Agreement relating to Relevant Events and that claim would not factor into the Change Response;
- (b) a detailed estimate of the Extra Work Costs of carrying out the proposed MDOT Change, in respect of which no mark-up shall be allowed in excess of the amounts allowed under Schedule 5 to the Project Agreement;
- (c) all activities associated with the Request for Change Proposal, including a description of additions, decreases, omissions, deletions, removals or modifications to the existing requirements of the Project Agreement (including the Technical Requirements, the Handback Work or the Handback Requirements) or the infrastructure;
- (d) if prior to the Final Acceptance Date, the effect of the proposed MDOT Change on the Project Schedule, including achievement of the Completion Deadlines, taking into consideration the Company's duty to mitigate any delay;
- (e) if so requested by MDOT, an alternative cost and schedule proposal showing the acceleration costs associated with meeting the non-adjusted Completion Deadlines;

- (f) the proposed manner of payment set out in Schedule 5 to the Project Agreement;
- (g) net cost savings and schedule savings to which MDOT is entitled and the timing and method for realizing such cost or schedule savings. If the effect of a MDOT Change is to decrease, delete or remove scope, then MDOT is entitled to (i) 100% of the net cost savings attributable to such reductive MDOT Change and 100% of the net savings in financing costs associated with savings in capital cost, (ii) 100% of the effect of the proposed MDOT Change on shortening the Project Schedule and the Completion Deadlines, and (iii) issue a MDOT Change reducing the Maintenance Work value by 100% of the amount of cost savings to any Developer-Related Entity due to decrease in certain taxes on materials incorporated or to be incorporated into the Project during the Maintenance Term;
- (h) the effect (if any) of the contemplated MDOT Change on the Company's ability to perform the Maintenance Work stated by Contract Year;
- where relief from obligations is sought, the effect of the contemplated MDOT Change on the Company's ability to perform any of its obligations that would otherwise result in accrual of Noncompliance Points, assessment of Deductions, Developer Default or an MDOT right to terminate the Project Agreement;
- (j) a description of any additional consents or approvals required, including amendments, if any, of any Governmental Approvals required to implement the contemplated MDOT Change;
- (k) a detailed description of the steps that the Company will take to implement the contemplated MDOT Change, including measures to mitigate the costs, delay and other consequences of the contemplated MDOT Change; and
- (l) any other relevant information related to carrying out the proposed MDOT Change.

MDOT and the Company (on its own behalf and on behalf of its Subcontractors) will try to negotiate, in good faith, a reasonable cost for each Change including any Extra Work Costs to which the Company is entitled and the timing and method for payment of any such compensation (or if applicable, any net cost savings and schedule savings to which MDOT is entitled and the timing and method for realizing such cost savings). If MDOT and the Company are able to reach agreement on a Change, then MDOT may issue a Change Order on the terms agreed.

If MDOT and the Company are unable to reach agreement on a Change Order, then MDOT may elect to resolve that dispute under the Project Agreement's Dispute Resolution Procedures without issuing a Work Order, or to deliver a Work Order directing the Company to proceed with the performance of the Project Work in question notwithstanding such disagreement.

MDOT, after meeting with the Company to review, discuss and agree on the Company's estimate, will either confirm to the Company the Company's estimate or withdraw its MDOT Change request.

The Company may claim a Delay Event and a Relief Event in connection with the implementation of a MDOT Change that is not preceded by a Change Request (see below).

Company Changes. The Company may at any time issue a Change Request in approved form that proposes a Change. Each Change Request is to include the same details required to be included in a Change Response.

MDOT, in its sole discretion, may accept or reject any Change Request. If MDOT accepts a Change Request, then the Company will execute a Change Order in respect of same and will implement the change in accordance with the Change Order, applicable Technical Requirements, the Project Management Plan, Good Industry Practice and all Applicable Law.

The Company alone bears the risk of any increase in the Extra Work Costs or other costs, and for any additional risks, resulting from a Change Request accepted by MDOT, and the Company is not entitled to any extension of the Project Schedule and/or the Completion Deadlines for delays or other impacts resulting from a Change Request proposed by the Company and accepted by MDOT.

If a Change Request accepted by MDOT results in a net cost savings to the Company, then MDOT is entitled to 50% of such savings.

No Change Request is required to implement any change to the Project Work that is not a Deviation and is not specifically limited, restricted, regulated or addressed by the Project Agreement, the Technical Requirements or Applicable Law.

Certain minor changes without significant cost savings may be approved in writing by MDOT as Deviations and will not require a Change Order.

Indemnity by the Company

The Company will indemnify MDOT, the State of Michigan, the Cities of Hazel Park, Madison Heights and Royal Oak, Wayne and Oakland Counties, and the Oakland County Water Resources Commissioner, and each of their respective successors, assigns, officeholders, officers, directors, agents and employees (the "Indemnified Parties") against any claim or liability arising out of or in connection with:

- (a) any alleged or actual Developer Fault, if asserted or incurred by or awarded to any Third Party;
- (b) damage to public or private property owned by Third Parties and for injuries to any Person arising out of the Company's performance of the Project Work;
- (c) any alleged Intellectual Property infringement or other allegedly improper appropriation or use of Intellectual Property by any Developer-Related Entity in performance of the Project Work or in connection with the infrastructure (excluding any infringement to the extent resulting from MDOT's failure to comply with specific material written instructions regarding use provided to MDOT by the Company);
- (d) any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, or the use of any property or income of any Developer-Related Entity with respect to any payment for the Project Work made to or earned by any Developer-Related Entity;
- (e) failure or alleged failure by any Developer-Related Entity to pay sums due for the work or services of Subcontractors, laborers, or Suppliers, provided that MDOT has paid all undisputed amounts owing to the Company with respect to such Project Work, if asserted or incurred by or awarded to any Third Party;
- (f) any actual or threatened Developer Release of Hazardous Materials;
- (g) claim or assertion by any Interface Party: (i) that any Developer-Related Entity failed to cooperate reasonably with such Interface Party, so as to cause interference, disruption, delay or loss, except where the Developer-Related Entity was not in any manner engaged in performance of the Project Work; or (ii) that any Developer-Related Entity interfered with or hindered the progress or completion of work being performed by such Interface Party, so as to cause interference, disruption, delay or loss, to the extent such claim arises out of any Developer Fault;
- (h) any Developer-Related Entity's breach of or failure to perform an obligation that MDOT owes to a third person, including Governmental Entities and Utility Owners, under Applicable Law or under any agreement between MDOT and a third person, where MDOT has delegated performance of the obligation to the Company under the Project Agreement or the acts or omissions of any Developer-Related Entity render MDOT unable to perform or abide by an obligation that it owes to a third person, including Governmental Entities and Utility Owners, under any agreement between MDOT and a third person, where, in each case, the agreement was expressly disclosed or known to the Company;
- (i) inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of: (i) the failure of any Developer-Related Entity to comply with Good Industry Practices, requirements of the Project Agreement, the Project Management Plan or Governmental Approvals respecting control and mitigation of construction activities and construction impacts, (ii) the intentional misconduct or negligence of any Developer-Related Entity in connection with performance of the Project Work, or (iii) the actual physical entry onto or encroachment upon another's property by any Developer-Related Entity in connection with performance of the Project Work;

- (j) Errors or other Defects in the design, supply, construction (including installation), operation or maintenance of the Project or of Utility Relocations included in the Project Work, excluding the Interim Maintenance Work; or
- (k) Errors or other Defects in the Interim Maintenance Work resulting from: (i) the Company's breach of its obligations under the Project Agreement with respect to Interim Maintenance Work; or (ii) the negligence, intentional misconduct, or recklessness of any Developer-Related Entity.

The Company's indemnity obligations do not extend, however, to any liability to the extent directly caused by:

- (a) a breach by MDOT of the Project Agreement;
- (b) the sole negligent acts, sole negligent omissions, recklessness or willful misconduct, bad faith or fraud of an Indemnified Party; or
- (c) MDOT's violation of any Applicable Law.

Neither MDOT nor the State has any obligation to indemnify the Company.

Unavailability Adjustments and Noncompliance Points

The Project Agreement contains a regime pursuant to which the Unavailability Adjustments briefly described above and Noncompliance Points can be assessed against the Company by MDOT for certain Unavailability Events and Noncompliance Events, respectively, each as set forth in Schedule 4 of the Project Agreement.

Unavailability Adjustments are calculated by multiplying the number of Hour intervals of an Unavailability Event (rounded up to the nearest Hour) by the relevant Unavailability Factor:

Unavailability Factor per Unavailability Event per Hour		
Unavailability Event	Unavailability Factor	
D&C Term Unavailability Factors		
Mainline shoulder	\$200	
Mainline I-75 (per lane)	\$3500	
High Impact Ramp	\$3500	
Other ramp (per lane)	\$100	
Service Drive per lane	\$100	
Overpass/underpass per lane	\$50	
Maintenance Term Unavailability Factors		
Mainline shoulder	\$100	
Mainline I-75 (per lane)	\$6000	
High Impact Ramp	\$6000	
Other ramp (per lane)	\$500	
Service Drive per lane	\$500	
Overpass/underpass per lane	\$500	

Unavailability Adjustments are limited to a daily maximum of \$100,000 (indexed each year on the anniversary of the Financial Close Date).

For Noncompliance Points, the Company has the benefit of certain periods within which to mitigate, temporarily repair and/or permanently repair the relevant Noncompliance Event. If a Noncompliance Event occurs for which there is no such period provided, or if the Company fails to take the required action within the available period, subject to limited circumstances for extension, then MDOT may assess prescribed Noncompliance Points. Any available period then resets, and Noncompliance Points may be assessed again if the required action is not taken within the reset period.

MDOT may (a) replace Noncompliance Events in the list of same that are applicable to the Maintenance Term by removing a Noncompliance Event and adding in its place an alternate Noncompliance Event, and (b) set periods of time applicable to alternate Noncompliance Events, provided that (i) an existing obligation of the Company can become an alternate Noncompliance Event if the Company has failed to comply with that obligation at least twice, MDOT provided required notice of intent to make such obligation a Noncompliance Event and the Company failed to comply with such obligation a third time, (ii) the total number of Noncompliance Points existing on the Financial Close Date cannot increase by more than 10% over the Term, and (iii) Noncompliance Points cannot be assessed for Noncompliance Events that have not yet been added to the list.

In additional to Noncompliance Points, MDOT may assess Noncompliance Adjustments at prescribed dollar amounts for each Noncompliance Point assigned to the Company and on the occurrence of certain Noncompliance Events.

The total of Deductions and Unavailability Adjustments cannot cause each of Milestone Payment 1 and Milestone Payment 2 or the Quarterly Total Maximum Availability Payment for the relevant Quarter to be less than 65% of the applicable maximum Milestone Payment or Quarterly Total Maximum Availability Payment available for the relevant Milestone or Quarter. However any Deductions or Unavailability Adjustments that, as a result of the foregoing, are not deducted from the Milestone Payment or Quarterly Total Maximum Availability Payment shall be carried over and applied against the next Milestone Payment or Quarterly Total Maximum Availability Payment (as applicable). This limitation does not apply to the last three Quarterly Total Maximum Availability Payments during the Maintenance Term where there will be no limit on the amount of Deductions and Unavailability Adjustments that may be applied to such Quarterly Total Maximum Availability Payments.

Accumulation of Noncompliance Points can be the basis for a Developer Default and basis for termination of the Project Agreement. See "Rights of MDOT Following a Developer Default" below.

Risk of Loss

Subject to the provisions of the Project Agreement relating to Relevant Events, the Company bears the risk of loss, damage or destruction the infrastructure during the Term, except to the extent that MDOT or a Third Party has accepted elements of the Non-Maintained Work in accordance with the Project Agreement and assumes responsibility for the maintenance thereof.

If the infrastructure is wholly or substantially destroyed or damaged by: (a) a Force Majeure Event which is not insured against and is not required to be insured against in accordance with the Project Agreement or an Unobtainable Coverage Event; and (b) MDOT requires the Company to repair, replace or rebuild the infrastructure, then MDOT and the Company will use reasonable efforts to negotiate and agree on how the infrastructure will be repaired, replaced or rebuilt in accordance with Schedule 9 to the Project Agreement relating to Changes and the Extra Work Costs of doing so in accordance with Schedule 5 to the Project Agreement.

If the loss or damage to the infrastructure is caused by a Compensable Delay Event or a Compensable Relief Event and MDOT requires the Company to repair, replace or rebuild the infrastructure, then subject to the express terms of the Project Agreement, the Company may submit a claim for Extra Work Costs under the applicable Relevant Event provisions of the Project Agreement.

Except to the extent there are available Insurance Proceeds to pay for the cost of repairing, replacing or rebuilding the infrastructure, the Company will bear all costs, including Extra Work Costs and Delay Costs, to repair or replace, and will not be entitled to any compensation for delay due to, any loss, damage or destruction caused by a Relevant Event or other event (except MDOT's gross negligence, recklessness or willful misconduct) to: (a) any tools, machinery, equipment, facilities, protective fencing, job trailers, scaffolding or other items of any Developer-Related Entity used in the performance of the Project Work but not intended for permanent installation into the infrastructure; (b) any machinery, equipment, facilities, materials, inventory, supplies and other property of any Developer-Related Entity outside the Project Right of Way or (c) any machinery, equipment, facilities, materials, inventory, supplies and other property of any Developer-Related Entity while in transit to the Site.

Rights of MDOT Following a Developer Default

The Project Agreement provides for a number of default events by the Company. Such default events include, without limitation, any one or more of the following where such event is not solely and directly attributable to a Delay Event or Relief Event (each a "Developer Default"):

- (a) the Company fails to begin the D&C Work within 30 days following issuance of NTP;
- (b) the Company fails to begin the Interim Maintenance Work within 120 days following issuance of NTP;
- (c) the Company fails to begin the Long Term Maintenance Work associated with the Tunnel and Pump Station within 30 days following a Milestone Completion Certificate for Milestone 2;
- (d) the Company fails to begin all Long Term Maintenance Work for the remainder of the I-75 (Segment 3) excluding the Tunnel and Pump Station within 30 days following the Substantial Completion Certificate;
- (e) the Company fails to (i) make any payment due to MDOT under the Project Agreement when due, (ii) deposit funds to any custodial account, trust account or other reserve or account in the amount

and within the time period required by the Project Agreement, or (iii) deliver the Acceptable Letter of Credit for Handback in accordance with the Project Agreement (if applicable) in the required amount and within the period required;

- (f) the Company ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on the Company's ability to perform its obligations under the Project Agreement;
- (g) the Company abandons the Project or discontinues the performance of a substantial portion of the Project Work for a continuous period of 30 or more days, except in accordance with the approved Project Schedule;
- (h) the Company fails to obtain, provide and maintain the Insurance Policies in accordance with the Project Agreement and such failure is not cured within 5 days after receiving notice from MDOT of such failure;
- (i) the Company breaches the restrictions on a Change in Control set out in the Project Agreement;
- (j) any representation or warranty made by the Company in the Project Agreement or any documents delivered to MDOT under the Project Agreement is false in any material respect or materially misleading or inaccurate in any material respect when made or omits material information when made;
- (k) a Bankruptcy Event arises for:
 - (i) the Company, except to the extent such Bankruptcy Event is caused by a failure by MDOT to pay the Company as required under the Project Agreement, and/or
 - (ii) the Design-Build Contractor (during the D&C Term) unless the Company:
 - (A) enters into a replacement Design-Build Contract or guarantee (as relevant) with a reputable counterparty acceptable to MDOT within 60 days of the relevant Bankruptcy Event; or
 - (B) in the absence of entering into a replacement Design-Build Contract, the Company otherwise demonstrates to the satisfaction of MDOT that the Company possesses the technical and financial capacity to perform all remaining D&C Work in accordance with the Project Agreement;
- (l) the Design-Build Contract is terminated (other than non-default termination on its scheduled termination date) and the Company has not either:
 - (A) entered into a replacement Design-Build Contract with a reputable counterparty acceptable to MDOT within 60 days of the termination of the Design-Build Contract, <u>provided</u>, <u>however</u> that if the Company is required to replace the Lead Tunnel Subcontractor, then the Company has 120 days from the termination of the Design-Build Contract to enter into a replacement Design-Build Contract; or
 - (B) in the absence of entering into a replacement Maintenance Contract, the Company otherwise demonstrates to the satisfaction of MDOT that the Company possesses the technical and financial capacity to perform all remaining Maintenance Work in accordance with the Project Agreement;
- (m) the Company fails to achieve Substantial Completion by the Longstop Date;
- (n) a Persistent Developer Default occurs, MDOT delivers to the Company a Default Notice, and either (i) the Company fails to deliver to MDOT, within 30 days, a cure plan meeting the requirements of the Project Agreement, or (ii) the Company fails to fully comply with the schedule or specific elements of, or actions required under, the approved cure plan;
- (o) the Company fails to comply with MDOT's suspension of Project Work issued in accordance with the Project Agreement within the time reasonably allowed in such order;

- (p) after exhaustion of all rights of appeal, any disqualification, suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, from bidding, proposing or contracting with any United States or State department or agency of (i) the Company, (ii) any affiliate of the Company (as "affiliate" is defined in 29 CFR § 16.105 or successor regulation of similar import), (iii) any Equity Member or (iv) any Key Subcontractor whose work is not completed;
- (q) the Company fails to replace and maintain the Maintenance Performance Security in accordance with the Project Agreement; and
- (r) the Company fails to timely observe or perform or cause to be observed or performed any other covenant, agreement, obligation, term or condition required to be observed or performed by the Company under the Project Agreement, including failure to pay for or perform the D&C Work, Maintenance Work or any portion thereof in accordance with the Project Agreement, to cure any such failure identified in notice from MDOT relating to same (but excluding any Noncompliance Event unless the number of points accumulated with respect to such Noncompliance Event constitutes a Developer Default described in clause (n) above).

A "Persistent Developer Default" is (i) with respect to Noncompliance Events (excluding Incident Management Noncompliance Events), incurrence by the Company of: (A) in any twelve (12) consecutive Months, 300 Noncompliance Points, or (B) in any thirty-six (36) consecutive Months, 750 Noncompliance Points; or (ii) with respect to Incident Management Noncompliance Events, incurrence by the Company of: (A) in any twelve (12) consecutive Months, 100 Noncompliance Points, or (B) in any thirty-six (36) consecutive Months, 250 Noncompliance Points.

Default Notice. The Company must provide prompt notice to MDOT of the occurrence of a Developer Default. If the Company does so, or MDOT believes that a Developer Default has occurred, MDOT may give a Default Notice to the Company, setting out details of the Developer Default, any cure period available and if not capable of being cured or there is no cure period available, the date by which the Company will comply with MDOT's requirements related to that Developer Default.

Company Cure Periods. The Company has the benefit of the following cure periods:

- (a) for the Developer Default described in clause (a) above, 20 days after MDOT's delivery of a Default Notice;
- (b) for a Developer Default described in clause (f) or (k) above, 15 days after MDOT's delivery of a Default Notice;
- (c) for a Developer Default described in clause (e), (g) or (r) above, 30 days after MDOT's delivery of a Default Notice, provided that, if the Developer Default is of such a nature that the cure cannot with diligence be completed within such time period and the Company has commenced meaningful steps to cure promptly after receiving the Default Notice, the Company will have such additional period of time, up to a maximum cure period of 60 days after MDOT's delivery of a Default Notice; and
- (d) no cure period for any other Developer Default.

Warning Notices. MDOT may deliver a Warning Notice to the Company, with a copy to the Collateral Agent, warning of a material Developer Default. If MDOT issues a Warning Notice for any Developer Default after it issues a Default Notice, then the remaining cure period available to the Company, if any, for such Developer Default before MDOT may terminate the Project Agreement on account of such Developer Default will be extended by the time period between the date the Default Notice was issued and the date the Warning Notice is issued. That shall not defer the time at which MDOT may exercise any remedy other than termination respecting such Developer Default.

Company Cure Plans. If MDOT delivers a Default Notice to the Company, then the Company will comply with the Default Notice and, except in the case of the Developer Defaults described in clauses (g), (i), (k), (l), (m) and (n) above and Developer Defaults for which there is no cure period, the Company shall, as soon as possible, give MDOT a plan to cure the Developer Default and comply with any requirements of MDOT in accordance with the terms of the Default Notice. MDOT and the Company will develop and seek to agree on such plan, and following

agreement or determination of the plan, the Company shall implement and comply with it. Any failure to implement the cure plan or comply with the agreed cure plan will result in a Developer Default which is not subject to any cure period.

In the case of a Persistent Developer Default, within 30 days the Company will submit a cure plan to MDOT, including specific actions (including timeframes) to be taken by the Company to improve its performance and reduce (i) the cumulative number of Noncompliance Points assessed and cumulative number of breaches and failures to perform to the point that a Persistent Developer Default no longer applies, and (ii) the cumulative number of Noncompliance Points assessed and cumulative number of Noncompliance Points outstanding with respect to the Developer Default by at least 50%. MDOT and the Company will develop and seek to agree on such plan, and following agreement or determination of the plan, the Company shall implement and comply with it. Any failure to implement the cure plan or comply with the agreed cure plan will result in a Developer Default which is not subject to any cure period.

Compliance by the Company with a Persistent Developer Default cure plan in all material respects and achievement of the requirements set out in it will result in a reduction by MDOT of the number of cured Noncompliance Points that would otherwise then be counted toward a Persistent Developer Default by 25%, so long as there are no other uncured Developer Defaults at such time for which a Default Notice was given.

MDOT Rights on Developer Default. Upon occurrence of a Developer Default that has not been cured within the applicable cure period, if any, MDOT will be entitled to:

- (a) exercise its Step-In Rights under the Project Agreement;
- (b) terminate the Project Agreement in accordance with its terms;
- (c) recover any liability on account of the occurrence of a Developer Default. regardless of when the Default Notice is given, whether the liability accrues after the occurrence of the Developer Default or whether the Developer Default is subsequently cured;
- (d) where such Developer Default is not cured within the applicable cure period, if any, make demand upon and enforce any Performance Security, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security (including the Handback Account and MDOT's rights to withhold payment) available to MDOT under the Project Agreement with respect to the Developer Default without notice to the Company, applying the proceeds of any such action to the satisfaction of the Company's obligations under the Project Agreement;
- (e) suspend the Project Work in whole or part in accordance with the Project Agreement; or
- (f) exercise any other remedies available under the Project Agreement or at law or in equity.

MDOT Termination Right. Subject to the PA Direct Agreement, if (a) a Developer Default occurs and it has not been cured within the relevant cure period, if any, set out in the related Default Notice or in accordance with any cure plan accepted by MDOT, or (b) a Developer Default occurs for which there is no cure period under the Project Agreement, then MDOT by notice to the Company may terminate the Project Agreement.

Such termination of the Project Agreement is effective on the date stated in MDOT's notice of termination.

Developer Default Termination Compensation.

(1) Termination Before Substantial Completion Deadline

If the Project Agreement is terminated due to a Developer Default <u>before</u> the Substantial Completion Deadline, then MDOT will pay the Company, calculated at MDOT's date of termination of the Project Agreement, an amount equal to <u>the lesser of</u> (a) and (b) below:

- (a) an amount equal to the D&C Contract Price <u>minus</u> the aggregate of:
 - (i) the Cost to Complete, being:
 - (A) the costs (internal and external) that MDOT reasonably and properly projects that it will incur in carrying out any process to request tenders from any parties interested in entering into a contract with MDOT to achieve Final Acceptance, including all

costs related to the preparation of tender documentation, evaluation of tenders and negotiation and execution of relevant contracts; <u>plus</u>

- (B) costs that MDOT reasonably and properly projects that it will incur in achieving Final Acceptance; <u>plus</u>
- (C) any other liability that MDOT would, but for the termination of the Project Agreement, not have incurred prior to Final Acceptance; minus
- (D) any insurance proceeds received by MDOT for the purposes of achieving Final Acceptance;

<u>plus</u>

(ii) the Milestone Payments that became payable prior to the termination date;

<u>plus</u>

(iii) any Availability Payments that became payable prior to the termination date;

<u>plus</u>

- (iv) any Deduction or Unavailability Adjustment or other reductions to the Availability Payment or Milestone Payment accrued prior to the termination date that has, in each case, not been deducted from any Milestone Payments or Availability Payment (as applicable); and
- (b) the amount equal to:
 - (i) one-hundred percent (100%) of the Lenders' Liabilities, being the aggregate, without double counting, of all principal, interest, banking fees and premiums on financial insurance policies, costs and expenses and other amounts properly incurred owing or outstanding to the Senior Secured Parties by the Company under the Finance Documents on the termination date of the Project Agreement, including any prepayment costs, makewhole amounts or breakage costs;

<u>minus</u>

(ii) Cash Account Balances;

<u>minus</u>

(iii) Insurance Proceeds (excluding proceeds of personal injury, property damage or other Third Party liability insurance payable to or for the account of a Third Party);

<u>minus</u>

(iv) any D&C Deductions and Unavailability Adjustments to the extent not deducted in full from the Milestone Payment.

(2) Termination After Substantial Completion Deadline

If the Project Agreement is terminated due to a Developer Default <u>after</u> the Substantial Completion Deadline, then MDOT will pay the Company, calculated at MDOT's date of termination of the Project Agreement, an amount equal to:

(a) 80% of Lenders' Liabilities;

<u>minus</u>

- (b) Maintenance Rectification Costs, being all liability that MDOT determines, in its good faith discretion, that it has is or may incur as a result of the termination of the Project Agreement, including:
 - the costs (internal and external) of carrying out any process to request tenders from any parties interested in entering into a contract with MDOT to carry out Maintenance Work in respect of the Project (on similar terms contemplated in the Project Agreement), including

all costs related to the preparation of tender documentation, evaluation of tenders and negotiation and execution of relevant contracts;

- (ii) the costs to be incurred by MDOT in relation to:
 - (A) remediation or, if remediation is not possible or would cost more than renewal or replacement, renewal or replacement of any Defect; and
 - (B) rectification or cure of any breach of the Project Agreement by any Developer-Related Entity, or any other condition that, with the giving of notice or the passage of time, would be a breach of the Project Agreement; and
- (iii) the costs to be incurred for the remainder of the Term (if the Project Agreement had not been terminated) in order to ensure that the Project complies with the requirements of the Project Agreement, but only to the extent such projected costs exceed the costs assumed in the Financial Model; and
- (iv) any amount which, but for the termination of the Project Agreement, either should have been deposited with or paid to MDOT in accordance with the terms of the Project Agreement;

<u>minus</u>

(c) Cash Account Balances;

<u>minus</u>

(d) Deferred Equity Amounts;

<u>minus</u>

(e) Insurance Proceeds to the extent that such proceeds were not used to repair or replace any portion of the infrastructure or to satisfy a third party claim;

<u>minus</u>

(f) any Deduction and Unavailability Adjustment accrued prior to the termination date of the Project Agreement that has, in each case, not been deducted from any Milestone Payment or Availability Payment (as applicable).

Rights of Company Following a MDOT Default

MDOT Default. The following are MDOT Defaults under the Project Agreement:

- (a) MDOT fails to make any payment due to the Company under the Project Agreement when due to the extent such payment is not subject to a good faith dispute;
- (b) any representation made by MDOT under the Project Agreement is false or materially misleading or inaccurate when made in each case in any material respect or omits material information when made; and
- (c) MDOT commits a material breach of its obligations under the Project Agreement (other than as a consequence of any Developer Fault), which breach materially adversely affects the ability of the Company to perform its obligations under the Project Agreement for a continuous period of not less than 60 days after notice is received from the Company.

Notice to MDOT and Cure Periods. The Company is to provide MDOT with notice of a MDOT Default. Upon receipt of such notice from the Company: (i) in the case of a MDOT Default described in clause (a) above, MDOT has a 30-day cure period; and (ii) in the case of a MDOT Default described in clause (b) or (c) above, MDOT has a 60-day cure period, provided that, if the MDOT Default is of such a nature that the cure cannot with diligence be completed within such time period and MDOT has commenced meaningful steps to cure immediately after receiving the Company's notice, then MDOT shall have up to a maximum 180-day cure period.

Suspension Right. For so long as a MDOT Default has occurred and remains uncured after the expiration of any applicable cure period, the Company may suspend performance of the Project Work.

Termination Right. The Company has the right to terminate the Project Agreement upon the occurrence of a MDOT Default following notice and expiration of the applicable cure period. The Company must provide MDOT not less than 30 days' notice of termination, and such termination of the Project Agreement is effective on the date stated in the Company's notice of termination.

Compensation for Termination for MDOT Default. If the Project Agreement is terminated for a MDOT Default, MDOT will pay compensation to the Company calculated in the same manner as the compensation on Termination for Convenience as described below.

Other Project Agreement Termination and Compensation

Termination for Convenience and Related Compensation. At any time after the Financial Close Date, in its sole discretion and for any reason, MDOT may terminate the Project Agreement upon not less than 60 days' notice to the Company. Such termination of the Project Agreement will be effective on the date specified in MDOT's notice of termination.

If MDOT terminates the Project Agreement for convenience, then MDOT will pay the Company an amount equal to:

(a) all amounts shown in the Financial Model as payable by the Company to the Equity Members from the termination date of the Project Agreement, either in dividends or other distributions on the capital of the Company or as payments of interest or repayments of principal made by the Company under the Equity Members' funding agreements, each amount discounted back at the Base Case Equity IRR from the date on which it is shown to be payable in the Financial Model to the termination date of the Project Agreement, less the Deferred Equity Amounts at the termination date of the Project Agreement;

<u>plus</u>

- (b) Lenders' Liabilities;
- <u>plus</u>
- (c) Developer Employee and Contractor Breakage Costs;
- <u>plus</u>
- (d) Cash Account Balances;
- <u>minus</u>
- (e) Insurance Proceeds to the extent that such proceeds were not used to repair or replace any portion of the infrastructure or to satisfy a third party claim;

<u>minus</u>

(f) any Deduction accrued prior to the termination date of the Project Agreement that has, in each case, not been deducted from any Milestone Payment or Availability Payment (as applicable).

Termination for Extended Force Majeure Event and Related Compensation. Subject to the following paragraph, if a Force Majeure Event is continuing and prevents or is likely to continue to prevent the Company from undertaking all or substantially all of its obligations in accordance with the Project Agreement for a continuous period exceeding 180 days, then either MDOT or the Company may terminate the Project Agreement by giving notice to the other. Such termination of the Project Agreement will be effective on the date stated in such notice of termination.

The Company may not so terminate the Project Agreement in the period when the Company is able to recover under any Insurance Policy for any liability suffered as a consequence of the relevant Force Majeure Event or would have been able to recover had it effected and maintained such insurances in accordance with the Project Agreement.

If the Project Agreement terminates for such a Force Majeure Event, then MDOT will pay the Company, calculated at the termination date of the Project Agreement, an amount equal to:

(a) the amount of (i) any form of direct cash investment by Equity Members in the Company and (ii) any cash draws by or on behalf of the Company under Deferred Equity Amounts in the form of

letters of credit, less the distributions paid to the Equity Members, which amount will never be less than zero;

<u>plus</u>

(b) Lenders' Liabilities;

<u>plus</u>

(c) Developer Employee and Contractor Breakage Costs;

<u>minus</u>

(d) Cash Account Balances;

<u>minus</u>

(e) Insurance Proceeds to the extent that such proceeds were not used to repair or replace any portion of the infrastructure or to satisfy a third party claim;

<u>minus</u>

(f) any Deduction and Unavailability Adjustment accrued prior to the termination date of the Project Agreement that has, in each case, not been deducted from any Milestone Payment or Availability Payment (as applicable).

Termination for Unobtainable Coverage Event and Related Compensation. MDOT may terminate the Project Agreement in connection with an Unobtainable Coverage Event on notice to the Company. Such termination will take effect on the date stated in MDOT's notice of termination.

An "Unobtainable Coverage Event" means a risk that is required to be insured in accordance with the Project Agreement and for which insurance coverage is available prior to the performance of any Project Work but (i) becomes unobtainable in the recognized international insurance market in connection with that risk by a Qualified Insurer, or (ii) Commercially Reasonable Insurance Rates become unobtainable from a Qualified Insurer in the recognized international insurance market in case provided that the unobtainable coverage is not caused by any act or omission of a Developer-Related Entity.

If MDOT terminates the Project Agreement in connection with an Unobtainable Coverage Event, then MDOT will pay the Company an amount calculated according to the same formula provided above for a Force Majeure Event termination.

Termination for Failure to Reach Financial Close and Related Compensation.

MDOT may terminate the Project Agreement without fault or penalty on notice to the Company if Financial Close does not occur by the Financial Close Deadline and all conditions to Financial Close have been achieved.

MDOT or the Company may terminate the Project Agreement without fault or penalty on notice to the other if Financial Close does not occur by the Financial Close Deadline, an Adverse Event or another similar event described in the Project Agreement has occurred, MDOT and the Company have negotiated in good faith for 30 days to agree on mitigation actions and no agreement has been reached.

Termination under either of the foregoing situations requires MDOT and the Company to have engaged in good faith negotiations for a minimum of 30 days before such termination is effective, and termination will be effective at the end of such 30-day period unless MDOT and the Company otherwise agree.

If the Project Agreement terminates in either of the foregoing circumstances, then MDOT will return the Financial Close Security to the Company on the termination date of the Project Agreement and pay the Company an amount equal to: (a) the Company's documented costs for Project Work performed during the time period between Commercial Close and Financial Close up to a maximum amount of \$1,000,000, calculated at the termination date of the Project Agreement; <u>plus</u> (b) up to \$1,000,000.

If the Company fails to achieve Financial Close by the Financial Close Deadline and such failure is not directly attributable to any of the excusing events for same in the Project Agreement, then MDOT may terminate the Project Agreement upon notice to the Company, and such termination of the Project Agreement will take effect on the date stated in such notice.

If MDOT terminates the Project Agreement for the Company's failure to achieve Financial Close, then MDOT may draw upon or retain the full amount of the Financial Close Security and no amount shall be payable by MDOT to the Company in such circumstances.

Miscellaneous Compensation Provisions

Timing of Payment. Any compensation on termination to be paid by MDOT for a Termination for Convenience or by reason of MDOT Default will be due and payable by MDOT sixty (60) days after such amount is finally agreed or determined. Compensation on termination to be paid by MDOT for any other termination will be due and payable by MDOT one hundred and twenty (120) days after such amount is finally agreed or determined.

Termination Requirements. Compliance by the Company with the requirements to be observed on termination of the Project Agreement is a condition precedent to MDOT's payment of any Compensation Amount.

Exclusivity of Remedy. Any termination compensation amount irrevocably paid by MDOT to the Company is in full and final settlement of the Company's rights and claims for any liability against MDOT for breaches and/or termination of the Project Agreement but without prejudice to (i) any liability of MDOT or the Company to the other that arose prior to the termination date of the Project Agreement (and not from termination itself), to the extent not accounted for in the calculation of the relevant termination compensation, and (b) any liabilities in connection with any breach by the Company after the expiration date of any obligation under the Project Agreement that survives termination of the Project Agreement, to the extent not taken into account in the calculation of the relevant termination compensation.

Other MDOT Remedies

Step-In Rights. If (i) an Emergency occurs, (ii) MDOT is required by Applicable Law to discharge a statutory power or duty; or (iii) a Developer Default occurs and any applicable cure period expires without full and complete cure of same by the Company (each of which is a Step-In Event), subject to the terms of the Direct Agreement, MDOT may: (1) temporarily assume total or partial management and control of the whole or any part of the infrastructure, (2) access the Project Right of Way, (3) perform the Project Work, and (4) take such other steps as are necessary in the opinion of MDOT to perform the Project and minimize the effect of the Step-in Event. MDOT will notify the Company as soon as reasonably practicable upon exercise of MDOT's Step-In Rights.

If MDOT has exercised its Step-In Rights, then the Company's obligations in the Project Agreement that are directly affected by the Step-In Rights will be suspended for the period and to the extent necessary to enable MDOT to exercise those Step-In Rights.

If the Step-In Event:

- (a) was a result of a Developer Default or was caused by Developer Fault then:
 - (i) all liabilities reasonably incurred by MDOT in exercising its Step-In Rights will be a debt due and payable from the Company to MDOT on demand;
 - the Availability Payments and the Milestone Payments will be subject to Deductions and Unavailability Adjustments in accordance with Schedule 4 to the Project Agreement as a result of the Step-In Event; and
 - (iii) the liability described in clause (a) above will be reduced by any Deductions or Unavailability Adjustments to the Milestone Payments or Availability Payments described in clause (b) above, and all such amounts will be deducted from the Milestone Payments or future Availability Payments until all such amounts are recovered, unless all future Milestone Payments or Availability Payments are, in MDOT's good faith determination, insufficient, in which case, such amounts will be a debt due and payable by the Company to MDOT on demand.
- (b) was not the result of a Developer Default or was not caused by Developer Fault then:
 - (i) the Availability Payments and the Milestone Payments will not be subject to Deductions and Unavailability Adjustments notwithstanding that the obligation to perform the Maintenance Work directly affected by the Step-In Event is suspended or is being provided by MDOT, provided that MDOT may deduct the amount of avoided costs which are not in

fact incurred by the Company during the period, where Maintenance Work is not required to be performed by the Company as a result of the exercise of the Step-In Rights; and

(ii) the Step-In Rights will be limited to the extent and for such period as is necessary, in MDOT's sole discretion, to cure or resolve the Step-In Event.

MDOT may, at any time, cease to exercise its Step-In Rights on five days' notice to the Company, and will, on five days' notice to the Company, cease to exercise its Step-In Rights (i) if the related Emergency ceases, (ii) if MDOT is no longer required by Applicable Law to discharge the statutory power or duty, or (iii) if the Developer Default has been remedied or ceases, as the case may be.

Except as set out in clause (n) of the definition of Compensable Delay Event and Compensable Relief Event, MDOT has no liability to the Company for, and the Company is not entitled to make any claim against MDOT or any MDOT Person for any liability in connection with, MDOT exercising its Step-In Rights.

Suspension Right. Subject to the PA Direct Agreement, MDOT may by notice to the Company suspend, in whole or in part, the Project Work due to any of the following, regardless of whether a Developer Default has been declared or any cure period (other than the cure period provided below) has not yet lapsed:

- (a) for MDOT's convenience, provided that the same may result in a Compensable Delay Event or a Compensable Relief Event;
- (b) failure to perform the Project Work in compliance with, or other breach of, the Project Agreement where such failure is not cured within 15 days after MDOT delivers notice to the Company, except Noncompliance Events where no Persistent Developer Default exists;
- (c) failure to comply with any Applicable Law or Governmental Approval, including any failure to handle, preserve and protect archeological, paleontological, cultural or historic resources, or failure to handle Hazardous Materials, in accordance with Applicable Law and Governmental Approvals;
- (d) the Company has failed to pay in full when due sums owing any Subcontractor for services, materials or equipment, except only for retainage provided in the relevant Subcontract and amounts in dispute, where such failure is not substantially cured within 15 days after MDOT delivers notice to the Company;
- (e) failure to provide proof of required Insurance Policy coverage;
- (f) failure to deliver or maintain any Performance Security in accordance with the Project Agreement;
- (g) the existence, in MDOT's good faith determination, of conditions unsafe for workers, other Project personnel, MDOT Persons, Interface Parties or the general public, including failures to comply with safety standards or traffic management procedures or perform safety compliance in accordance with the Technical Requirements; and
- (h) failure to carry out and comply with Work Orders or where the failure is not substantially cured within 15 days after MDOT delivers notice to the Company.

Except as set out in clause (n) of the definitions of Compensable Delay Event and Compensable Relief Event, MDOT has no liability to the Company for, and the Company is not entitled to make any claim against MDOT or any MDOT Person for any liability in connection with, MDOT exercising its suspension rights.

Renewal Work

The Company will diligently perform Renewal Work (i) as and when necessary to maintain compliance with the Performance Requirements and restore the Useful Life of each Element; and (ii) in accordance with the Project Agreement, including, when applicable, the Handback Requirements.

The Renewal Work Schedule is the principal guide for scheduling and performing Renewal Work. Not later than: (a) 90 days before the beginning of the second full calendar year after the Substantial Completion Date, the Company will prepare and submit to MDOT, for review and comment, a Renewal Work Schedule; and (b) 90 days before the beginning of the third full calendar year after the Substantial Completion Date and 90 days before each calendar year thereafter, the Company will prepare and submit to MDOT for review and comment a revised Renewal Work

Schedule (or the current Renewal Work Schedule and a statement that the Company intends to continue with the same without revision).

Handback Requirements

The Company is required to comply with the Handback Requirements. The Handback Requirements mean the required condition of the infrastructure:

- (a) if Handback occurs during the Maintenance Term for the full I-75 (Segment 3) and prior to or on the date which is two years before the Scheduled Expiration Date, is the condition that the infrastructure would be in if the Company had complied with all of its obligations in connection with the Project Agreement up to the time of termination and taking into account the circumstances and timing of the termination; or
- (b) if Handback occurs on or after two years prior to the Scheduled Expiration Date, is consistent with:
 - (i) the infrastructure and each Element of the Project having been designed and built in accordance with the applicable Useful Life requirements specified in Table 3-6 of the Technical Requirements; provided that if the Design Life of an Element as specified therein has been extended through Good Industry Practice, the Company shall demonstrate that the Residual Life of an Element is three years or greater at the end of the Term, unless specified otherwise in the Project Agreement;
 - (ii) the Company having performed the Maintenance Work in accordance with the Project Agreement, including the Technical Requirements;
 - (iii) the remaining Residual Life standards established in the Technical Requirements, compliance with which shall be determined using the methodology and criteria specified therein and in the Residual Life Methodology in the Handback Work Plan; and
 - (iv) the Company having otherwise complied with the requirements of the Project Agreement.

MDOT and the Company will conduct inspections of the Project and deliver a Preliminary Project Handback Condition Report not less than 42 months prior to the Scheduled Expiration Date identifying the Handback Work and estimating the Handback Work Costs. The Company will produce a Prefinal Project Handback Condition Report on the first anniversary of the original Prefinal Project Handback Condition Report.

The Company will carry out the Handback Work at its own cost notwithstanding that the actual cost of the Handback Work may be higher than the Handback Work Costs.

Within 30 days after the delivery of the Prefinal Project Handback Condition Report, the Company is required to provide MDOT an amount equal to the Handback Work Costs for deposit with the State Treasurer in the PA Handback Account for the purpose of making payments to the Company. MDOT will have a first priority perfected security interest in the PA Handback Account and is not obliged to pay the Company interest on the PA Handback Account.

MDOT will pay from the PA Handback Account the amounts necessary to reimburse the Company upon submittal of (i) certified requisitions with full supporting receipts or other evidence of payment for work actually expended in the performance of the Handback Work; and (ii) confirmation that the applicable Handback Work has been completed in accordance with the terms of the Project Agreement.

If, at any time after the initial deposit of funds into the PA Handback Account, MDOT determines, in its good faith discretion, that the balance may be insufficient to pay for the Handback Work, MDOT may give notice to the Company and the Company shall deposit such additional funds into the PA Handback Account not later than ten Business Days after such notice. If, in the good faith discretion of MDOT, the funds in the PA Handback Account exceed the value (based on the Handback Work Costs) of all or any part of the Handback Work (as amended) yet to be performed, then MDOT will pay the excess to the Company from the PA Handback Account within 30 days thereafter.

In lieu of funding the PA Handback Account, the Company may deliver one or more Acceptable Letters of Credit under the Project Agreement to cover all or any portion of the amounts required to be on deposit in the PA Handback Account. The Company shall produce a Final Project Handback Condition Report within 45 days after the Expiration Date. If such report identifies any remaining or deficient Handback Work, MDOT may withdraw from the PA Handback Account or draw on the Acceptable Letter of Credit an amount equal to 100% of the applicable Handback Work Costs, and following completion of the remaining Handback Work, pay any remaining funds or return the unused portion of the Acceptable Letter of Credit to the Company. If no Handback Work is identified in the Final Project Handback Condition Report, MDOT will pay the funds in the PA Handback Account or return the letter(s) of credit to the Company within 45 days of receipt of such report.

Restrictions on Assignment

The Company cannot voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber any portion of its rights or obligations under the Project Agreement without MDOT's prior written approval, in MDOT's sole discretion, except:

- (a) to Senior Secured Parties for security as permitted by the Project Agreement, provided the Company retains responsibility for the performance of the Company's obligations;
- (b) to any Substituted Entity permitted under the PA Direct Agreement, provided that such Substituted Entity assumes in writing full responsibility for performance of the obligations of the Company under the Project Agreement arising from and after the date of assignment; or
- (c) to any entity in which the organizations that signed the Project Agreement for the Company, or the shareholder(s), general partner(s), or member(s) that exercise management control over such organizations, hold and exercise effective management control and hold at least 50 percent of the equity interest.

Any purported voluntary or involuntary sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, grant of right of entry, or grant of other special use, management or control of the infrastructure in violation of the Project Agreement shall be null and void *ab initio* and MDOT, at its option, may declare any such attempted action to be a material Developer Default.

Restrictions on Changes in Control and Equity Transfers

No Change in Control of the Company, or Equity Transfer that results in an Equity Member ceasing to own (directly or indirectly) the same percentage of the issued share capital, partnership or membership interests, as applicable, in the Company that it owned (directly or indirectly) as of the Financial Close Date, is permitted:

- (a) prior to 2 years after the Substantial Completion Date, without MDOT's prior written approval, in its sole discretion; or
- (b) after 2 years after the Substantial Completion Date, without MDOT's prior written approval, not to be unreasonably withheld or delayed, based on the financial resources, qualifications and experience necessary to perform the Project Work and potential conflicts of interest.

An "Equity Transfer" means any assignment, mortgage, encumbrance, hypothecation, conveyance, sale, or other transfer of equity interest in the Company.

A "Change in Control" means any Equity Transfer, transfer of an interest, direct or indirect, in an Equity Member, or other assignment, sale, financing, grant of security interest, hypothecation, conveyance, transfer of interest or transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation, bankruptcy 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 the Company or a material aspect of its business. A change in possession of the power to direct or control or cause the direction or control of the Company if such Equity Member possesses, immediately prior to such Change in Control, the power to direct or control or cause the direction or control of the management of the Company.

The following situations are not a Change in Control, and transfers and transactions within any of the following situations are allowed at any time without necessity for MDOT's approval:

(a) a change in possession of the power to direct or control the management of the Company or a material aspect of its business due solely to a bona fide transaction involving beneficial interests in the ultimate parent organization of an Equity Member, (but not if the Equity Member is the

ultimate parent organization) (but this exception shall not apply if the transferee in such transaction is, at the time of the transaction, suspended or debarred, 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 State department or agency);

- (b) an upstream reorganization or transfer of direct or indirect interests in the Company so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of the Company;
- (c) a transfer of interests (i) between managed funds that are under common ownership, management or control or (ii) by an Equity Member to a fund, investment vehicle or other entity managed by or under common control of such Equity Member, except, in each case, a change in the management or control of a fund, investment vehicle or other entity, as applicable, that manages or controls the Company;
- (d) an Equity Transfer where the transferring Equity Member and the transferee are under the same ultimate parent organization ownership, management and control before and after the transfer;
- (e) a change in possession of the power to direct or control the management of the Company 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;
- (f) the exercise of minority veto or voting rights (whether provided by Applicable Law, by the Company's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of the Company, provided that if such minority veto or voting rights are provided by shareholder or similar agreements, MDOT has received copies of such agreements; and
- (g) the grant of a security interest pursuant to the Finance Documents, in strict compliance with the Project Agreement, or the exercise of Senior Secured Party remedies under the Security Documents, including foreclosure.

Any Change in Control in violation of the provisions of the Project Agreement shall be null and void *ab initio* and MDOT, at its option, may declare any such attempted action to be a material Developer Default.

Assignment by MDOT

MDOT may transfer and assign all or any portion of its rights, title and interests in and to the Project, the infrastructure, appropriations, the Project Agreement, performance security, guarantees, letters of credit and other security for payment or performance:

- (a) without the Company's consent, to any other State governmental entity of Michigan that:
 - (i) succeeds to the governmental powers and authority of MDOT, including the power and authority to request appropriations from the State legislature;
 - (ii) has the legal authority to perform its obligations under the Project Agreement and sources of funding for the Milestone Payments and Availability Payments that are at least as adequate and secure as MDOT's at the time of the assignment; and
 - (iii) has an unsecured long-term debt credit rating equal to or better than the unsecured long-term debt credit rating of MDOT bonds at the time of the assignment, as measured by a Rating Agency under the Project Agreement; or
- (b) to any other person with the prior consent of the Company, acting reasonably.

Disputes

All disputes shall be resolved in accordance with the Project Agreement's Dispute Resolution Procedures. Other than matters described in clause (a) below, MDOT or the Company may seek resolution of disputes that are not subject to resolution under the Dispute Resolution Procedures in accordance with Applicable Law.

The Dispute Resolution Procedures do not apply to:

- (a) any matters that the Project Agreement expressly state are final, binding or not subject to dispute resolution (including any exercise of sole discretion);
- (b) any claim or dispute that does not arise under the Project Agreement;
- (c) disputes regarding compliance with Rules and Regulations, termination of the Project Agreement or indemnification;
- (d) any claim for injunctive relief;
- (e) any claim against an insurance company, including any Subcontractor dispute that is covered by insurance;
- (f) disputes regarding safety issues and/or matters under the jurisdiction of Michigan-OSHA;
- (g) issues regarding DBE/SBE participation;
- (h) any claim or dispute that is the subject of litigation in a lawsuit filed in court to which the procedures established under the Dispute Resolution Procedures do not apply, including any effort to interplead MDOT or the Company into such a lawsuit in order to make the procedures established in the Dispute Resolution Procedures applicable;
- (i) any claim for, or dispute based on, remedies expressly created by statute;
- (j) any dispute that is actionable only against a surety;
- (k) any dispute as to audit to be dealt with under specific provisions of the Project Agreement; and
- (l) any claim in connection with the Project Work where a third party is a necessary party.

Governing Law and Jurisdiction

The Project Agreement and each of the documents contemplated by or delivered under or in connection with the Project Agreement, is governed by and construed in accordance with the Applicable Law of the State of Michigan and the laws of the United States applicable therein and shall be treated in all respects as a MDOT contract, without regard to conflict of laws principles.

The Company has irrevocably attorned to the exclusive jurisdiction of the Court of Claims of the State of Michigan and all courts competent to hear appeals therefrom.

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APPENDIX C

SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT

Summary of the Design-Build Contract between Oakland Corridor Partners LLC, as Company, and MI 75 Constructors, LLC, as Design-Build Contractor

The following is a summary of selected provisions of the Design-Build Contract relating to the Project and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement. A copy of such agreement is available, free of charge, upon request from the Company or the Trustee, subject to confidentiality undertakings. For the purposes of the following summary, the term "Project" has the meaning provided to such term in the Project Agreement and included in "Appendix A - DEFINITIONS OF TERMS". Unless otherwise stated, any reference herein to any agreement means such agreement and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof.

The Design-Build Contract

The Company and the Design-Build Contractor have entered into the Design-Build Contract on October 12, 2018, pursuant to which the Design-Build Contractor is responsible for the D&C Work, achieving each of Substantial Completion and Final Acceptance, and performance of both the Interim Maintenance Work and the Long Term Maintenance Work to be performed prior to Substantial Completion, all on a lump-sum, fixed-price basis.

The Company retains responsibility for all Maintenance Work (i.e., Long Term Maintenance Work) after the Project Maintenance Commencement Date (the later of Substantial Completion and the Substantial Completion Deadline).

The Company will participate in the development and finalization of the design for the Project, with a right to comment. The Company has also provided, and the Design-Build Contract includes as an Attachment thereto, a schedule of "Developer Requirements", namely means, methods by which and materials with which the Design-Build Contractor will design and construct the Project and performance of the D&C Work in accordance with the applicable Developer Requirements is a Contractor Obligation under the Design-Build Contract to which all of the Company's rights and remedies thereunder attach.

The Design-Build Contractor cannot achieve Substantial Completion prior to the Substantial Completion Deadline without the Company's prior consent (not to be unreasonably withheld).

Notice Periods and Buffering of Project Agreement Timelines

Generally, the Design-Build Contractor will provide the Company with all Communications prepared by the Design-Build Contractor that the Company is required to deliver to MDOT pursuant to the Project Agreement within a period of time equal to 75% of that available to the Company to deliver same to MDOT, subject to a minimum of two Days or Business Days, as applicable.

The Company may elect to waive this requirement and have the Design-Build Contractor deal directly with MDOT, providing the Design-Build Contractor with the full time period available to the Company under the Project Agreement. This waiver ceases to apply on notice from the Company, upon the occurrence of any Contractor Default or upon notice from MDOT that it will not accept direct Communications from the Design-Build Contractor.

Contractor Obligations

<u>Scope of Contractor Obligations</u>. Subject to the Excluded Obligations under the Design-Build Contract, the Design-Build Contractor's is responsible for performing all Contractor Obligations, being: (a) the D&C Work, (b) the Interim Maintenance Work, (c) the Long Term Maintenance Work for the Tunnel and Pump Station prior to the Substantial Completion Date, and (d) all other obligations of the Design-Build Contractor under the Design-Build Contract, including, without limitation, the performance of all warranty obligations, all of the foregoing in accordance with the Design-Build Contract, the Technical Requirements and the Developer Requirements.

The Design-Build Contractor is not responsible for the Excluded Obligations, being (a) financing the Project, including financial modeling, and excepting the Design-Build Contractor's responsibility for the D&C Performance Security required by the Project Agreement and the DB Performance Support required by the Design-Build Contract, (b) the Maintenance Work (other than the Interim Maintenance Work and the Long Term Maintenance Work for the Tunnel and Pump Station prior to the Substantial Completion Date), and excepting the Design-Build Contractor's obligation to remediate Defects and Latent Defects as set out in the Design-Build Contract, (c) the

costs, fees and charges of the Company's own personnel, consultants and professional advisors, except as specifically provided in the Design-Build Contract, (d) cost, fees and charges of a mediator or arbitrator acting under the DB Dispute Resolution Procedures to the extent required to be paid by the Company, and (e) any other obligation which is expressly stated to be the obligation of the Company under the Design-Build Contract and which is not an obligation of MDOT under the Project Agreement.

<u>Back-to-Back Obligations</u>. Subject to the terms and conditions of the Design-Build Contract, including the general limitation of the Design-Build Contractor's liability thereunder to forty percent (40%) of the Design-Build Contract Price, the Design-Build Contractor assumes all risks, costs and expenses arising from the performance of the Contractor Obligations and, on a back-to-back basis, carrying out, performing and observing the Company's obligations under the Project Agreement, to the extent that they apply to the Contractor Obligations. The Design-Build Contractor will perform its duties and obligations under the Design-Build Contract in a manner such that no act or omission of, or default by, the Design-Build Contractor will in any way result in or contribute to a default by the Company under the Project Agreement or the taking of any other remedy by MDOT thereunder.

<u>Assumption of Risk and Responsibility</u>. Subject to the provisions of the Design-Build Contract, the Design-Build Contractor: (a) shall not be relieved of any liability or obligation by the engagement of any Contractor-Related Entity or DB Subcontractor, and (b) shall be solely responsible for the selection, pricing, performance, acts, defaults, omissions, breaches and negligence of all Contractor-Related Entities and DB Subcontractors as if such acts, defaults, omissions, breaches and negligence were those of the Design-Build Contractor. The Design-Build Contractor shall obtain all necessary information from DB Subcontractors engaged in the performance of the Contractor Obligations to ensure that such DB Subcontractors' work conforms to the requirements of the Design-Build Contract.

Company Obligations and Indemnities

Enforcement of Rights. To the extent directed to do so by the Design-Build Contractor, the Company will enforce its rights against MDOT under the Project Agreement that relate to the D&C Work and the Contractor Obligations. The Company doing so is subject to agreement on a budget for same in advance, or if that cannot be accomplished before the relevant rights under the Project Agreement are in jeopardy of lapsing, then within 10 Business Days after the Company commences the directed action(s).

The Company has the discretion not to follow the Design-Build Contractor's direction on the basis that the Design-Build Contractor's claim is false, fraudulent, frivolous, illegal or impermissible under the Project Agreement or the Finance Documents. The Design-Build Contractor can dispute that determination by the Company. The Company also has absolute discretion not to pursue a matter with MDOT as directed by the Design-Build Contractor.

If the Company exercises its absolute discretion not to pursue or if the DB Dispute Resolution Procedures determines that the Company's conclusion of a false, fraudulent or frivolous claim or illegal or impermissible circumstances under the Project Agreement or the Finance Documents was wrong and the Company either continues not to pursue the claim or the time to pursue the claim under the Project Agreement has lapsed, then the Design-Build Contractor is entitled to receive from the Contractor the full benefit of the claim that would have otherwise been afforded to the Design-Build Contractor if the relevant matter had been pursued against MDOT and substantiated in accordance with the Project Agreement.

Equivalent Project Relief. To the extent that any entitlement or right of the Company to relief under the Project Agreement is related to the Contractor Obligations or the rights of the Design-Build Contractor under the Design-Build Contract, then if the Company receives a written direction from the Design-Build Contractor in accordance with the terms of the Design-Build Contract, the Company will pursue, at the Design-Build Contractor's expense, such relief diligently, in good faith and in accordance with the Design-Build Contractor's direction. The Design-Build Contractor shall be entitled to receive the benefit of such relief (to the extent attributable to the Contractor Obligations and to the extent that the Company has received the corresponding relief from MDOT under the Project Agreement), such entitlement to include the benefit of:

- (a) any indemnification, compensation, damages or other additional payment of any kind on the same or substantially the same grounds as the Company has received indemnification, compensation, damages or other additional payment of any kind under the Project Agreement;
- (b) any relief (including extensions of time) from the performance of the Design-Build Contractor's obligations under, or from termination of, the Design-Build Contract on the same or substantially

the same grounds as the Company has received relief from performance of equivalent obligations under, or from termination of, the Project Agreement;

- (c) any certificate, consent or approval granted under the Project Agreement or any other agreement, statute, by-law or regulation in regard to any matter relating to the Contractor Obligations; and
- (d) any entitlement of the Design-Build Contractor under the Design-Build Contract in respect of which Equivalent Project Relief is to apply.

No direction of the Design-Build Contractor in relation to Equivalent Project Relief will be to effect any exercise of any of the Company's termination rights under the Project Agreement.

If MDOT apportions the amounts to be received by the Design-Build Contractor with respect to Equivalent Project Relief between the Company and the Design-Build Contractor, then the Company will pay the Design-Build Contractor in accordance with such apportionment, provided that if a failure to pay by the Design-Build Contractor has occurred and is then continuing, the Company shall be entitled to exercise its rights of set-off under the Design-Build Contractor.

Where any award relates to a matter that involves the Design-Build Contractor and the Company but does not separately identify the amount, nature or extent of the Design-Build Contractor's entitlement to Equivalent Project Relief, such indemnity, payment, extension or relief shall be apportioned by the Company:

- (a) first, to the Senior Secured Parties in respect of any portion of the relevant indemnity, payment, extension or relief in respect of the relevant matter to which they are entitled pursuant to the Finance Documents;
- (b) second, to the Company in satisfaction of all unpaid costs incurred by the Company to take the relevant action(s) as directed by the Design-Build Contractor; and
- (c) to the extent of the relevant indemnity, payment, extension or relief remaining, proportionally to all persons claiming an entitlement to such indemnity, payment, extension or relief according to the amount thereof that is claimed by each of them and is then unsatisfied (subject to the rights of the Design-Build Contractor pursuant to the DB Dispute Resolution Procedures).

MDOT Claims. A MDOT Claim exists where MDOT asserts or exercises any right against the Company under or in connection with the Project Agreement: (i) in regard to any matter in respect of which the Company asserts or exercises a right against the Design-Build Contractor under or in connection with the Design-Build Contract; or (ii) to the extent that such right is related to the Contractor Obligations or to the rights or obligations of the Design-Build Contract, including reductions in or deductions from payments under the Project Agreement, claims for indemnification and claims for damages for breach of such agreement.

If an MDOT Claim is made, then, among other processes:

- (a) the Design-Build Contractor shall prepare and each of the Company and the Design-Build Contractor shall endeavour in good faith to agree on and comply with a protocol for challenge or defence of such MDOT Claim, which shall comply with and be consistent with the provisions of the Project Agreement;
- (b) the Company shall use commercially reasonable efforts to preserve the rights of the Company and the Design-Build Contractor against MDOT in respect of the MDOT Claim;
- (c) a party that proposes a compromise or admission in relation to such MDOT Claim (the "First Party") as opposed to a defence thereof shall consult with the other party (the "Second Party") regarding any such proposal, and shall not make any such compromise or admission without first obtaining written consent from the Second Party, such consent not to be unreasonably withheld or delayed (and any disputes relating to any such consent shall be resolved pursuant to the Fast Track DB Dispute Resolution Procedures); and
- (d) if the Second Party unreasonably withholds its consent to any compromise or admission in respect of such MDOT Claim so that either party is required to continue to defend or challenge such MDOT Claim, then the Second Party shall be liable for and shall indemnify and hold harmless the First Party from and against the direct liability of the First Party resulting from not reaching the proposed compromise or agreement of the First Party should the defence or challenge to such

MDOT Claim prove unsuccessful to the extent of what would have been resolved through such compromise or agreement, provided always that the First Party shall not be entitled to double recovery.

Any determination or agreement made or reached under the Project Agreement as to the amount, nature and extent of the Company's liability in relation to any MDOT Claim shall be binding on the Design-Build Contractor under the Design-Build Contract, and Contractor's liability with respect to a MDOT Claim shall:

- (a) where the determination or agreement made or reached under the Project Agreement separately identifies the amount, nature or extent of the Company's liability attributable to the Design-Build Contractor or the Contractor Obligations, be the amount, nature or extent so identified; or
- (b) where the determination or agreement made or reached under the Project Agreement does not separately identify the amount, nature or extent of the Company's liability attributable to the Design-Build Contractor or the Contractor Obligations, be a fair and reasonable proportion of the Company's liability, as determined by the Company, acting reasonably

If the Design-Build Contractor disputes any such allocation made by the Company as to what is a fair and reasonable proportion of such liability, the Design-Build Contractor may refer the matter to the DB Dispute Resolution Procedures where the onus shall be on the Design-Build Contractor to prove that the Company has liability.

<u>Conduit Indemnity</u>. If any event would have constituted a Delay Event under the Project Agreement or the Company would have had other rights or remedies under the Project Agreement but, solely as a result of an act or failure to act by the Company following receipt of a Design-Build Contractor direction relating to same such event is not so constituted or such rights and remedies are not available or enforceable, then:

- (a) if the event would have constituted a Delay Event under the Project Agreement (i.e., delay in the Critical Path) and an extension of time is what is unavailable as a result of such act or failure to act on the part of the Company, then a "Developer Delay Event" has occurred for which the Design-Build Contractor can make a claim as it would with any other claim for a Delay Event under the Design-Build Contract; and
- (b) the Company will indemnify the Design-Build Contractor for all liability arising from such event of unavailability or unenforceability of Project Agreement rights and/or remedies, solely to the extent of the compensation that the Company would have been entitled to receive under the Project Agreement in the absence of such act or failure to act on the part of the Company.

The onus of proving that an event would have constituted a Delay Event under the Project Agreement or that rights and/or remedies under the Project Agreement would have been available or enforceable rests with the Design-Build Contractor.

If a "Developer Delay Event" has occurred as described above, then:

- (a) to the extent permitted pursuant to the Project Agreement, all Float in the Project Schedule must be utilized before a delay to the Critical Path may be determined to exist for purposes of the Design-Build Contract;
- (b) the Design-Build Contractor will certify to the Company whether the Design-Build Contractor can accelerate the D&C Work, at the Company's cost, so as to eliminate the delay to the Critical Path associated with the Developer Delay Event, and:
 - (i) if the Design-Build Contractor can so accelerate the D&C Work, then:
 - (A) the Design-Build Contractor will provide a *bona fide* fixed price estimate for the cost to so accelerate performance of the D&C Work in accordance with the details required of a Request for DB Change Proposal under Attachment 9 of the Design-Build Contract;
 - (B) unless the Company determines not to pay such acceleration costs, the Company will issue a DB Change Order under Attachment 9 to the Design-Build Contract and the Design-Build Contractor will commit to complete the D&C Work in accordance with the original schedule; and

- (C) once such a Design-Build Contractor commitment is made in writing, the Design-Build Contractor will be fully responsible for achieving: (I) Substantial Completion by the Original Substantial Completion Deadline; and (II) the remaining Milestone(s) by the relevant Milestone Due Date(s), in each case without adjustment for the related delay that would have been compensated under the Project Agreement in the absence of such act or failure to act by the Company; or
- (ii) if the Design-Build Contractor is unable to accelerate the D&C Work or the Design-Build Contractor is able to accelerate the D&C Work but the Company has determined not to pay the costs thereof, then:
 - (A) the Design-Build Contractor continues to be responsible for the obligation to pay Liquidated Damages as a result of the failure to achieve: (I) Substantial Completion by the Original Substantial Completion Deadline; or (II) a Milestone by the relevant Milestone Due Date, in each case in connection with the related delay that would have been compensated under the Project Agreement in the absence of such act or failure to act by the Company, and
 - (B) the Company will indemnify the Design-Build Contractor for all such Liquidated Damages that are paid by the Design-Build Contractor in such circumstances.

Developer Act Indemnity. The Developer Act indemnity is separate from the conduit indemnity described above as it relates to a separate act or omission of the Company.

A "Developer Act" occurs when:

- (a) the Company breaches the Design-Build Contract and does not remedy same within: (i) five Business Days, in respect of any matter that has a material financial impact on the Design-Build Contractor; or (ii) 20 Business Days, in respect of any matter that does not have a material financial impact on the Design-Build Contractor, in each case after notice from the Design-Build Contractor; or
- (b) a negligent act or omission on the part of the Company occurs.

Neither circumstance described in (a) or (b) above is a Developer Act if it results, directly or indirectly, from any breach, act or omission of MDOT, the Design-Build Contractor or any Contractor-Related Entity.

If there is a Developer Act in the nature of a breach (which does not include a failure to pay breach) or a negligent Developer Act is determined or agreed by the Parties, then:

- (a) if the Design-Build Contractor believes that there is a delay in the Critical Path directly attributable to such Developer Act, then:
 - (i) the Company and the Design-Build Contractor will agree upon, or have the DB Dispute Resolutions Procedures determine, the period of delay;
 - (ii) the Design-Build Contractor will certify to the Company whether the Design-Build Contractor can accelerate the D&C Work, at the Company's cost, so as to eliminate such delay; and
 - (A) if the Design-Build Contractor can so accelerate the D&C Work, then:
 - (I) the Design-Build Contractor will provide a bona fide fixed price estimate for the cost to so accelerate performance of the D&C Work in accordance with the details required of a Request for DB Change Proposal under Attachment 9 of the Design-Build Contract;
 - (II) unless the Company determines not to pay such acceleration costs, the Company will issue a "DB Change Order" under Attachment 9 to the Design-Build Contract and the Design-Build Contractor will commit to complete the D&C Works in accordance with the accelerated program; and

- (III) once such a Design-Build Contractor commitment is made in writing, the Design-Build Contractor will be fully responsible for achieving: (1) Substantial Completion by the Original Substantial Completion Deadline; and (2) the remaining Milestone(s) by the relevant Milestone Due Date(s), in each case without adjustment for the related delay; or
- (B) if the Design-Build Contractor is unable to accelerate the D&C Work or the Design-Build Contractor is able to accelerate the D&C Work but the Company has determined not to pay the costs thereof, then:
 - (I) the Design-Build Contractor continues to be responsible for the obligation to pay Liquidated Damages as a result of the failure to achieve: (1) Substantial Completion by the Original Substantial Completion Deadline; or (2) a Milestone by the relevant Milestone Due Date, in each case in connection with the related delay; and
 - (II) the Company will indemnify the Design-Build Contractor for all such Liquidated Damages that are paid by the Design-Build Contractor in such circumstances; and
- (c) without duplication of amounts payable as described above, the Company will indemnify the Design-Build Contractor for all liability arising from such Developer Act, where such liability is directly attributable to same and if in relation to a Contractor Obligation that was priced in the Proposal, supported by evidence as to the difference between that pricing and the current liability.

The Design-Build Contractor may not claim under both the conduit indemnity and the Developer Act indemnity in connection with the same act or omission of the Company. If the Design-Build Contractor exercises its rights under the conduit indemnity or the Developer Act indemnity, then the Design-Build Contractor is deemed to have waived any right to terminate the Design-Build Contract with respect to the relevant act or omission of the Company.

Excluded from the conduit and Developer Act indemnities is liability for the occurrence of risks against which the Design-Build Contractor is required to insure under the Design-Build Contract to the extent of insurance proceeds received or that would have been received but for a failure by the Design-Build Contractor to comply with its obligations to properly insure such risks.

Deductions and Unavailability Adjustments

If MDOT assesses any Deduction and/or Unavailability Adjustment during the Design-Build Term (whether against a Milestone Payment or an Availability Payment), the Company will allocate that Deduction and/or Unavailability Adjustment against and in reduction of amounts otherwise payable to the Design-Build Contractor under the Design-Build Contract on a back-to-back, dollar-for-dollar basis except to the extent that such Deduction and/or Unavailability Adjustment results from a Developer Act (in which case the Company shall be responsible for such Deduction and/or Unavailability Adjustment solely to such extent).

If the amount of the Deduction and/or Unavailability Adjustment allocated to the Design-Build Contractor is greater than the aggregate amount able to be set off by the Company under the Design-Build Contract, then the Design-Build Contractor shall reimburse the Company for the amount of such deficiency within five (5) Business Days of receipt of demand from the Company, failing which the Company can have recourse to the DB Performance Support and/or the D&C Performance Security to satisfy such deficiency.

Liquidated Damages

Delay Liquidated Damages. If the Design-Build Contractor has not achieved Substantial Completion by the Original Substantial Completion Deadline, then the Design-Build Contractor is responsible to pay the Company Delay Liquidated Damages at a per diem rate of \$124,779.26 calculated from and including the first day following the Original Substantial Completion Deadline until the earliest of (a) the Substantial Completion Date, (b) the termination date of the Design-Build Contract, and (c) the date on which the aggregate amount of Delay Liquidated Damages equals the Delay Liquidated Damages Cap of \$45,557,363.74.

Delay Event Liquidated Damages. Without limiting or duplicating the obligations relating to Delay Liquidated Damages, if the Design-Build Contractor has not achieved Substantial Completion by the Original Substantial Completion Deadline by reason of an event that is determined to be a Delay Event under the Project Agreement,

then Contractor shall pay the Company "Delay Event Liquidated Damages" at a per diem rate of \$115,170.70 for the period commencing on the Original Substantial Completion Deadline and ending on the earlier to occur of (a) the Substantial Completion Date, and (b) the termination date of the Design-Build Contract.

Milestone Liquidated Damages. If the Design-Build Contractor has not performed the Contractor Obligations necessary for a Milestone Payment to be paid by the Milestone Due Date and as a result the Company has not received such Milestone Payment from MDOT by the Milestone Due Date, then the Design-Build Contractor shall pay the Company Milestone Liquidated Damages in an amount equal to the aggregate of the Non-Refundable Costs plus the Refundable Costs, for the period commencing on the relevant Milestone Due Date and ending on the earlier to occur of (a) the date on which the relevant Milestone Payment is received by the Company, and (b) the termination date of the Design-Build Contract.

If the Company receives proceeds from any delay in start-up insurance policy for any loss of revenue arising from an event which does not entitle the Design-Build Contractor to relief from the payment of Liquidated Damages, the Design-Build Contractor's liability to pay Liquidated Damages will be reduced to the extent that the Company has received such insurance proceeds (but not for any deductible payable in respect of the relevant period of delay) where such insurance covers the same period of delay or loss of revenue. If the insurance proceeds are not received until after the point in time at which the Design-Build Contractor has paid Liquidated Damages, then the Company will reimburse the Design-Build Contractor in an amount equivalent to the delay in start-up insurance proceeds received within five (5) Business Days following receipt.

If the Design-Build Contractor has paid any Liquidated Damages: (a) in respect of any Delay Event for which the Company receives compensation from MDOT that corresponds to the amounts compensated by the Design-Build Contractor's payment of such Liquidated Damages; or (b) in respect of Refundable Costs that are then received by the Company as part of the relevant Milestone Payment, then in each case, the Company will reimburse the Design-Build Contractor in the amount of such Liquidated Damages payments within five (5) Business Days following receipt of the same. If a failure to pay by the Design-Build Contractor has occurred and is then continuing, the Company is entitled to exercise its rights of set-off prior to making any such payment to the Design-Build Contractor.

Defects and Latent Defects

Completion Warranty Period. Without derogating from the Design-Build Contractor's assumption of the Company's obligations relating to Defects under the Project Agreement set out in Part 2 of the Design-Build Contract, the Design-Build Contractor will correct promptly, at its expense, any Defect which appears on or after the Substantial Completion Date and prior to the expiry of the Completion Warranty Period, which runs until the second anniversary of the Substantial Completion Date.

If the Design-Build Contractor is obliged to carry out work to correct and remedy any Defect described above, the Completion Warranty Period will be extended to cover the work carried out to correct and remedy the relevant Defect from the date on which the relevant corrective or remedial work is completed in accordance with the Design-Build Contract for an additional 12-month period.

A Defect is (a) any Element which does not comply with the requirements of the Design-Build Contract, or (b) any Error in an Element that is not consistent or is incompatible with its age, function, performance and use when properly maintained in accordance with Good Industry Practice. For greater certainty, if the improper maintenance of the Element arises or relates to the period prior to Substantial Completion, then the Error in the Element is the obligation of the Design-Build Contractor in accordance with the Design-Build Contract.

Latent Defect Warranty Period. Without derogating from the Design-Build Contractor's assumption of the Company's obligations relating to Defects under the Project Agreement set out in Part 2 of the Design-Build Contract, the Design-Build Contractor will correct promptly, at its expense, any Latent Defect which appears after the Completion Warranty Period and prior to the expiry of the Latent Defect Warranty Period, which runs from expiration of the Completion Warranty Period until the tenth anniversary of the Substantial Completion Date.

No later than the 10th Business Day prior to the expiry of the Completion Warranty Period, the Company and the Design-Build Contractor will conduct a joint inspection of I-75 Segment 3 to determine whether there exists, at that time, any Latent Defect.

A Latent Defect is a Defect determined to have been present in the D&C Work prior to the expiry of the Completion Warranty Period that a reasonably competent person, through the inspection described above and Good Industry

Practice, and the performance of the Maintenance Work (other than the Interim Maintenance Work and the Long Term Maintenance Work for the Tunnel and Pump Station prior to the Substantial Completion Date), would not have discovered prior to expiration of the Completion Warranty Period. A Latent Defect does not include a fault or Error in an Element that manifests itself after: (a) if a Design Life for such Element is set forth in Table 3-6 of the Technical Requirements, such Design Life, except to the extent that such Design Life for such Element or a component thereof is modified by the Developer Requirements, in which case the design life in the Developer Requirements; (b) if no Design Life for such Element is set out in Table 3-6 of the Technical Requirements, the design life for such Element set forth in the Developer Requirements; or (c) if no Design Life or design life is so set forth in Table 3-6 of the Technical Requirements or in the Developer Requirements, the design life for such Element as determined in accordance with Good Industry Practice.

Defects Process. If the Company becomes aware of a Defect following the Substantial Completion Date and believes, acting reasonably, that such Defect is, in whole or in part, a Defect or a Latent Defect for which the Design-Build Contractor is responsible, then (y) prior to the end of the Completion Warranty Period in the case of a Defect, or (z) prior to the end of the Latent Defect Warranty Period in the case of a Latent Defect:

- (a) the Company will use reasonable efforts to mitigate the consequences arising from such Defect;
- (b) the Company will promptly notify the Design-Build Contractor of same and, on a *prima facie* basis, such Defect shall be a Defect or a Latent Defect for which the Design-Build Contractor is responsible for all purposes of the Design-Build Contract; provided that, if such Defect results in or is otherwise part of an Emergency, the Company will promptly take temporary corrective measures necessary to stabilize such Defect and to mitigate the immediate adverse consequences such Defect, and after completion of such temporary measures, the Design-Build Contractor will promptly commence and diligently pursue to completion permanent correction or repair of such Defect in accordance with the Contractor Obligations; or
- (c) if:
 - (i) the Company has given the notice to the Design-Build Contractor described above;
 - the Design-Build Contractor has not commenced the correction and repair of such Defect as soon as reasonably practicable thereafter, or is not diligently pursuing to completion the correction and repair of such Defect; and
 - (iii) Defect Losses: (A) have begun to accrue as a result of, or in connection with, such Defect (or would have begun to accrue but for works or services having been undertaken by the Company as a result of such Defect, which works or services are in excess of the level of works and services that the Company is required to provide to fulfill the Maintenance Work under the Project Agreement in the normal course); or (B) in the opinion of the Company with reference to the time period within which it will take to complete the correction and repair of such Defect in question, are reasonably likely to accrue prior to the completion of the correction and repair of such Defect,

the Company may have corrective and repair work carried out by its own labour forces (including day labour retained by the Company) or by a third party contractor and at the Company's cost and expense;

- (d) the Design-Build Contractor may dispute whether a Defect or a Latent Defect exists or the nature or extent of the Design-Build Contractor's liabilities in relation to same, in which case:
 - (i) the dispute will be referred by the Design-Build Contractor to the Fast Track DB Dispute Resolution Procedures; and
 - (ii) notwithstanding the dispute, the Design-Build Contractor will commence and diligently pursue to completion the correction or repair of such Defect at the Design-Build Contractor's cost and expense;
- (e) if the Fast Track DB Dispute Resolution Procedures determines that such claimed Defect:
 - (i) is not, in whole or in part, a Defect or a Latent Defect, then the Design-Build Contractor shall complete the correction or repair of such Defect and the Company shall be solely

liable for all Defect Losses sustained by the Company in connection with such Defect and all of the Design-Build Contractor's liability relating to such Defect (including its costs and expenses in the correction or repair thereof) and all related proceedings; or

- (ii) is, in whole or in part, a Defect or a Latent Defect, then:
 - (A) the Design-Build Contractor will, at its sole cost and expense, continue the diligent correction and repair such Defect or Latent Defect; and
 - (B) to the extent, and in proportion, that it is a Defect or a Latent Defect, the Design-Build Contractor will be liable to the Company for any Defect Losses incurred by the Company as a result of, or in connection with, such Defect or Latent Defect.

Defect Losses are (a) all reasonable liability incurred by the Company in connection with a Defect, including in respect of any related temporary measures and/or the correction or repair of same, and (b) all monetary deductions and other deductions, offsets and/or negative adjustments made by MDOT pursuant to the Project Agreement arising as a result of such Defect.

Subject to the Maximum Liability Cap of the Design-Build Contractor and the exclusions therefrom, the Design-Build Contractor will be liable to the Company for all Defect Losses and other liabilities incurred by the Company as a result of, or in connection with, any Defect or Latent Defect. The Company will have immediate recourse to the DB Performance Support and/or the D&C Performance Security to the extent that any Defect Losses for which the Design-Build Contractor is responsible are not paid by within five (5) Business Days of the Design-Build Contractor's receipt of the Company's invoice for same.

Limitations on Liability

Delay Liquidated Damages Cap. The maximum liability of the Design-Build Contractor for Delay Liquidated Damages is the Delay Liquidated Damages Cap of \$45,557,363.74. The Delay Liquidated Damages Cap excludes (a) any Delay Event Liquidated Damages, (b) any Milestone Liquidated Damages, and (c) any Delay Liquidated Damages paid by the Design-Build Contractor that are subsequently recovered by the Design-Build Contractor from the Company. The Design-Build Contractor cannot raise the Delay Liquidated Damages Cap as a defense to the payment by it of any Delay Liquidated Damages to the extent of the aggregate amount of Delay Liquidated Damages paid by the Design-Build Contractor in connection with a conduit indemnity or Developer Act indemnity and for which the Design-Build Contractor is awaiting reimbursement of such amounts by the Company.

Maximum Liability Cap. Subject to the exclusions set out below, the maximum aggregate liability of the Design-Build Contractor under the Design-Build Contract for any reason whatsoever, including (a) recovery by the Company under indemnity claims, (b) any abatement or set-off exercised by the Company, (c) recovery by the Company of Liquidated Damages, (d) any exercise by the Company or the Collateral Agent of its respective rights under the DB Performance Support and/or the D&C Performance Security, and (e) compensation on termination payable by the Design-Build Contractor, is 40% of the Design-Build Contract Price.

Exclusions from Maximum Liability Cap. The Design-Build Contractor's Maximum Liability Cap excludes and shall not apply to the following:

- (a) liability (including defense costs) to the extent:
 - (i) an amount thereof is paid directly from, or paid and subsequently recovered from, any Insurance Proceeds, net of any applicable deductibles;
 - (ii) the amount is paid by the Design-Build Contractor and subsequently recovered by the Design-Build Contractor from MDOT or the Company; or
 - (iii) the liability would have been recovered through insurance if the Design-Build Contractor had maintained the coverage required to be maintained by it under the Design-Build Contract or if the Design-Build Contractor had otherwise complied with its obligations under applicable insurance policies and diligently pursued the relevant insurance claim;
- (b) liability relating to any claim or sum paid by the Design-Build Contractor to the Company and subsequently recovered by the Design-Build Contractor from the Company;

- (c) liability arising out of third party claims, including, without limitation, any third party claims for any damage or destruction or property, death or personal injury or third party Intellectual Property;
- (d) liability arising out of or relating to abandonment, fraud, criminal conduct, intentional misconduct, gross negligence, recklessness or bad faith on the part of the Design-Build Contractor or any Contractor-Related Entity;
- (e) liability arising out of or relating to any Contractor Release of Hazardous Materials;
- (f) liability relating to any fines and penalties under statute incurred by the Company in complying with statutory obligations that arise out of any breach by the Design-Build Contractor of any Applicable Law (including breaches relating to workers' compensation, employment or health and safety laws or regulations);
- (g) interest, late charges, fees, transaction fees and charges, penalties and similar charges that are expressly stated to be due from the Design-Build Contractor to the Company; and
- (h) liability relating to any encumbrances created or caused by the Design-Build Contractor or any Contractor-Related Entity and preserved in respect of or attaching to the Site or any Project-related assets.

If the Company determines not to terminate the Design-Build Contract following the Contractor Default that arises when the Maximum Liability Cap is met or exceeded, then there will be no re-set of the Maximum Liability Cap, no future recourse to any DB Performance Support for a breach by the Design-Build Contractor or a Contractor Default or action in damages against the Design-Build Contractor or any Design-Build Guarantor. The Company's only recourse thereafter for a failure by the Design-Build Contractor to fulfill its obligations under the Design-Build Contractor for specific performance or similar claim or a termination of the Design-Build Contract or Default.

Design-Build Contract Price

<u>Lump Sum</u>. The Design-Build Contractor is undertaking the Contractor Obligations on a fixed price, lump sum basis. The Design-Build Contract Price of \$629,245,356 (subject to any adjustments made pursuant to the provisions of the Design-Build Contract) will be the total compensation for the performance by the Design-Build Contractor of its obligations under the Design-Build Contract, including the cost of all equipment, materials, labor, transportation and services (including Intellectual Property) to be provided, all taxes (including all sales and use taxes on all equipment, materials, labor and services furnished by the Design-Build Contractor or any Subcontractors or otherwise arising in connection with the Design-Build Contractor's performance of the Contractor Obligations, including any increases in any such taxes during the term of the Design-Build Contract), and any duties, fees and royalties imposed with respect to any such equipment, materials, labor or services related to the Contractor Obligations, and all costs and risks associated with the execution of the Design-Build Contract.

Subject to any express right of the Design-Build Contractor to seek time relief or additional compensation in respect of any Equivalent Project Relief or for compensation in connection with a Developer Delay Event, all costs and expenses incurred by the Design-Build Contractor or for and in respect of the Contractor Obligations, including any cost overruns with respect to the Contractor Obligations, shall be the sole responsibility of the Design-Build Contractor and will not count toward the Maximum Liability Cap.

Milestone Payments. The Design-Build Contractor has acknowledged and agreed that each Milestone Payment is a source of funds for the Company and that it has no entitlement to receive any portion of a Milestone Payment unless and except to the extent that the Company has received the relevant Milestone Payment from MDOT, and then solely as may be determined in accordance with and subject to the provisions of the Design-Build Contract.

<u>Contractor Payments</u>. Subject to the terms of the Design-Build Contract, the Company will make monthly progress payments to the Design-Build Contractor in partial payment of the Design-Build Contract Price in the amount, if any, certified by the Lenders' Technical Advisor as corresponding to the progress of the D&C Work on the dates established in the Design-Build Contract's Drawdown Schedule, all in accordance with the payment submission and certification process set out in the Design-Build Contract (each, a Contractor Payment). The Design-Build Contractor will submit to the Company, with a copy to the Lenders' Technical Advisor, a payment application dated as of and delivered on or before the 10th (tenth) Business Day of the following calendar month, including the following information:

- (a) the value earned of each item of D&C Work performed/completed in the month to which such application relates;
- (b) the amount of the Contractor Payment being applied for that month, based on the D&C Work performed/completed as provided above; provided that the aggregate amount of Contractor Payments applied for in the period up to and including such month shall not exceed the amount set out next to such month in the Drawdown Schedule;
- (c) any amount claimed with respect to Changes or other compensation amounts owed to the Design-Build Contractor;
- (d) a statement detailing:
 - (i) amounts previously paid to the Design-Build Contractor and the corresponding net amount then claimed as owing;
 - (ii) a Cost to Complete estimate;
 - (iii) an estimate of the date that Milestone 1, Milestone 2 (in each case to the extent still outstanding) and Substantial Completion will be achieved;
 - (iv) a statement as to whether each of Milestone 1 and Milestone 2 (in each case to the extent still outstanding) will be achieved by its respective Milestone Due Date;
 - (v) a statement as to whether Substantial Completion will be achieved by the Original Substantial Completion Deadline (and the current Substantial Completion Deadline, if different);
 - (vi) certification that it is reasonable for the Company to expect that Substantial Completion will occur on or prior to the DB Longstop Date;
 - (vii) certification that all Governmental Approvals necessary for carrying out of the Contractor Obligations and required at the time of such application, have been obtained and have not been revoked, suspended or terminated;
 - (viii) certification that certain representations and warranties of the Design-Build Contractor are true and correct as at the date of such application; and
 - (ix) certification that there is no outstanding Contractor Default or any event or circumstance that is likely, with the passage of time or otherwise, to constitute or give rise to a Contractor Default;
- (e) evidence reasonably satisfactory to the Lenders' Technical Advisor of compliance with the prompt payment provisions of Applicable Law;
- (f) lien waivers from the Design-Build Contractor, the Key DB Subcontractors and the other relevant Subcontractors in relation to the amount requested in such application; and
- (g) such other information as may be reasonably required by the Company or the Lenders' Technical Advisor.

Within fifteen (15) Business Days of receipt of an application by the Company, the Company will issue to the Design-Build Contractor a payment certificate, subject to same being countersigned by the Lenders' Technical Advisor, certifying the amount payable to the Design-Build Contractor for D&C Work performed/completed during the subject month for such application, which shall be the Contractor Payment in relation to such month.

If the Design-Build Contractor fails to produce any portion of the documentation described above for its payment application and the Company or the Lenders' Technical Advisor is unable to certify or verify all or a portion of the such application, the Company and the Lenders' Technical Advisor can withhold certification of that portion of the application until the relevant documentation, information or certifications have been provided, and will then issue the payment certificate described above.

No Contractor Payment shall be due and payable by the Company where a Contractor Default has occurred and is continuing.

If the Company has not received a Milestone Payment in respect of a Milestone Due Date that occurs in the month to which a payment application applies, then:

- (a) there shall be no Contractor Payment in respect of such month or in any other month after the relevant Milestone Due Date pursuant to any payment application until the Company is in receipt of the relevant Milestone Payment; provided that, pending receipt of such Milestone Payment, to the extent of funds scheduled and available to be used to make Contractor Payments under the Finance Documents during that period (and not including funds scheduled and/or available to be used for other project costs or requiring the Company to accelerate any draw amount thereunder or incur any breakage amounts to make such a payment), the Company will continue to pay Contractor Payments for work that has been certified performed as described above; and
- (b) except as described in the proviso above:
 - (i) the requested amounts in each such payment application shall not be due and payable for purposes of the Design-Build Contract;
 - (ii) the fact that the Company makes no payment to the Design-Build Contractor in these circumstances shall not constitute a failure to pay on the part of the Company or a Developer Default under the Design-Build Contract, and the Design-Build Contractor will not be entitled to suspend the performance of the Contractor Obligations in connection with such non-payment; and
 - (iii) the withheld amounts will not be due and payable until thirty (30) days after the date on which the Company has received the relevant Milestone Payment.

Subject to the Company's rights described above and the other rights of the Company under the Design-Build Contract to set off or withhold payment, within 20 days of the date of each payment certificate, the Company will pay each related Contractor Payment.

No disagreement by the Design-Build Contractor with respect to any aspect of a payment certificate will entitle the Design-Build Contractor to delay, suspend or terminate the Contractor Obligations.

D&C Performance Security and DB Performance Support

D&C Performance Security. The Design-Build Contractor will procure, deliver to MDOT and be responsible to maintain the D&C Performance Security required under the Project Agreement. Liberty Mutual Insurance Company and Federal Insurance Company are proposed as the initial Eligible Sureties to provide the D&C Performance Security.

DB Performance Support – Liquidity Bond. The Design-Build Contractor shall procure the issuance of, deliver to the Company on or prior to the Financial Close Date, and thereafter maintain, a demand bond having a bond amount equal to \$51,383,416.32 (the "DB Liquidity Bond"), naming the Company as obligee and issued by an Eligible Surety. The DB Liquidity Bond will stand as continuing security for the performance of all of the Contractor Obligations. The DB Liquidity Bond shall include the Collateral Agent as a co-obligee along with the Company. Liberty Mutual Insurance Company and Federal Insurance Company are proposed as the initial Eligible Sureties to provide the D&C Performance Security.

If at any time the surety under the DB Liquidity Bond ceases to be an Eligible Surety or becomes bankrupt or insolvent and the DB Liquidity Bond is still required to stand as security, the Design-Build Contractor will, by no later than twenty (20) Business Days after the date upon which such surety ceased to be an Eligible Surety or became bankrupt or insolvent:

- (a) replace the DB Liquidity Bond with a replacement DB Liquidity Bond on the same terms (including the current bond amount thereunder) from an Eligible Surety; or
- (b) replace the DB Liquidity Bond with one or more irrevocable letters of credit issued by a Permitted Letter of Credit Provider with the Company and the Collateral Agent as beneficiaries thereunder, in a face amount equal to the current bond amount under the DB Liquidity Bond and having an expiration date that is no later than the current term of the DB Liquidity Bond (such letter(s) of credit, "Acceptable Replacement Support").

If the Design-Build Contractor fails to replace the DB Liquidity Bond as described above, then the Company can demand the entire current bond amount of the DB Liquidity Bond, place the proceeds into an account managed by the Collateral Agent and use any amounts held in such account in any circumstance in respect of which the Company would be entitled to make a demand under the DB Liquidity Bond. Any such replacement DB Liquidity Bond, Acceptable Replacement Support and/or DB Liquidity Bond proceeds will constitute DB Performance Support for all purposes of the Design-Build Contract. Any interest earned on the DB Liquidity Bond proceeds will be for the benefit of the Design-Build Contractor.

If the Design-Build Contractor delivers Acceptable Replacement Support and at any time while such Acceptable Replacement Support is still required to stand as security, any issuer thereunder either (y) ceases to be a Permitted Letter of Credit Provider; or (z) advises the Company that it will not renew or otherwise maintain such instrument to its stated expiration date, the Design-Build Contractor will, by no later than twenty (20) Business Days after the date of the relevant event, replace the relevant Acceptable Replacement Support with one or more irrevocable letters of credit issued by a Permitted Letter of Credit Provider and otherwise meeting the requirements described above for Acceptable Replacement Support. If the Design-Build Contractor fails to so replace the relevant instrument, then the Company and the Collateral Agent can draw the full amount of such Acceptable Replacement Support, deposit the proceeds thereof in the account described above and use any amounts held in such account in any circumstance in respect of which the Company would be entitled to draw on the Acceptable Replacement Support. Such proceeds will constitute DB Performance Support for all purposes of the Design-Build Contractor.

DB Performance Support. The Design-Build Contractor will provide the Design-Build Guarantee from each of the Design-Build Guarantors to the Company covering the full and timely performance, observance and payment by the Design-Build Contractor of each and every present and future covenant, agreement, undertaking, representation, warranty and obligation of the Design-Build Contractor under the Design-Build Contract.

The term of the Design-Build Guarantee will run for a term which shall commence on the Effective Date and shall expire on the expiration date of the Design-Build Term, except with respect to any claims made prior to such expiry date, in which case the Design-Build Guarantee shall not terminate with respect to such claims until such claims have been satisfied in full.

Return of DB Performance Support. On the Substantial Completion Date, the Company will require liquid security (whether in the form of the DB Liquidity Bond, DB Liquidity Bond proceeds, Acceptable Replacement Support and/or the cash proceeds thereof) equal to the sum of:

- (a) 2% of the Design-Build Contract Price; plus
- (b) 125% of the Company's estimated cost to rectify "Developer Punch List Items" (as described below); plus
- (c) 200% of the amount that the Lenders' Technical Advisor certifies may be required to rectify any Defect identified on the Punch List in relation to Substantial Completion,

and the Company shall either:

- (d) advise the Design-Build Contractor and the surety under the DB Liquidity Bond of the amount so determined and the original bond amount of the DB Liquidity Bond shall be reduced to equal such amount; or
- (e) release an amount of DB Liquidity Bond proceeds or Acceptable Replacement Support (or proceeds thereof) such that the face amount thereof and/or the amount remaining on deposit in the account described above equals such amount.

On the expiration date of the Completion Warranty Period, the Company will require liquid security (whether in the form of the DB Liquidity Bond, DB Liquidity Bond proceeds, Acceptable Replacement Support and/or the cash proceeds thereof) equal to the amount that the Lenders' Technical Advisor certifies may be required to rectify any items that, on such date, require rectification pursuant to any remaining obligations of the Design-Build Contractor under the Design-Build Contract (based on an assumption of 125% of the estimated cost to rectify such Defect), and on such date the Company will either:

- (a) advise the Design-Build Contractor and the surety under the DB Liquidity Bond of the amount so determined and the bond amount of the DB Liquidity Bond shall be reduced to equal such amount; or
- (b) release an amount of DB Liquidity Bond proceeds or Acceptable Replacement Support (or proceeds thereof) such that the face amount thereof and/or the amount remaining on deposit in the account described above equals such amount.

Once all of the matters certified by the Lenders' Technical Advisor to require rectification as described above are rectified, the Company will release and return to the Design-Build Contractor the DB Liquidity Bond, the remaining DB Liquidity Bond proceeds and/or the Acceptable Replacement Support (or the remaining proceeds thereof).

Under the DB Liquidity Bond, at any time after the second reduction in the bond amount described above, the surety may provide written notice to the Company of the cancellation of the DB Liquidity Bond on a date that is not earlier than ninety (90) days from the date of such notice. Upon receipt of such notice, the Company will demand payment of the entirety of the reduced bond amount and deposit the related DB Liquidity Bond proceeds in the account described above.

Key DB Subcontractors

Each of Dan's, Ajax, C.A. Hull and Jay Dee is a Key DB Subcontractor that has entered into a direct agreement with the Company pursuant to which:

- (a) if the Design-Build Contract is terminated as a result of a Contractor Default, then Company will have the option on notice within ten (10) days from the termination, to require the assignment of the Key DB Subcontract to the benefit of (i) the Company, without the consent of the Key DB Subcontractor, or (ii) a person designated by the Company in its sole discretion, with the prior consent of the Key DB Subcontractor, such consent not to be unreasonably withheld or delayed; and
- (b) each Key DB Subcontractor has agreed not to terminate the Key DB Subcontract without thirty (30) days' prior written notice to the Company and the Collateral Agent.

The Design-Build Contractor cannot terminate a Key DB Subcontract without thirty (30) days' prior written notice to that effect to the Company.

In addition to the provisions described above, the direct agreement between the Company and Jay Dee sets out certain obligations of the Design-Build Contractor and Jay Dee in relation to the purchase of the Tunnel Boring Machine, including acknowledgements of rights to use, grants of security interests in same and covenants to obtain related acknowledgements and/or subordination agreements from the Tunnel Boring Machine supplier and the surety under the D&C Performance Security.

Financial Close Obligations

If Financial Close is not achieved by the relevant target date under the Project Agreement and MDOT draws on the Financial Close Security by reason of the Design-Build Contractor's failure to perform its obligations to achieve Financial Close and/or provide one of its deliverables towards achievement of Financial Close, then the Design-Build Contractor will be responsible to the extent of its contribution to such event.

If Financial Close is not achieved by the relevant target date under the Project Agreement but that failure is excused under the Project Agreement, then the Company is entitled to the relevant compensation on termination set out in the Project Agreement, and for the costs and expenses of the Design-Build Contractor incurred towards its Financial Close obligations, the Design-Build Contractor may submit an accounting of same to the Company and the Company and the Design-Build Contractor will negotiate their respective pro rata shares of the amount received from MDOT.

Design-Build Contractor's Representations and Warranties

The Design-Build Contractor makes certain representations and warranties for the benefit of the Company that are typical for design-build contracts in the transportation industry and those which are required to be made by the Company in the Project Agreement (to the extent they relate to the Design-Build Contractor, the Contractor Obligations and/or and the Design-Build Contract).

Key DB Personnel

The Design-Build Contractor will provide or cause to be provided certain individuals to fill certain of the Key Personnel roles under the Project Agreement. Such individuals will be Key DB Personnel, and the Design-Build Contractor will be responsible to pay any related liquidated damages under the Project Agreement applicable to such individuals' ceasing to fill such roles.

Hazardous Materials Management

Prior to the Substantial Completion Date, the Design-Build Contractor is responsible for all Hazardous Materials Management for which the Company is responsible under the Project Agreement. After the Substantial Completion Date, the Company maintains its rights against the Design-Build Contractor (including indemnification) for a Contractor Release of Hazardous Materials whether occurring before or after Substantial Completion.

A Developer Release of Hazardous Materials as defined in the Design-Build Contract prior to the Substantial Completion Date is a matter for which the Design-Build Contractor is responsible to perform the related Hazardous Material Management and a Developer Act for which the Developer Act indemnity is applicable.

DBE/SBE Requirements

Prior to the Substantial Completion Date, the Design-Build Contractor is responsible for achieving each of the DBE Goal and the SBE Goal.

Uncovering

The Design-Build Contractor will observe and perform the Company's obligations related to MDOT's right to call for an uncovering of finished or covered work performed as part of the D&C Work under the Project Agreement. The Company has a right separate and apart from MDOT's right to call for such an uncovering by the Design-Build Contractor in connection with the Contractor Obligations. The Developer Act indemnity is applicable if the work uncovered at the Company's own request proves to be in conformance with the requirements of the Design-Build Contract.

Completion Milestones

The Design-Build Contractor is responsible to achieve the Completion Milestones by the applicable deadlines and with the necessary approvals of MDOT under the Project Agreement.

The Company has an independent inspection right (with the Design-Build Contractor) in the context of purported completion of the Completion Milestones that can be exercised within the 21-day period available to the MDOT Authorized Representative to issue (or not issue) a Milestone Completion Certificate, Substantial Completion Certificate or Final Acceptance Certificate, as applicable.

The independent inspection will produce a "Developer Punch List" of items that remain to be performed, which will bind the Design-Build Contractor and the Company notwithstanding any certificate issued by the MDOT Authorized Representative (or any Punch List delivered by the MDOT Authorized Representative). The Design-Build Contractor will complete these Developer Punch List items: (a) prior to the Substantial Completion Deadline, for Developer Punch List items identified in certification of Completion Milestones other than Substantial Completion; or (b) prior to the Final Acceptance Deadline, for Developer Punch List items identified in the certification of Substantial Completion.

Company Step-In Rights

The Design-Build Contractor will observe the Company's obligations related to MDOT's exercise of its Step-In Rights under the Project Agreement. The Company has its own step-in events for the Design-Build Contractor that correspond to MDOT's Step-In Events (an Emergency, the Company has a statutory duty to discharge, and a Contractor Default has occurred and has not been cured after expiry of any applicable cure period).

If a step-in event for the Company occurs, the Company has an independent right, separate from the MDOT Step-In Rights, to assume control of the Project, perform the Contractor Obligations and take other steps to minimize the consequences of such step-in event.

Company Suspension

The Design-Build Contractor will observe the Company's obligations related to MDOT's exercise of its right to suspend the Project Work under the Project Agreement.

The Company has an independent right, separate from that available to MDOT, to suspend performance of the Contractor Obligations in the following circumstances that generally correspond to MDOT's grounds for suspension under the Project Agreement, regardless of whether or not a Contractor Default has been declared or any cure period has not lapsed:

- (a) failure to perform the Contractor Obligations or other breach of the Design-Build Contract not cured within 10 days of notice from the Company;
- (b) failure to comply with Applicable Law or a Governmental Approval or failure to handle Hazardous Materials in accordance with same;
- (c) failure to pay a Subcontractor amounts not subject to applicable retainage or not in dispute where such failure is not cured within 15 days of notice from the Company;
- (d) failure to provide proof of insurance coverage
- (e) failure to deliver DB Performance Support or D&C Performance Security;
- (f) existence of unsafe conditions; and
- (g) failure to carry out Work Orders relating to the Contractor Obligations that is not cured within 10 days of notice from the Company.

Delay Events

Subject to the Equivalent Project Relief provisions of the Design-Build Contract and the Design-Build Contractor's compliance with the claim process set out in the Design-Build Contract (including time buffers associated with deadlines under the Project Agreement), the Design-Build Contractor will receive time and compensatory relief applicable to events that are Delay Events under the Project Agreement, subject to provisions of the Project Agreement that deny or reduce coverage for concurrent delay attributable to the Design-Build Contractor or Contractor-Related Entities and/or Contractor Fault.

Changes

Subject to the terms and conditions of the Design-Build Contract, including provisions relating to Equivalent Project Relief and the interface obligations of the Company and the Design-Build Contractor in relation to Changes that impact or affect the Contractor Obligations and the Excluded Obligations, to the extent that: (i) a Change Order issued by MDOT relates to or affects the Design-Build Contractor or the Contractor Obligations, then the same is a DB Change Order for purposes of the Design-Build Contract for which the Design-Build Contractor is responsible; or (ii) a Work Order issued by MDOT relates to or affects the Design-Build Contract for which the Design-Build Contractor or the Contractor Obligations, then the same is a DB Work Order for purposes of the Design-Build Contract for which the Design-Build Contractor or the Contractor Obligations, then the same is a DB Work Order for purposes of the Design-Build Contract for which the Design-Bui

Subject to the terms and conditions of the Design-Build Contract, including provisions relating to Equivalent Project Relief and the interface obligations of the Company and the Design-Build Contractor in relation to Changes that impact or affect the Contractor Obligations and the Excluded Obligations, if MDOT issues a Request for Change Proposal setting out the nature, extent and details of a proposed MDOT Change, then to the extent that such proposed MDOT Change relates to or affects the Design-Build Contractor or the Contractor Obligations, such MDOT Change is an "MDOT DB Change" for purposes of the Design-Build Contract for which the Design-Build Contractor is responsible, including preparation of any required Change Response to same.

If the effect of a MDOT DB Change a decrease in, deletion or removal of scope, MDOT is entitled to: (a) one hundred percent (100%) of the net cost savings attributable to same, which the Company will deduct from amounts payable to the Design-Build Contractor under the Design-Build Contract or which the Design-Build Contractor will pay to the Company to the extent that the Company has a payment obligation to MDOT under the Project Agreement in respect of same; and (b) one hundred percent (100%) of the effect of the MDOT DB Change on shortening the Project Schedule and the Completion Deadlines.

Contractor Changes. Subject to the terms and conditions of the Design-Build Contract relating to the interface obligations of Developer and Contractor in relation to Changes that impact or affect the Contractor Obligations and the Excluded Obligations, the Design-Build Contractor may at any time direct the Company to issue a Change Request under the Project Agreement that proposes a Change. The terms and conditions of the Design-Build Contract relating to the interface obligations of Developer and Contractor in relation to Changes that impact or affect the Contractor Obligations and the Excluded Obligations will govern preparation of such Change Request.

MDOT, in its sole discretion, may accept or reject any such Change Request, and if MDOT accepts such a Change Request, then a DB Change Order will follow and the Design-Build Contractor will implement the change in accordance with the DB Change Order, applicable Technical Requirements, the Project Management Plan, Good Industry Practice and all Applicable Law.

The Design-Build Contractor alone bears the risk of any increase in the Extra Work Costs or other costs, and for any additional risks, resulting from such a Change Request accepted by MDOT, and the Design-Build Contractor is not entitled to any extension of the Project Schedule and/or the Completion Deadlines for delays or other impacts resulting from such a Change Request accepted by MDOT.

If such a Change Request accepted by MDOT results in a net cost savings to the Design-Build Contractor, then the Company is entitled to 50% of such savings to the extent required to comply with the Project Agreement where MDOT is entitled to all or any part of the same.

No such Change Request is required to implement any change to the Contractor Obligations that that is not a Deviation and is not specifically limited, restricted, regulated or addressed by the Design-Build Contract, the Technical Requirements or Applicable Law.

Contractor Default

Contractor Defaults. The occurrence of any one or more of the following events or conditions is a Contractor Default where such event is not solely and directly attributable to a Delay Event.

- (a) the Design-Build Contractor fails to begin the D&C Work within 24 days following issuance of NTP;
- (b) the Design-Build Contractor fails to begin the Interim Maintenance Work within 90 days following issuance of NTP;
- (c) the Design-Build Contractor fails to begin the Long Term Maintenance Work associated with the Tunnel and Pump Station to be performed prior to Substantial Completion within 24 days following a Milestone Completion Certificate for Milestone 2;
- (d) the Design-Build Contractor fails to make any payment due to the Company under the Design-Build Contract when due;
- (e) the Design-Build Contractor or a Design-Build Guarantor ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on the Design-Build Contractor's or such Design-Build Guarantor's ability to perform its obligations under the Design-Build Contract or the Design-Build Guarantee;
- (f) the Design-Build Contractor abandons the Project or discontinues the performance of a substantial portion of the Contractor Obligations for a continuous period of 24 or more days, except in accordance with the approved Project Schedule;
- (g) the Design-Build Contractor fails to obtain, provide and maintain the Insurance Policies for which it is responsible under the Design-Build Contract and such failure is not cured within three days after receiving notice from the Company of such failure;
- (h) the Design-Build Contractor breaches the restrictions in the Design-Build Contract with respect to a Contractor Change in Control;
- (i) any representation or warranty made by the Design-Build Contractor or a Design-Build Guarantor in the Design-Build Contract, the Design-Build Guarantee or any other document is false in any

material respect or materially misleading or inaccurate in any material respect when made or omits material information when made;

- (j) A Bankruptcy Event arises with respect to:
 - (i) the Design-Build Contractor (except to the extent such Bankruptcy Event is caused by a failure by the Company to pay the Design-Build Contractor as required under the Design-Build Contract);
 - (ii) a Design-Build Contractor Member, being any limited liability company member of the Design-Build Contractor; or
 - (iii) a Design-Build Guarantor;
- (k) the Design-Build Contractor fails to achieve Substantial Completion by the DB Longstop Date, being the date that is six months prior to the Longstop Date under the Project Agreement;
- (l) a Persistent Contractor Default occurs, the Company delivers a Contractor Default Notice in respect of same, and either (i) the Design-Build Contractor fails to deliver to the Company, within 24 days after the earlier of: (A) such Contractor Default Notice being delivered by the Company; and (B) MDOT's delivery of a related Default Notice under the Project Agreement, a cure plan as described below meeting the requirements for approval, (ii) the Design-Build Contractor fails to fully comply with the schedule or specific elements of, or actions required under, the approved cure plan;
- (m) the Design-Build Contractor fails to comply with the Company's or MDOT's suspension of the Contractor Obligations within the time reasonably allowed in such order;
- (n) after exhaustion of all rights of appeal, there occurs any disqualification, suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, from bidding, proposing or contracting with any United States or State department or agency, of the Design-Build Contractor or any Key DB Subcontractor, where its work is not completed;
- (o) the Design-Build Contractor fails to timely observe or perform or cause to be observed or performed any other covenant, agreement, obligation, term or condition required to be observed or performed by the Design-Build Contractor under the Design-Build Contract or any related agreement, including failure to pay for or perform the Contractor Obligations or any portion thereof in accordance with the Design-Build Contract or any related agreement, or to cure any such failure identified in such notice (but excluding any Noncompliance Event unless the number of points accumulated with respect to such Noncompliance Event constitutes a Contractor Default described in clause (l) above);
- (p) the Design-Build Contractor fails to obtain, provide, maintain and deliver originals, certificates or required evidence of the D&C Performance Security, the DB Performance Support, other bonds, guarantees, letters of credit or other payment or performance security as and when required under the Design-Build Contract for the benefit of relevant parties, or fails to comply with any requirement of the Design-Build Contract pertaining to the amount, terms or coverage of the same;
- (q) the Design-Build Contractor fails to pay any Liquidated Damages (which sum or sums are not being disputed by the Design-Build Contractor in accordance with the DB Dispute Resolution Procedures);
- (r) the Maximum Liability Cap has been met or exceeded (other than by reason of claims excluded therefrom);
- (s) any Design-Build Guarantor defaults under the Design-Build Guarantee (which default, if it is in respect of a Contractor Default under the Design-Build Contract, will be after the relevant cure period (if any) under the Design-Build Contract applicable to such Contractor Default has expired) or expressly taking the position that the Design-Build Guarantee is invalid or unenforceable;
- (t) failure to implement a cure plan as described below for a Contractor Default or to comply with an agreed cure plan; and

(u) failure to implement a cure plan as described below for a Persistent Contractor Default.

The Contractor Defaults described in clauses (a) through (o) above are passed down from the Developer Defaults applicable to the Company under the Project Agreement, provided that:

- (a) the grace period associated with the Contractor Defaults described in clauses (a), (c), (f) and (l) have been buffered at 80% of the grace period available to the Company for the corresponding Developer Defaults;
- (b) the grace period associated with the Contractor Default described in clause (b) has been buffered at 75% of the grace period available to the Company for the corresponding Developer Default; and
- (c) the Noncompliance Point accrual thresholds for a Persistent Contractor Default under the Design-Build Contract (to which the Contractor Default described in such clause (l) relates) have been set at 75% of the Project Agreement's Persistent Developer Default thresholds.

Contractor Default Notice. The Design-Build Contractor must provide prompt notice to the Company of the occurrence of a Contractor Default. If the Design-Build Contractor does so, or the Company believes that a Contractor Default has occurred, the Company may give a Contractor Default Notice to the Design-Build Contractor, setting out details of the Contractor Default, any cure period available and if not capable of being cured or there is no cure period available, the date by which the Design-Build Contractor will comply with the Company's requirements related to that Contractor Default.

Cure Periods. The Design-Build Contractor has the following cure periods for the Contractor Defaults:

- (a) for the Contractor Default described in clause (a) above, 15 days after the Company's delivery of a Contractor Default Notice (75% of the period available to for the corresponding Developer Default);
- (b) for the Contractor Defaults described in clauses (e) and (j) above, 11 days after the Company's delivery of a Contractor Default Notice (73% % of the period available for the corresponding Developer Defaults);
- (c) the Contractor Defaults described in clauses (d), (f) and (o), a period equal to the earlier of: (i) three-quarters (3/4) of the cure period available to the Company to cure the corresponding Developer Default under the Project Agreement; and (ii) 22 days after delivery by the Company of the Contractor Default Notice; provided that, if the Contractor Default is of such a nature that the cure cannot with diligence be completed within such time period and the Design-Build Contractor has commenced meaningful steps to cure promptly after receiving the Contractor Default Notice, the Design-Build Contractor will have an additional period of time equal to the lesser of: (iii) three-quarters (3/4) of the additional period available to the Company to cure the corresponding Developer Default under the Project Agreement, if any; and (iv) 45 days after delivery by the Company of the Contractor Default; and
- (d) no cure period for any other Contractor Default, provided that:
 - (i) no Contractor Default described in clause (p) above will occur in relation to the DB Liquidity Bond if the Company makes a demand against same for the full bond amount and deposits the cash proceeds in the collateral account for same;
 - (ii) no Contractor Default described in clause (j)(ii) above will occur if:
 - (A) no later than 30 days after the occurrence of the Bankruptcy Event, each relevant Design-Build Contractor Member has been replaced by an Acceptable Replacement Party that has assumed all of the obligations of the relevant Design-Build Contractor Member;
 - (B) no other Contractor Default has occurred and is continuing;
 - (C) the Contractor Obligations have continued and continue to be carried out by the Design-Build Contractor in accordance with the Design-Build Contract;
 - (D) one of C.D.M. Leasing or JAJ Holdings is not in breach or default of its obligations under the Design-Build Contract or the Design-Build Guarantee; and

- (E) no termination right of MDOT has arisen under the Project Agreement with respect to a Contractor Default and is continuing that would not be cured by the replacement of the relevant Design-Build Contractor Member; and
- (iii) no Contractor Default described in clause (j)(iii) will occur if a Bankruptcy Event has not occurred in respect of one of C.D.M. Leasing or JAJ Holdings and such entity is not otherwise in breach or default of its obligations under the Design-Build Contract, the Design-Build Guarantee or the Design-Build Lenders' Direct Agreement.

Contractor Warning Notices. The Company may deliver a Contractor Warning Notice to the Design-Build Contractor warning of a material Contractor Default. If the Company issues a Contractor Warning Notice for any Contractor Default after it issues a Contractor Default Notice, then the remaining cure period available to the Design-Build Contractor, if any, for such Contractor Default before the Company may terminate the Design-Build Contract on account of such Contractor Default will be extended by the lesser of: (a) three-quarters (3/4) of the time period available to the Company under the Project Agreement if MDOT has issued a Warning Notice to the Company after issuing a Default Notice in respect of the corresponding Developer Default under the Project Agreement; and (b) the time period between the date the Contractor Default Notice was issued and the date the Contractor Warning Notice is issued. That shall not defer the time at which the Company may exercise any remedy other than termination respecting such Contractor Default.

Cure Plans. If the Company delivers a Contractor Default Notice to the Design-Build Contractor, then the Design-Build Contractor will comply with the Contractor Default Notice and, except in the case of the Contractor Defaults described in clauses (f), (h), (j), (k) and (l) above and the Contractor Defaults for which there is no cure period, the Design-Build Contractor shall, as soon as possible, give the Company a plan to cure the Contractor Default (for review and approval by the Company, the Senior Secured Parties and MDOT) and comply with any requirements of the Company in accordance with the terms of the Contractor Default Notice. The Company and the Design-Build Contractor, and the Senior Secured Parties and MDOT as applicable, will develop and seek to agree on such plan, and following agreement or determination of the plan, the Design-Build Contractor shall implement and comply with it. Any failure to implement the cure plan or comply with the agreed cure plan will result in a Contractor Default which is not subject to any cure period.

In the case of a Persistent Contractor Default, within 22 days the Design-Build Contractor will submit a cure plan to the Company (for review and approval by the Company, the Senior Secured Parties and MDOT), including specific actions (including timeframes) to be taken by the Design-Build Contractor to improve its performance and reduce (i) the cumulative number of Noncompliance Points assessed and cumulative number of breaches and failures to perform to the point that a Persistent Contractor Default no longer applies, and (ii) the cumulative number of Noncompliance Points outstanding with respect to the Contractor Default by at least 50%. The Company and the Design-Build Contractor, and the Senior Secured Parties and MDOT as applicable, will develop and seek to agree on such plan, and following agreement or determination of the plan, the Design-Build Contractor shall implement and comply with it. Any failure to implement the cure plan or comply with the agreed cure plan will result in a Contractor Default which is not subject to any cure period.

Compliance by the Design-Build Contractor with a Persistent Contractor Default cure plan in all material respects and achievement of the requirements set out in it will, on an Equivalent Project Relief basis to the extent of a reduction by MDOT under the Project Agreement, result in a reduction by the Company of the number of cured Noncompliance Points that would otherwise then be counted toward a Persistent Contractor Default, so long as there are no other uncured Contractor Defaults at such time for which a Contractor Default Notice was given.

Company Rights on Contractor Default. Upon occurrence of a Contractor Default that has not been cured within the applicable cure period, if any, the Company will be entitled to:

- (a) exercise its step-in rights under the Design-Build Contract;
- (b) terminate the Design-Build Contract in accordance with its terms;
- (c) recover any liability on account of the occurrence of a Contractor Default. regardless of when the Contractor Default Notice is given, whether the liability accrues after the occurrence of the Contractor Default or whether the Contractor Default is subsequently cured;
- (d) where such Contractor Default is not cured within the applicable cure period, if any, make demand upon and enforce the D&C Performance Security and/or the DB Performance Support and/or

make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security available to the Company under the Design-Build Contract with respect to the Contractor Default without notice to the Design-Build Contractor;

- (e) suspend the Contractor Obligations in whole or part in accordance with the Design-Build Contract; or
- (f) exercise any other remedies available under the Design-Build Contract or at law or in equity.

Company Termination Right. If (a) a Contractor Default occurs and it has not been cured within the relevant cure period, if any, set out in the related Contractor Default Notice or in accordance with any cure plan accepted by the Company, or (b) a Contractor Default occurs for which there is no cure period under the Design-Build Contract, then the Company by notice to the Design-Build Contractor may terminate the Design-Build Contract.

Such termination of the Design-Build Contract is effective on the date stated in the Company's notice of termination.

Contractor Default Termination Compensation.

(1) Project Agreement Does Not Terminate

If the Design-Build Contract is terminated due to a Contractor Default where there is no concurrent termination of the Project Agreement, then the Design-Build Contractor will pay the Company an amount, calculated at the termination date of the Design-Build Contract, equal to:

(a) the amount of the Company's liability resulting from the Contractor Default and termination of the Design-Build Contract (including the projected costs required to remedy any defective part of the Contractor Obligations, to rectify any breach by any Contractor-Related Entity and/or to bring the condition of the Contractor Obligations to the standard it would have been in if the Design-Build Contractor had complied with its obligations to carry out and complete the Contractor Obligations in accordance with its obligations under the Design-Build Contract);

<u>plus</u>

(b) all costs incurred by the Company associated with locating and appointing one or more replacement contractors to perform the D&C Work, the Interim Maintenance Work and/or the Long Term Maintenance Work prior to Substantial Completion;

<u>plus</u>

(c) increases to the cost of completing all remaining elements of the D&C Work, the Interim Maintenance Work and/or the Long Term Maintenance Work prior to Substantial Completion above the payments therefor remaining under the Design-Build Contract;

<u>plus</u>

(d) any Liquidated Damages that have accrued but have not been paid as at the termination date of the Design-Build Contract;

<u>plus</u>

(e) an allowance for the amount of any Liquidated Damages that the Company estimates will accrue as a result of the Contractor Default;

<u>plus</u>

(f) any Deduction and/or Unavailability Adjustment accrued prior to the termination date of the Design-Build Contract for which the Design-Build Contractor is responsible under the Design-Build Contract that has not, as at the date of calculation: (i) been deducted by the Company from any amount payable to the Design-Build Contractor; or (ii) been paid by the Design-Build Contractor or otherwise satisfied by the Company under the Design-Build Contract, where the amounts available to the Company against which to levy such reduction were insufficient;

<u>minus</u>

(g) the contract value of the Contractor Obligations performed and for which the Design-Build Contractor is entitled to, but has not received, payment from the Company.

(2) Project Agreement Terminates

If the Design-Build Contract terminates upon termination of the Project Agreement by MDOT for a Developer Default that has been caused by the Design-Build Contractor or any Contractor-Related Entity, in whole or in part, then the Design-Build Contractor will pay the Company an amount, calculated at the termination date of the Design-Build Contract, equal to:

(a) the amount of the Company's liability resulting from the Contractor Default and termination of the Design-Build Contract and the Project Agreement (including all Lenders' Liabilities not reimbursed by MDOT and all amounts payable by the Company to MDOT under the Project Agreement arising from the relevant Developer Default and/or termination of the Project Agreement);

<u>plus</u>

(b) any Liquidated Damages that have accrued but have not been paid as at the termination date of the Design-Build Contract;

<u>plus</u>

(c) any Deduction and/or Unavailability Adjustment accrued prior to the termination date of the Design-Build Contract for which the Design-Build Contractor is responsible under the Design-Build Contract that has not, as at the date of calculation: (i) been deducted by the Company from any amount payable to the Design-Build Contractor; or (ii) been paid by the Design-Build Contractor or otherwise satisfied by the Company under the Design-Build Contract, where the amounts available to the Company against which to levy such reduction were insufficient;

<u>plus</u>

(d) the loss of each Equity Member (or its successor(s) or assign(s)) nominal equity investment in the Company (whether direct or indirect);

<u>minus</u>

(e) Insurance Proceeds received by the Company to the extent that such proceeds were not used to repair or replace any portion of the infrastructure or to satisfy a third party claim and the Company is entitled to retain the same;

<u>minus</u>

(f) the contract value of the Contractor Obligations performed and for which the Design-Build Contractor is entitled to, but has not received, payment from the Company.

Rights of Design-Build Contractor Following a Developer Default under the Design-Build Contract

Developer Default. The following are Developer Defaults under the Design-Build Contract, other than as a consequence of a breach by MDOT of its obligations under the Project Agreement or by the Design-Build Contractor of its obligations under the Design-Build Contract:

- (a) the Company fails to make any payment due and payable to the Design-Build Contractor under the terms and conditions of the Design-Build Contract to the extent such payment is not subject to a good faith dispute;
- (b) any representation made by the Company under the Design-Build Contract is false or materially misleading or inaccurate when made in each case in any material respect or omits material information when made; or
- (c) the Company commits a material breach of its obligations under the Design-Build Contract, which breach materially adversely affects the ability of the Design-Build Contractor to perform its obligations under the Design-Build Contract for a continuous period of not less than 60 days after notice from the Design-Build Contractor.

Notice to the Company and Cure Periods. The Design-Build Contractor is to provide the Company with notice of a Developer Default under the Design-Build Contract. Upon receipt of such notice from the Design-Build Contractor: (i) in the case of a Developer Default described in clause (a) above, the Company has a 30-day cure period; and (ii) in the case of a Developer Default described in clause (b) or (c) above, the Company has a 60-day cure period, provided that, if the Developer Default is of such a nature that the cure cannot with diligence be completed within such time period and the Company has commenced meaningful steps to cure immediately after receiving the Design-Build Contractor's notice, then the Company shall have up to a maximum 180-day cure period.

Suspension Right. The Design-Build Contractor shall be entitled to suspend performance of the Contractor Obligations where a MDOT Default under the Project Agreement has resulted in a failure by the Company to pay an amount to the Design-Build Contractor to which the Design-Build Contractor would be entitled if received by the Company from MDOT. The Design-Build Contractor has no other rights of suspension in connection with any Developer Default under the Design-Build Contract.

Termination Right. Subject to the DB Lenders' Direct Agreement, the Design-Build Contractor has the right to terminate the Design-Build Contract upon the occurrence of a Developer Default under the Design-Build Contract following notice and expiration of the applicable cure period. The Design-Build Contractor must provide the Company not less than 30 days' notice of termination, and, subject to the DB Lenders' Direct Agreement, such termination of the Design-Build Contract is effective on the date stated in the Design-Build Contractor's notice of termination.

Developer Default Termination Compensation. If the Design-Build Contract is terminated: (a) by the Design-Build Contractor for a Developer Default under the Design-Build Contract; or (b) upon termination of the Project Agreement by MDOT for a Developer Default under the Project Agreement that has not been caused by the Design-Build Contractor or any Contractor-Related Entity, in whole or in part, then the Company will pay the Design-Build Contractor an amount, calculated at the termination date of the Design-Build Contract, equal to:

(a) on an Equivalent Project Relief basis, to the extent recoverable under the Project Agreement pursuant to clause (b) of the definition of Developer Employee and Subcontractor Breakage Costs thereunder, the contract value of the Contractor Obligations performed and for which the Design-Build Contractor is entitled to, but has not received, payment from the Company;

<u>plus</u>

(b) on an Equivalent Project Relief basis, to the extent recoverable under the Project Agreement pursuant to clause (b) of the definition of Developer Employee and Subcontractor Breakage Costs thereunder, the Contractor Breakage Costs;

<u>minus</u>

(c) Insurance Proceeds received by the Design-Build Contractor to the extent that such proceeds were not used to repair or replace any portion of the infrastructure or to satisfy a third party claim;

<u>minus</u>

(d) any Deduction and/or Unavailability Adjustment accrued prior to the termination date of the Design-Build Contract for which the Design-Build Contractor is responsible under the Design-Build Contract that has not, as at the date of calculation: (i) been deducted by the Company from any amount payable to the Design-Build Contractor; or (b) been paid by the Design-Build Contractor or otherwise satisfied by the Company under the Design-Build Contract, where the amounts available to the Company against which to levy such reduction were insufficient.

Other Design-Build Contract Termination and Compensation

Termination of Project Agreement. For certainty, the Design-Build Contract will terminate automatically upon any termination of the Project Agreement, including for MDOT Default or Developer Default under the Project Agreement, subject to the rights of MDOT set out in the Design-Build Contract and the terms of the PA Direct Agreement.

Termination of Project Agreement for Convenience and Related Compensation. If MDOT terminates the Project Agreement, the Design-Build Contract will terminate concurrently.

In such circumstances, the Company will pay the Design-Build Contractor the amount described above in connection with termination of the Design-Build Contract for a Developer Default thereunder, provided that such amount shall only be payable by the Company to the Design-Build Contractor on an Equivalent Project Relief basis solely from and to the extent of the related termination compensation received by the Company from MDOT under the Project Agreement in connection with such termination of the Project Agreement.

Termination of Project Agreement for Force Majeure Event and Related Compensation. If MDOT or the Company terminates the Project Agreement for an extended Force Majeure Event, the Design-Build Contract will terminate concurrently.

In such circumstances, the Company will pay the Design-Build Contractor an amount, calculated at the termination date of the Design-Build Contract, equal to:

(a) on an Equivalent Project Relief basis, to the extent recoverable under the Project Agreement pursuant to clause (b) of the definition of Developer Employee and Subcontractor Breakage Costs thereunder, the contract value of the Contractor Obligations performed and for which the Design-Build Contractor is entitled to, but has not received, payment from the Company;

<u>plus</u>

(b) on an Equivalent Project Relief basis, to the extent recoverable under the Project Agreement pursuant to clause (b) of the definition of Developer Employee and Subcontractor Breakage Costs thereunder, the Contractor Breakage Costs;

<u>minus</u>

(c) Insurance Proceeds received by the Design-Build Contractor to the extent that such proceeds were not used to repair or replace any portion of the infrastructure or to satisfy a third party claim;

<u>minus</u>

(d) any Deduction and/or Unavailability Adjustment accrued prior to the termination date of the Design-Build Contract for which the Design-Build Contractor is responsible under the Design-Build Contract that has not, as at the date of calculation: (i) been deducted by the Company from any amount payable to the Design-Build Contractor; or (b) been paid by the Design-Build Contract or or otherwise satisfied by the Company under the Design-Build Contract, where the amounts available to the Company against which to levy such reduction were insufficient,

provided that such amount shall only be payable by the Company to the Design-Build Contractor on an Equivalent Project Relief basis solely from and to the extent of the related termination compensation received by the Company from MDOT under the Project Agreement in connection with such termination of the Project Agreement.

Termination of Design-Build Contract for Extended Force Majeure Event and Related Compensation. Where the Company is entitled to terminate the Project Agreement for an extended Force Majeure Event (and such right is still in effect) and the Company has elected not to terminate the Project Agreement by the date on which a total continuous period of 240 days of the Force Majeure Event preventing or likely continuing to prevent the Design-Build Contractor from undertaking all or substantially all of its obligations in accordance with the Design-Build Contract shall have lapsed, the Design-Build Contractor will be entitled to terminate the Design-Build Agreement on notice to Company, in which case the Company will terminate the Project Agreement pursuant to the corresponding termination right.

If the Design-Build Contractor terminates the Design-Build Contract for such a Force Majeure Event, then the Company will pay the Design-Build Contractor the amount described above in connection with termination of the Project Agreement for an extended Force Majeure Event, including that such amount shall only be payable by the Company to the Design-Build Contractor on an Equivalent Project Relief basis solely from and to the extent of the related termination compensation received by the Company from MDOT under the Project Agreement.

Termination of Project Agreement for Unobtainable Coverage Event and Related Compensation. If MDOT terminates the Project Agreement in connection with an Unobtainable Coverage Event, then the Design-Build Contract will terminate concurrently.

In such circumstances, the Company will pay the Design-Build Contractor the amount described above in connection with termination of the Project Agreement for an extended Force Majeure Event, including that such

amount shall only be payable by the Company to the Design-Build Contractor on an Equivalent Project Relief basis solely from and to the extent of the related termination compensation received by the Company from MDOT under the Project Agreement.

Termination of Project Agreement for Failure to Reach Financial Close and Related Compensation.

If MDOT terminates the Project Agreement because Financial Close does not occur by the Financial Close Deadline and all conditions to Financial Close have been achieved, then the Design-Build Contract will terminate concurrently.

If MDOT terminates the Project Agreement for the Company's failure to achieve Financial Close, then the Design-Build Contract will terminate concurrently.

Miscellaneous Compensation Provisions

Timing of Payment. Any compensation on termination to be paid by the Company (a) where the source of such payment is compensation on termination payable by MDOT under the Project Agreement, will be paid within 10 Business Days of the Company's receipt of such amount from MDOT; or (b) otherwise, within sixty (60) days after such amount is finally agreed or determined. Compensation on termination to be paid by the Design-Build Contractor will be due and payable within (30) days after such amount is finally agreed or determined.

Termination Requirements. Compliance by the Design-Build Contractor with the requirements to be observed on termination of the Design-Build Contract is a condition precedent to the Company's payment of any compensation amount.

Exclusivity of Remedy. Any termination compensation amount irrevocably paid by the Company to the Design-Build Contractor is in full and final settlement of the Design-Build Contractor's rights and claims for any liability against the Company for breaches and/or termination of the Design-Build Contract but without prejudice to (i) any liability of the Company or the Design-Build Contractor to the other that arose prior to the termination date of the Design-Build Contract (and not from termination itself), to the extent not accounted for in the calculation of the relevant termination compensation, and (b) any liabilities in connection with any breach by the Design-Build Contractor after the expiration date of any obligation under the Design-Build Contract that survives termination of the Design-Build Contract, to the extent not taken into account in the calculation of the relevant termination compensation.

Design-Build Contractor's Indemnities

The Design-Build Contractor will indemnify the Company, any Developer-Related Entity and any direct or indirect shareholder, member, partner and/or joint venture member of, in or with the Company (the "Company Indemnified Parties") against any claim or liability arising out of or in connection with:

- (a) any alleged or actual Contractor Fault, if asserted or incurred by or awarded to any Third Party;
- (b) damage to public or private property owned by Third Parties and for injuries to any Person arising out of the Design-Build Contractor's performance of the Contractor Obligations;
- (c) any alleged Intellectual Property infringement or other allegedly improper appropriation or use of Intellectual Property by any Contractor-Related Entity in performance of the Contractor Obligations, or in connection with the infrastructure, excluding any infringement to the extent resulting from the Company's or, on an Equivalent Project Relief basis, MDOT's failure to comply with specific material written instructions regarding use provided to the Company or MDOT by the Design-Build Contractor;
- (d) any and all claims by any governmental or taxing authority claiming Taxes based on gross receipts, purchases or sales, or the use of any property or income of any Contractor-Related Entity with respect to any payment for the Contractor Obligations made to or earned by any Contractor-Related Entity;
- (e) the failure or alleged failure by any Contractor-Related Entity to pay sums due for the work or services of Subcontractors, laborers, or Suppliers, provided that the Company has paid all undisputed amounts owing to the Design-Build Contractor with respect to such Contractor Obligations, if asserted or incurred by or awarded to any Third Party;
- (f) any actual or threatened Contractor Release of Hazardous Materials;

- (g) the claim or assertion by any Interface Party: (i) that any Contractor-Related Entity failed to cooperate reasonably with such Interface Party, so as to cause interference, disruption, delay or loss, except where the Contractor-Related Entity was not in any manner engaged in performance of the Contractor Obligations or (ii) that any Contractor-Related Entity interfered with or hindered the progress or completion of work being performed by such Interface Party, so as to cause interference, disruption, delay or loss, to the extent such claim arises out of any Contractor Fault;
- (h) any Contractor-Related Entity's breach of or failure to perform an obligation that the Company or MDOT owes to a third person, including Governmental Entities and Utility Owners, under Applicable Law or under any agreement between the Company or MDOT and a third person, where the Company has delegated performance of the obligation to the Design-Build Contractor under the Design-Build Contract, or the acts or omissions of any Contractor-Related Entity which render the Company or MDOT unable to perform or abide by an obligation that the Company or MDOT owes to a third person, including Governmental Entities and Utility Owners, under any agreement between the Company or MDOT and a third person, where, in each case, the agreement was expressly disclosed or known to the Design-Build Contractor;
- (i) inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of: (i) the failure of any Contractor-Related Entity to comply with Good Industry Practices, requirements of the Design-Build Contract, the Project Management Plan or Governmental Approvals respecting control and mitigation of construction activities and construction impacts, (ii) the intentional misconduct or negligence of any Contractor-Related Entity in connection with performance of the Contractor Obligations, or (iii) the actual physical entry onto or encroachment upon another's property by any Contractor-Related Entity in connection with performance of the Contractor Obligations; or
- (j) Errors or other Defects in the design, supply, construction (including installation), operation or maintenance of the Project or of Utility Relocations included in the Contractor Obligations, excluding the Interim Maintenance Work; or
- (k) Errors or other Defects in the Interim Maintenance Work resulting from (i) the Design-Build Contractor's breach of its obligations under the Design-Build Contract with respect to Interim Maintenance Work or (ii) the negligence, intentional misconduct, or recklessness of any Contractor-Related Entity.

The Design-Build Contractor's indemnity obligations do not extend, however, to any liability to the extent directly caused by:

- (a) on an Equivalent Project Relief basis:
 - (i) breach by MDOT of the Project Agreement;
 - (ii) the sole negligent acts, sole negligent omissions, recklessness or willful misconduct, bad faith or fraud of a MDOT Indemnified Party;
 - (iii) MDOT's violation of any Applicable Law; or
- (b) (i) breach by the Company of the Design-Build Contract, (ii) the sole negligent acts, sole negligent omissions, recklessness or willful misconduct, bad faith or fraud of a Company Indemnified Party, or (iii) the Company's violation of any Applicable Law.

Restrictions on Assignment

The Design-Build Contractor cannot voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber any portion of its rights or obligations under the Design-Build Contract without the Company's prior written approval, in the Company's sole discretion.

Any purported voluntary or involuntary sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, grant of right of entry, or grant of other special use, management or control of the infrastructure in violation of the Design-Build Contract shall be null and void *ab initio* and the Company, at its option, may declare any such attempted action to be a material Contractor Default.

Restrictions on Contractor Changes in Control and Contractor Transfers

No Contractor Change in Control or Contractor Transfer that results in a Design-Build Contractor Member ceasing to own (directly or indirectly) the same percentage of the issued share capital, partnership or membership interests, as applicable, in the Design-Build Contractor that it owned (directly or indirectly) as of the Financial Close Date, is permitted without the Company's prior written approval, in its sole discretion.

A "Contractor Transfer" means any assignment, mortgage, encumbrance, hypothecation, conveyance, sale, or other transfer of equity interest in the Design-Build Contractor, a Design-Build Contractor Member or a Design-Build Guarantor. A Design-Build Contractor Member is a member of the Design-Build Contractor.

A "Contractor Change in Control" means any Contractor Transfer, transfer of an interest, direct or indirect, in a Design-Build Contractor Member or a Design-Build Guarantor, or other assignment, sale, financing, grant of security interest, hypothecation, conveyance, transfer of interest or transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation, bankruptcy 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 the Design-Build Contractor or a material aspect of its business. A change in possession of the power to direct or control or cause the direction or control of the management of a Design-Build Contractor Member or a Design-Build Guarantor may constitute a Contractor Change in Control of the Company if such Design-Build Contractor Member or Design-Build Guarantor possesses, immediately prior to such Contractor Change in Control, the power to direct or control or cause the direction or control or change in Control or the Design-Build Contractor Change in Control or control or cause the direction or control or change in Control or the power to direct or control or cause the direction or control or change in Contractor Change in Control or cause the direction or control or the management of the Design-Build Contractor.

The following situations are not a Contractor Change in Control, and transfers and transactions within any of the following situations are allowed at any time without necessity for the Company's approval:

- (a) a change in possession of the power to direct or control the management of the Design-Build Contractor or a material aspect of its business due solely to a bona fide transaction involving beneficial interests in the ultimate parent organization of a Design-Build Contractor Member or a Design-Build Guarantor (but not if the Design-Build Contractor Member or Design-Build Guarantor is the ultimate parent organization) (but this exception shall not apply if the transferee in such transaction is, at the time of the transaction, suspended or debarred, 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 State department or agency);
- (b) an upstream reorganization or transfer of direct or indirect interests in a Design-Build Contractor Member or a Design-Build Guarantor so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of the Design-Build Contractor, a Design-Build Contractor Member or a Design-Build Guarantor;
- (c) a transfer of interests between managed funds that are under common ownership or control, except a change in the management or control of a fund, investment vehicle or other entity, as applicable, that manages or controls the Design-Build Contractor, a Design-Build Contractor Member or a Design-Build Guarantor;
- (d) a Contractor Transfer where the transferor and the transferee are under the same ultimate parent organization ownership, management and control before and after the transfer;
- (e) a change in possession of the power to direct or control the management of the Design-Build Contractor, a Design-Build Contractor Member or a Design-Build Guarantor 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; or

(f) the exercise of minority veto or voting rights (whether provided by Applicable Law, by the Company's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of the Design-Build Contractor, a Design-Build Contractor Member or a Design-Build Guarantor, provided that if such minority veto or voting rights are provided by shareholder or similar agreements, the Company has received copies of such agreements.

Any Contractor Change in Control in violation of the provisions of the Design-Build Contract shall be null and void *ab initio* and the Company, at its option, may declare any such attempted action to be a material Contractor Default.

Assignment by the Company

The Company may assign all or any portion of its right, title and interest in the Design-Build Contract, any D&C Performance Security, any DB Performance Support and/or any other guarantees, letters of credit and other security for the Design-Build Contractor's payment or performance:

- (a) in accordance with and to the extent allowed by the provisions of the Project Agreement; and
- (b) as security under the Finance Documents.

Any change in ownership and/or Change in Control of the Company shall be as permitted in accordance with the terms of the Project Agreement.

The Design-Build Contract has no consent rights in connection with any of the foregoing transactions.

DB Dispute Resolution Procedures

All disputes, controversies, or claims arising out of or relating to any provision of the Design-Build Contract, or the alleged wrongful exercise or failure to exercise by a party of a discretion or power given to that party under the Design-Build Contract, or the interpretation, enforceability, performance, breach, termination, or validity of the Design-Build Contract, including, without limitation, the application or implementation of Equivalent Project Relief ("DB Dispute") will be resolved in accordance with the DB Dispute Resolution Procedures.

Where a matter that is a DB Dispute is or relates to the same matter or is otherwise related to, or has issues in common with, a dispute between the Company and MDOT under the Project Agreement, such DB Dispute shall be referred to the Dispute Resolution Procedures under the Project Agreement, and the Design-Build Contractor and the Company will, in accordance with and subject to the applicable terms and conditions of the Design-Build Contract, participate in the proceedings referred to the Dispute Resolution Procedures in the Project Agreement. Any and all proceedings in relation to such DB Dispute under the DB Dispute Resolution Procedures shall be stayed during the pendency of the Dispute Resolution Procedures under the Project Agreement, and all time periods under the Design-Build Contract associated with disputing any of the matters under such DB Dispute (other than time periods to be met for purposes of the Project Agreement in relation to the related dispute thereunder) shall be tolled during the pendency of the Dispute Resolution Procedures under the Project Agreement and shall only commence to run upon the dispute being resolved under such Dispute Resolution Procedures. The Design-Build Contract and the Company will comply with and be bound by the resolved dispute concluded under the Dispute Resolution Procedures in the Project Agreement, and will not be entitled to make, and are barred from making, any claim pursuant to the DB Dispute Resolution Procedures in respect of any matter that is the subject of such resolved dispute, if and to the extent that the resolved dispute specifically includes determination of the respective rights of the Company and the Design-Build Contractor under the Design-Build Contract.

A DB Dispute that gives rise to a claim for Equivalent Project Relief or arises in connection with a MDOT Claim shall proceed in accordance with the applicable provisions of the Design-Build Contract relating to Equivalent Project Relief and MDOT Claims rather than the DB Dispute Resolution Procedures.

The DB Dispute Resolutions Procedures include a "fast track" process pursuant to which certain DB Disputes can be dealt with on a more expeditious basis in accordance with the Fast Track DB Dispute Resolution Procedures.

The Company and the Design-Build Contractor shall diligently carry out their respective obligations under the Design-Build Contract (including payment of any undisputed amounts and payment of any Liquidated Damages) during the pendency of any DB Dispute.

Governing Law and Jurisdiction

The Design-Build Contract and each of the documents contemplated by or delivered under or in connection with the Design-Build Contract are governed by and construed in accordance with the Applicable Law of the State of Michigan and the laws of the United States applicable therein, without regard to conflict of laws principles.

Subject to the DB Dispute Resolution Procedures, the Company and the Design-Build Contractor have irrevocably attorned to the exclusive jurisdiction of courts of competent jurisdiction in the State of Michigan and all courts competent to hear appeals therefrom.

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APPENDIX D

SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT

Summary of the Collateral Agency Agreement among the Michigan Strategic Fund, Oakland Corridor Partners LLC and U.S. Bank National Association

The following is a summary of selected provisions of the Collateral Agency Agreement relating to the Project and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement. A copy of such agreement is available, free of charge, upon request from the Company or the Trustee. Unless otherwise stated, any reference herein to any agreement means such agreement and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof. Capitalized terms used but not defined in this summary have the meanings set forth in Appendix A—"DEFINITIONS OF TERMS."

The Collateral Agent

Duties and Responsibilities

The Collateral Agent agrees, for the benefit of the Secured Parties, to administer and enforce the Collateral Agency Agreement and the other Security Documents to which it is a party as Collateral Agent, and, among other remedies, to foreclose upon, collect and dispose of the Collateral and to apply the proceeds therefrom, as provided in the Collateral Agency Agreement, and otherwise to perform its duties and obligations as the Collateral Agency Agreement and thereunder in accordance with the terms of the Collateral Agency Agreement and thereunder in accordance with the terms of the Collateral Agency Agreement and thereof; provided, however, that the Collateral Agent has no duties or responsibilities except those expressly set forth in the Collateral Agency Agreement or in the other Security Documents to which it is a party, and no implied covenants or obligations, fiduciary or otherwise, may be read into the Collateral Agency Agreement or any such other Security Documents against the Collateral Agent.

The Collateral Agent may, but is not required to exercise any discretion or take any discretionary action but is only be required to act or refrain from acting (and is fully protected in so acting or refraining from acting) upon the written instructions of the Bondholders, in each case, as specified in the Collateral Agency Agreement or in the Indenture, and such instructions will be binding upon the Collateral Agent and each of the Secured Parties; provided, <u>however</u>, that the written instructions of all of the Secured Parties are required where expressly provided for in the Collateral Agency Agreement and in the Indenture; <u>provided</u>, <u>further</u>, that the Collateral Agent will not be required to take any action which is contrary to any provision of the Collateral Agency Agreement or of the other Security Documents or applicable law.

Authorization

The Collateral Agent is authorized to execute, deliver, perform in such capacity under the Collateral Agency Agreement and each other Finance Document to which the Collateral Agent is or is intended to be a party, exercise and enforce any and all rights, powers and remedies provided to the Collateral Agent under the Collateral Agency Agreement, any other Finance Document, any applicable Law, or any other document, instrument, or agreement, in each case in accordance with the terms thereof, take any other action under and in accordance with the Collateral Agency Agreement and any other Finance Document to which the Collateral Agent is a party.

Administrative Actions

The Collateral Agent may, but will not be obligated to, take such action as it deems necessary to perfect or continue the perfection of the Security Interests on the Collateral held for the benefit of the Secured Parties. The Collateral Agent will not release any of the Collateral held for the benefit of such Secured Parties, except: (a) upon the written direction of the Trustee acting pursuant to the Indenture; (b) upon payment in full of the Secured Obligations, as certified to the Collateral Agent by the Trustee; (c) for Collateral consisting of a debt instrument if

the indebtedness evidenced thereby has been paid in full, as certified to the Collateral Agent by the Trustee; or (d) where such release is expressly permitted under the Security Documents.

Reliance of Collateral Agent

In connection with the performance of its duties under the Collateral Agency Agreement, the Collateral Agent will be entitled to rely conclusively upon, and will be fully protected in acting or refraining from acting in accordance with, any written certification, notice, instrument, opinion, request, consent, order, approval, direction or other written communication of the Trustee or of any other Secured Party, which the Collateral Agent in good faith reasonably believes to be genuine and to have been signed or sent by or on behalf of the proper Person or Persons, and it will be entitled to rely conclusively upon the due execution, validity and effectiveness, and the truth, correctness and acceptability of, any provisions contained therein. The Collateral Agent will not have any responsibility to make any investigation into the facts or matters stated in any notice, certificate, instrument, demand, request, direction, instruction, or other communication furnished to it. Whenever the Collateral Agency Agreement specifies that any instruction or consent by the Trustee is to be given in accordance with the terms of the Indenture, the Collateral Agent will be entitled to rely upon any such instruction or consent by the Trustee has been given in accordance with the terms of the Indenture.

Resignation and Removal; Successor Collateral Agent; Individual Collateral Agent

Subject to the appointment and acceptance of a successor Collateral Agent as provided below, the Collateral Agent may resign at any time by giving at least 30 days' prior written notice thereof to the other Secured Parties and the Company, and the Collateral Agent may be removed at any time with or without cause by the Trustee upon 30 days' written notice thereof to the Collateral Agent, the other Secured Parties and the Company unless a shorter period of notice is required at the discretion of the Trustee. Upon any such resignation or removal, the Trustee will have the right to appoint a successor Collateral Agent that, so long as no Event of Default has occurred and is continuing, will be reasonably acceptable to the Company. If no successor Collateral Agent will have been so appointed by the Trustee within 30 days after the retiring Collateral Agent's giving of notice of resignation or the removal of the retiring Collateral Agent by the Trustee, then the retiring Collateral Agent may, on behalf of the Secured Parties, apply to a court of competent jurisdiction for the appointment of a successor Collateral Agent. In all such cases, the successor Collateral Agent will be a bank organized under the laws of the United States of America or any state thereof that has an office in the State of New York and which agrees to administer the Collateral in accordance with the terms of the Collateral Agency Agreement and of the other Security Documents and the unsecured long-term debt of which will be rated "A" or better by S&P or "A2" or better by Moody's and will have a total capital stock and unimpaired surplus of not less than \$500,000,000 and, so long as no Event of Default has occurred and is continuing, will be reasonably acceptable to the Company.

Books and Records; Reports

The Collateral Agent will at all times keep, or cause to be kept, proper books of record and accounts in which complete and accurate entries will be made of all transactions relating to the Secured Obligations, Project Revenues and all Project Accounts (other than the Operating Account) established pursuant to the Collateral Agency Agreement. Such books of record and accounts will be available for inspection by the Trustee and the Secured Parties, or their agents or representatives duly authorized in writing, at reasonable hours and under reasonable circumstances and upon reasonable prior written request.

Within 15 days after the end of each calendar month, the Collateral Agent will furnish to the Trustee, the Insurer, and the Company, a report that will set forth in reasonable detail the account balances, receipts, disbursements, transfers, investment transactions, and accruals for each of the Project Accounts (other than the Operating Account) during such month.

Within 90 days after the end of each calendar year, the Collateral Agent will furnish to the Trustee, the Insurer and the Company, a report setting forth in reasonable detail the account balances, receipts, disbursements, transfers, investment transactions, and accruals for each of the Project Accounts (other than the Operating Account) during the preceding year.

The Collateral Agent will maintain records of all receipts, disbursements, and investments of funds with respect to the Project Accounts (other than the Operating Account) until the fifth anniversary of the date on which all of the Secured Obligations will have been paid in full.

Authorization of Collateral Agent to Recover Compensation, Fees and Expenses

To the extent that the Company fails to pay any amount required to be paid by it to the Collateral Agent pursuant to the Collateral Agency Agreement, the Collateral Agent is authorized to transfer funds to reimburse itself for such amounts out of the following accounts in the following order of priority: (i) from the Equity Lock-Up Account and (ii) (x) prior to the Substantial Completion Date, from the Construction Account (to the extent permitted by the Senior Loan Agreement and applicable Law), and (y) upon and following the Substantial Completion Date from the Revenue Account. The provisions of this paragraph will survive the termination of the Finance Documents and the resignation or removal of the Collateral Agent.

The Project Accounts

See "PROJECT ACCOUNTS AND FLOW OF FUNDS" for a description of the Accounts under the Collateral Agency Agreement

Reserve Accounts; Reserve Letters of Credit

The Applicable Reserve Requirement of any Reserve Account may be funded from time to time by any Applicable Reserve Letter of Credit; provided that the Collateral Agent will make a drawing upon any such Applicable Reserve Letter of Credit in an amount equal to the full remaining drawing amount under such Applicable Reserve Letter of Credit in the event that:

the issuer of such Applicable Reserve Letter of Credit fails to satisfy the requirements of an Acceptable Bank and, within forty-five (45) days of the date on which the existing issuer ceased to be an Acceptable Bank, the Company fails to replace such Applicable Reserve Letter of Credit with either cash or another Acceptable Letter of Credit from an Acceptable Bank; or

such Applicable Reserve Letter of Credit will expire within ten (10) days and either (A) the Collateral Agent has received a notice from the issuer thereof that such Applicable Reserve Letter of Credit will not be renewed in accordance with its terms or (B) the Collateral Agent has not received written evidence from the issuer thereof or the Company that such Applicable Reserve Letter of Credit will be extended or replaced upon or prior to its stated expiration date.

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

On any date that the Collateral Agent is required or permitted to withdraw funds from any Reserve Account, the Collateral Agent will, in the following order of priority:

first, withdraw available cash, if any, on deposit in such Reserve Account;

second, liquidate Permitted Investments, if any, held in such Reserve Account and withdraw the proceeds of such liquidation; and

third, make a pro rata drawing under each Applicable Reserve Letter of Credit in respect of such Reserve Account.

At the written request of an Authorized Representative of the Company, the Collateral Agent will release funds from any Reserve Account in the event that the Company has provided the Collateral Agent with an Applicable Reserve Letter of Credit in a stated amount equal to the amount of funds to be released from such Reserve Account. Any amounts so released will be transferred directly (for the avoidance of doubt, without the delivery of a Funds Transfer Certificate, application of such funds to the Revenue Account, application of funds pursuant to the Collateral Agency Agreement or satisfaction of the Restricted Payment Conditions) to the Distribution Account, to the account of any Sponsor(s) (or their designee) or other Affiliate of the Company, or otherwise as may be specified by the Company in a written direction to the Collateral Agent from an Authorized Representative of the Company on the date specified in such written direction. The Collateral Agent will credit any such additional Applicable Reserve Letter of Credit to the applicable Reserve Account.

Any delivery of an Applicable Reserve Letter of Credit by the Company will constitute a representation to the Collateral Agent that such Applicable Reserve Letter of Credit satisfies the requirements of the Collateral Agency Agreement absent manifest error.

Invasion of Accounts

One (1) Business Day prior to any Transfer Date on which disbursements are required to be made from the Revenue Account pursuant to clause "First" through "Ninth" under "PROJECT ACCOUNTS AND FLOW OF FUNDS—Flow of Funds—Revenue Account—Upon the Substantial Completion Date" if the amounts on deposit in the Revenue Account or credited thereto (together with, in the case of the Senior Debt Service Reserve Account, any amounts available to be transferred to the Senior Debt Service Account from the Revenue Account or the Equity Lock-Up Account as described in "PROJECT ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Senior Debt Service Reserve Account") are insufficient to make such disbursements, the Collateral Agent will transfer funds, first, from the Equity Lock-Up Account, second, from the Voluntary Prepayment Account, third, from the Maintenance Reserve Account, in each case in order to fund shortfalls in the clauses described in "PROJECT ACCOUNTS AND FLOW OF FUNDS—Flow of FUNDS—Flow of Funds—Revenue Account and, fifth, from the Senior Interest Payment Sub-Account, in each case in order to fund shortfalls in the clauses described in "PROJECT ACCOUNTS AND FLOW OF FUNDS—Flow of Funds—Revenue Account—Upon the Substantial Completion Date" it being understood that no amounts will be withdrawn until amounts sufficient as of the date of such deficiency for all the purposes specified under higher-ranking clauses will have been withdrawn or set aside, in the amount of such deficiency.

Funds as Collateral

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

Investment

Funds in the Project Accounts may be invested and reinvested only in Permitted Investments in accordance with written instructions given to the Collateral Agent by the Company (prior to the occurrence of an Event of Default and, thereafter (so long as such Event of Default is continuing), as directed by the Trustee and in accordance with the written instructions of the Trustee) and, unless an Event of Default has occurred and is continuing, the Company is entitled to instruct the Collateral Agent to liquidate Permitted Investments for purposes of effecting any such Investment or reinvestment, upon permitted withdrawals from the respective accounts or for any other purpose permitted in the Collateral Agency Agreement; provided that, absent such instruction, such amounts held in the Project Accounts will be invested and reinvested in Permitted Investments as selected by the Company in advance (which may be in the form of a standing instruction). The Collateral Agent will not be required to take any action with respect to investing the funds in any Project Account in the absence of written instructions by the Company or

the Trustee (to the extent provided in accordance with the terms of the Collateral Agency Agreement). The Collateral Agent will not be liable for any loss resulting from any Permitted Investment or the sale or redemption thereof made in accordance with the terms of the Collateral Agency Agreement. If and when cash is required for disbursement in accordance with the Collateral Agency Agreement, the Collateral Agent is authorized, in the event the Company fails to direct the Collateral Agency Agreement, to cause Permitted Investments to be sold or otherwise liquidated into cash (without regard to maturity) in such manner as the Collateral Agent will deem reasonable and prudent under the circumstances. The Company acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Company the right to receive brokerage confirmations of security transactions as they occur, the Company specifically waives receipt of such confirmations to the extent permitted by law. The Collateral Agent will provide the Company periodic cash transaction statements which will include detail for all investment transactions made by the Collateral Agent under the Collateral Agent will provide the Company periodic cash transaction statements which will include detail for all investment transactions made by the Collateral Agent under the Collateral Agency Agreement.

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

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

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

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

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

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

Each withdrawal or transfer of funds from the Project Accounts (other than from the Construction Account and sub-accounts thereof or the Operating Account) by the Collateral Agent on behalf of the Company will be made pursuant to an executed Funds Transfer Certificate, which certificate (except as provided in the Collateral Agency Agreement) will be provided and prepared by the Company and will contain a certification by the Company that such withdrawal or transfer complies with the requirements of the Collateral Agency Agreement.

Unless a shorter period is acceptable to the Collateral Agent, such Funds Transfer Certificate relating to each applicable Project Account (other than the Operating Account) will be delivered to the Collateral Agent no later than three (3) Business Days prior to each date on which funds are proposed to be withdrawn or transferred. In the event that a certificate does not comply with the requirements of the Collateral Agency Agreement and the other Finance Documents, the Collateral Agent has the right to reject such certificate and the Company will not be entitled to cause the proposed withdrawal or transfer until it has submitted a revised and compliant certificate.

Notwithstanding anything to the contrary contained in Collateral Agency Agreement, upon receipt of a notice of an Event of Default and during the continuance of the related Event of Default, the Trustee may, following the taking of an Enforcement Action without consent of the Company, instruct the Collateral Agent in writing to apply proceeds of the Project Accounts (other than the PA Handback Account) to the payment of Secured Obligations, in accordance with the terms of the Collateral Agency Agreement and as described under "PROJECT ACCOUNTS AND FLOW OF FUNDS—Flow of Funds—Application of Proceeds", so long as such payments are on account of amounts due under the Finance Documents in respect of such Secured Obligations and at any time prior to the taking of an Enforcement Action, proceeds of the Project Accounts will be applied in the order described under "PROJECT ACCOUNTS AND FLOW OF FUNDS—Flow of FUNDS—Flow of Funds—Revenue Account—Upon the Substantial Completion Date"; provided that the Construction Account, the Senior Debt Service Reserve Account may only be applied as described under "PROJECT ACCOUNTS AND FLOW OF FUNDS—Construction Account", "—Senior Debt Service Reserve Account".

Termination of Project Accounts

Upon the satisfaction in full of the Secured Obligations, the Collateral Agency Agreement will terminate, and the Collateral Agent will, within thirty (30) days of receipt of a request from the Company, countersigned by the Trustee, and at the expense of the Company, close the Project Accounts (other than the Operating Account which will remain at the full discretion of the Company) and/or liquidate any investments credited thereto and/or transfer the funds deposited therein or credited thereto, as directed by the Company, provided, however, that prior to any such transfer, the Company shall certify to the Collateral Agent that it has complied with all rebate obligations required by the Non-Arbitrage Certificate with respect to any Bonds, including any final rebate computations and any required final payment to the Series 2018 Rebate Fund. Thereafter, the Collateral Agent will be released from any further obligation to (a) comply with entitlement orders originated by the Trustee to the extent that any of the Project Accounts (other than the Operating Account) is a "securities account" under the applicable provision of the UCC or (b) comply with instructions originated by the Trustee, to the extent that any of the Project Accounts (other than the Operating Account) is a "securities provision of the UCC or (c) comply with any obligation under any Finance Document except as specifically provided therein, in each case as contemplated therein.

Securities Intermediary

The Securities Accounts will be established and maintained as securities accounts with a securities intermediary. Each of the parties to the Collateral Agency Agreement, including U.S. Bank National Association, agrees that U.S. Bank National Association (or any successor thereto) will act as the Securities Intermediary under and for the purposes of the Collateral Agency Agreement and for so long as U.S. Bank National Association (or any successor thereto) is the Collateral Agent.

The Securities Intermediary agrees that any financial assets credited to such Securities Accounts, or any "securities entitlement" (as defined in Section 8-102(a)(17) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) with respect thereto, will not be subject to any Security Interest or right of set-off in favor of the Securities Intermediary or anyone claiming through the Securities Intermediary (other than the Collateral Agent).

It is the intent of the Collateral Agent and the Company that the Collateral Agent (for the benefit of the Secured Parties) be the entitlement holder with respect to the Securities Accounts. In any event, the Securities Intermediary agrees that it will comply with entitlement orders with respect to the Securities Accounts originated by the Collateral Agent without further consent by the Company or any other Person. The Securities Intermediary covenants that it will not agree with any Person other than the Collateral Agent to comply with entitlement orders with respect to the Securities Accounts orders with respect to the Securities Accounts orders.

The Securities Intermediary will at all times act as a "securities intermediary" (within the meaning of Section 8-102(a)(14) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) in maintaining the Securities Accounts and will credit to each Securities Account each financial asset to be held in or credited to each Securities Account pursuant to the Collateral Agency Agreement. To the extent, if any, that the Collateral Agent is deemed to hold directly, as opposed to having a security entitlement in, any

financial asset held by the Securities Intermediary for the Collateral Agent, the Securities Intermediary agrees that it is holding such financial asset as the agent of the Collateral Agent and expressly acknowledges and agrees that it has received notification of the Collateral Agent's security interest in such financial asset and that it is holding possession of such financial asset for the benefit of the Collateral Agent.

Each Securities Account will remain held at all times by a "securities intermediary" (within the meaning of Section 8-102(a)(14) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) that is a bank organized under the laws of the United States of America or any state thereof that has offices in the State of New York with unsecured long-term debt which will be rated "A" or better by S&P or "A2" or better by Moody's and that has a total capital stock and unimpaired surplus of not less than \$500,000,000. The Securities Intermediary will give notice to the Collateral Agent and the Company of the location of the Securities Accounts and of any change thereof prior to the use or change thereof. If at any time the Securities Intermediary will replace the Securities Intermediary as soon as practicable with a qualifying Securities Intermediary.

Any income received by the Collateral Agent with respect to the balance from time to time on deposit in each Securities Account, including any interest or capital gains on investments in overnight securities made with amounts on deposit in each Securities Account, will be credited to the applicable Securities Account. All right, title and interest in and to the cash amounts on deposit from time to time in each Securities Account together with any investments in overnight securities from time to time made pursuant this section will constitute part of the Collateral for the Secured Obligations and will be held for the benefit of the Secured Parties and the Company as their interests will appear under the Collateral Agency Agreement and will not constitute payment of the Secured Obligations (or any other obligations to which such funds are provided under the Collateral Agency Agreement to be applied) until applied thereto as provided in the Collateral Agency Agreement.

In the event that, notwithstanding the second paragraph of Securities Intermediary above, the Securities Intermediary has or subsequently obtains by agreement, operation of Law or otherwise a Security Interest in any of the Securities Accounts, or any financial asset credited thereto, or any "securities entitlement" (as defined in Section 8-102(a)(17) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) with respect thereto, the Securities Intermediary agrees that such Security Interest will be subordinate to the Security Interest of the Collateral Agent.

The Securities Intermediary agrees to comply with any and all instructions originated by the Collateral Agent directing disposition of funds in the Project Accounts and the Operating Account without any further consent of the Company.

Collateral and Remedies

Administration of Collateral

The Account Collateral will be held by the Collateral Agent for the benefit of the Secured Parties pursuant to the terms of the Collateral Agency Agreement and will be administered by the Collateral Agent in the manner contemplated by the Collateral Agency Agreement and by the other Security Documents.

Knowledge of Event of Default

Unless a responsible officer of the Collateral Agent will have actual knowledge thereof, the Collateral Agent will not be deemed to have any knowledge of any Event of Default unless and until it will have received written notice from the Company, the Trustee or any other Secured Party describing such Event of Default in reasonable detail. If the Collateral Agent receives any such notice from a Person other than the Trustee, the Collateral Agent will deliver a copy thereof to the other Secured Parties (or representatives thereof), and if the Collateral Agent receives any such notice from a Person other than the Collateral Agent also will deliver a copy thereof to the Trustee. Upon receipt of a notice of Event of Default, the Collateral Agent will provide notice thereof to MDOT pursuant to Section 5.1 of the PA Direct Agreement. Upon receipt of

notice of acceleration, the Collateral Agent will provide notice thereof to MDOT pursuant to Section 5.6 of the PA Direct Agreement.

Enforcement of Remedies

Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent will, subject to the other provisions of the Collateral Agency Agreement, take such Enforcement Action with respect to such Event of Default under the Indenture as will be directed by Trustee, acting in accordance with the terms of the Indenture (a "Direction Notice"); <u>provided</u> that, in the absence of a Direction Notice, the Collateral Agent may (but will not be obligated to) take such action (with notice thereof to MDOT and the Company), or refrain from taking such action, with respect to such Event of Default as it will deem advisable in the best interests of the Security Documents. Upon receipt by the Collateral Agent of a Direction Notice, the Collateral Agent will seek to enforce the Security Documents (with notice thereof to MDOT and the Company) and to realize upon the Collateral in accordance with such Direction Notice; <u>provided</u>, <u>however</u>, that the Collateral Agent will not be obligated to follow any Direction Notice if the Collateral Agent reasonably determines that such Direction Notice is in conflict with any provisions of any Applicable Law or any Security Document, and the Collateral Agent will not, under any circumstances, be liable to any Secured Party, the Company or any other Person for following a Direction Notice. The Collateral Agent will not take any Enforcement Action as the co-obligee under the DB Liquidity Bond unless an Event of Default under the Senior Loan Agreement has occurred and is continuing.

Remedies of the Secured Parties

Unless otherwise consented to in writing by the Trustee (acting in accordance with the terms of the Indenture), no Secured Party, individually or together with any other Secured Parties, will have the right, nor will it (i) exercise or enforce any of the rights, powers or remedies which the Collateral Agent is authorized to exercise or enforce under the Collateral Agency Agreement or any of the other Security Documents, (ii) sue for or institute any creditor's process (including an injunction garnishment, execution or levy, whether before or after judgment) in respect of any Secured Obligation (whether or not for the payment of money) owing to it under or in respect of any Finance Document, (iii) take any step for the winding-up, administration of or dissolution of, or any insolvency proceeding in relation to, the Company, or for a voluntary arrangement, scheme of arrangement or other analogous step in relation to the Company, or (iv) apply for any order for an injunction or specific performance in respect of the Company in relation to any of the Finance Documents.

Secured Party Information

In the event that the Collateral Agent proceeds to foreclose upon, collect, sell or otherwise dispose of or take any other action with respect to any or all of the Collateral or to enforce any provisions of the Security Documents or takes any other action pursuant to any provision of the Security Documents or requests directions from the Trustee as provided therein, upon the request of the Collateral Agent, each of the other Secured Parties (or any agent of or representative for such Secured Party) will promptly deliver a written notice to the Collateral Agent and each of the other Secured Parties setting forth (a) the aggregate amount of Secured Obligations owing to such Secured Party under the applicable Finance Document as of the date specified by the Collateral Agent in such request and (b) such other information as the Collateral Agent may reasonably request.

Application of Proceeds

Following the taking of an Enforcement Action, notwithstanding any provision contrary in the Collateral Agency Agreement (other than "Construction Account" above), all proceeds received by the Collateral Agent pursuant to the exercise of any rights or remedies accorded to the Collateral Agent pursuant to, or by the operation of any of the terms of, any of the Security Documents, including insurance proceeds, Termination Amount payments, asset sale proceeds or proceeds from the sale or disposition of Collateral or other Enforcement Action and amounts available in or otherwise transferred from the Project Accounts will be applied promptly by the Collateral Agent as directed by the Trustee, as follows:

<u>First</u>, to the *pro rata* payment of the indemnities, fees, administrative costs and expenses due to the Senior Secured Parties under the Finance Documents, if any;

<u>Second</u>, to the *pro rata* payment of all accrued and unpaid interest, principal and premium (by acceleration or otherwise), if any, due on all Senior Secured Obligations;

<u>Third</u>, to the *pro rata* payment of all other amounts, if any, due and payable under the Finance Documents to the Secured Parties;

<u>Fourth</u>, to all accrued and unpaid interest, principal and premium (by acceleration or otherwise) on any Permitted Subordinated Indebtedness;

Fifth, to unsecured creditors; and

<u>Sixth</u>, upon the payment in full of all amounts in accordance with clauses "<u>First</u>" through "<u>Fifth</u>" hereof, to pay to the Company, or as may be directed by the Company, or as a court of competent jurisdiction may direct, any Proceeds then remaining.

If at any time any Secured Party will for any reason obtain any payment or distribution upon or with respect to the Secured Obligations contrary to the terms of the Collateral Agency Agreement or the Indenture, whether as a result of the Collateral Agent's exercise of any Enforcement Action in respect of the Collateral or otherwise, such Secured Party agrees that it will have received such amounts in trust, and will promptly remit such amount so received in error to the Collateral Agent to be applied in accordance with the terms of the Collateral Agency Agreement.

Miscellaneous Provisions

Amendments; Waivers

Any term, covenant, agreement or condition of the Collateral Agency Agreement or any of the other Security Documents may be amended or waived only by an instrument in writing signed by each of the Collateral Agent (acting upon the instruction of the Trustee), the Company and the Trustee (acting in accordance with the terms of the Indenture); <u>provided</u> that the consent of the Securities Intermediary will be required for any amendment to the provision described under "The Project Accounts—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default" or any other amendment that would modify the rights or obligations of the Securities Intermediary.

The waiver (whether express or implied) by the Collateral Agent of any breach of the terms or conditions of the Collateral Agency Agreement, and the consent (whether express or implied) of the Trustee will not prejudice any remedy of the Collateral Agent or Trustee in respect of any continuing or other breach of the terms and conditions of the Collateral Agency Agreement, and will not be construed as a bar to any right or remedy which the Collateral Agent or the Trustee would otherwise have on any future occasion under the Collateral Agency Agreement.

No failure to exercise nor any delay in exercising, on the part of the Collateral Agent or any other Secured Party, of any right, power or privilege under the Collateral Agency Agreement will operate as a waiver thereof; further, no single or partial exercise of any right, power or privilege under the Collateral Agency Agreement will preclude any other or further exercise thereof or the exercise of any other right, power or privilege available to it. All remedies under the Collateral Agency Agreement and under the other Security Documents are cumulative and are not exclusive of any other remedies that may be available to the Collateral Agent, whether at law, in equity or otherwise.

Governing Law

The Collateral Agency Agreement and the rights and obligations of the parties under the Collateral Agency Agreement will be governed by and construed in accordance with the laws of the State of New York.

Collateral Agent's Rights

If at any time the Collateral Agent is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Collateral (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of such property), the Collateral Agent is authorized to comply therewith in any manner it or legal counsel of its own choosing reasonably deems appropriate; and if the Collateral Agent complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Collateral Agent will not be liable to any of the parties to the Collateral Agency Agreement or to any other Person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

In the event of any dispute between or conflicting claims by or among the Company, the Secured Parties and/or any other Person or entity with respect to any property being held by the Collateral Agent in connection with the Collateral Agency Agreement or the other Security Documents, the Collateral Agent will be entitled, in its sole discretion, to refuse to comply with any and all claims, demands or instructions with respect to such property so long as such dispute or conflict continues, and the Collateral Agent will not be or become liable in any way to the Company, the Secured Parties or any other party for failure or refusal to comply with such conflicting claims, demands or instructions. The Collateral Agent will be entitled to refuse to act until, in its sole discretion, either (i) such conflicting or adverse claims or demands will have been determined by a final order, judgment or decree of a court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in a writing reasonably satisfactory to the Collateral Agent or (ii) the Collateral Agent will have received security or an indemnity reasonably satisfactory to it sufficient to hold it harmless from and against any and all losses which it may incur by reason of so acting. Any court order, judgment or decree will be accompanied by a legal opinion by counsel for the presenting party, reasonably satisfactory to the Collateral Agent, to the effect that said order, judgment or decree represents a final adjudication of the rights of the parties by a court of competent jurisdiction, and that the time for appeal from such order, judgment or decree has expired without an appeal having been perfected. The Collateral Agent will act on such court order and legal opinions without further question.

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each Person who opens an account. When any account or sub-account is opened, the Collateral Agent will be entitled to such information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

Insurer as Third-Party Beneficiary

To the extent that the Collateral Agency Agreement confers upon or gives or grants to the Insurer, if any, any right, remedy or claim thereunder, the Insurer is intended to be and is explicitly recognized as being a thirdparty beneficiary of such right, remedy or claim and may enforce any such right, remedy or claim conferred, given or granted thereunder.

APPENDIX E

SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

Summary of the Indenture between the Michigan Strategic Fund and U.S. Bank National Association, as Trustee

The following is a summary of selected provisions of the Indenture relating to the Project and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement. A copy of such agreement is available, free of charge, upon request from the Company or the Trustee. Unless otherwise stated, any reference herein to any agreement means such agreement and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof. Capitalized terms used but not defined in this summary have the meanings set forth in Appendix A—"DEFINITIONS OF TERMS."

The Indenture

The parties have entered into the Indenture in connection with the issuance of the Series 2018 Bonds, the proceeds of which will be distributed in the form of the Series 2018 Loan under the Senior Loan Agreement to the Company.

Grant of Trust Estate

The Issuer, in consideration for the purchase of the Bonds by the Owners and other good and valuable consideration, the receipt and sufficiency of which are acknowledged in the Indenture, in order to secure the payment of the Bonds and to secure the performance and observance of all the covenants and conditions set forth in the Bonds and the Indenture, has executed and delivered the Indenture and has pledged and assigned or has required to be pledged and assigned to the Trustee and to its successors and assigns forever and, subject to the Security Documents, for the benefit of the Owners, all of the following described property, franchises, rights and income, including any title or interest therein acquired after the date of the Indenture but excluding therefrom the Reserved Rights (collectively, the "Trust Estate"):

(a) all right, title and interest of the Issuer (except for Reserved Rights) in, to and under the Senior Loan Agreement and any Additional Parity Bonds Loan Agreement (if executed), the present and continuing right of the Issuer to make claim for, collect, receive and receipt for any of the sums, amounts, income, revenues, issues and profits and any other sums of money payable or receivable under the Senior Loan Agreement and any Additional Parity Bonds Loan Agreement (if executed), to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Issuer is entitled to do under such Senior Loan Agreement and any Additional Parity Bonds Loan Agreement (if executed);

(b) all moneys from time to time held by the Trustee under the Indenture in any Fund or account other than (i) the Series 2018 Rebate Fund and (ii) any Defeasance Escrow Account;

(c) any Security Interest granted to the Collateral Agent for the benefit of the Trustee (as a Secured Party) on behalf of the Owners of the Bonds under the Security Documents, including without limitation in respect of the Collateral pledged thereunder, and the present and continuing right of the Collateral Agent on behalf of the Trustee (as a Secured Party) to make claim for, collect, receive and receipt for any of the sums, amounts, income, revenues, issues and profits and any other sums of money payable or receivable under the Security Documents, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Collateral Agent on behalf of the Trustee (as a Secured Party) is entitled to do under such Security Documents;

(d) subject to the Collateral Agency Agreement, all funds deposited from time to time and earnings thereon in the Revenue Account, the Construction Account, the Senior Debt Service Reserve Account, the Mandatory Prepayment Account, the Maintenance Reserve Account and the Equity Lock-Up Account, any and all other accounts established from time to time pursuant to the Collateral Agency Agreement, and any and all sub-accounts created thereunder, each held by the Collateral Agent under the Collateral Agency Agreement; and

(e) any and all other property, revenues, rights or funds from time to time after the Closing Date by delivery or by writing of any kind specifically granted, assigned or pledged as and for additional security for any of the Bonds, the Senior Loan Agreement or any Additional Parity Bonds Loan Agreement (if executed) in favor of the Trustee (as a Secured Party) or the Collateral Agent on behalf of the Trustee (as a Secured Party), including any of the foregoing granted, assigned or pledged by the Company or any other Person on behalf of the Company, and the Trustee (as a Secured Party) and/or the Collateral Agent on behalf of the Trustee (as a Secured Party) is authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms of the Indenture.

Time of Pledge; Delivery of Trust Estate

The creation, perfection, enforcement, and priority of the pledge of the Trust Estate by the Issuer to secure or pay the Bonds as provided in the Indenture shall be governed by the Act, the Bond Authorizing Resolution and the Indenture. The Trust Estate pledged for the payment of the Bonds, as received by or otherwise credited to the Issuer, shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act and the lien of any such pledge is valid and binding against all parties having claims of any kind against the State or any governmental agency of the State, irrespective of whether such parties have notice thereof, and shall create a perfected security interest for all purposes of Chapter 1309 of the Revised Code, without the necessity for separation or delivery of funds or for the filing or recording of the bond proceedings by which such pledge is created or any certificate, statement, or other document with respect thereto; and the pledge of such pledged receipts and special funds is effective and the money therefrom and thereof may be applied to the purposes for which such pledge has been made without necessity for any act of appropriation.

Amounts Received Pursuant to the Collateral Agency Agreement

All funds provided pursuant to the Collateral Agency Agreement for deposit into any Fund or account of the Indenture will be available together with other moneys then on deposit in such Funds and Accounts to be used for the applicable purposes as set forth in the Indenture.

Series 2018 Bonds Secured on Equal and Proportionate Basis

The Trust Estate shall be held by the Trustee for the equal and proportionate benefit of the Owners and any of them, without preference, priority or distinction as to lien or otherwise.

Establishment of Funds and Accounts

The following Funds and Account will be created and established with the Trustee under the Indenture:

(a) the Series 2018 Debt Service Fund, and within the Series 2018 Debt Service Fund, three accounts designated (i) the Series 2018 Interest Account, (ii) the Series 2018 Principal Account and (iii) the Series 2018 Redemption Account; and

(b) the Series 2018 Rebate Fund.

Notwithstanding anything in the Indenture to the contrary, the Trustee may from time to time after the Closing Date establish and maintain additional funds, accounts or subaccounts necessary or useful in connection with any other provision of the Indenture or any Supplemental Indenture or to the extent deemed necessary by the Trustee.

Series 2018 Debt Service Fund

There shall be deposited into the appropriate account of the Series 2018 Debt Service Fund: (i) amounts remitted or transferred to such account from the Revenue Account pursuant to the Collateral Agency Agreement; (ii) any moneys paid to the Trustee pursuant to the Indenture and the Collateral Agency Agreement with respect to the

Redemption Price of the Series 2018 Bonds; (iii) any amounts remitted or moneys transferred to such account from the Senior Debt Service Reserve Account pursuant to the Collateral Agency Agreement; (iv) any amounts remitted or moneys transferred to such account from the Construction Account pursuant to the Collateral Agency Agreement; (v) any moneys deposited into such account pursuant to the Indenture upon an Event of Default as described below under the heading "Use of Moneys Received from Exercise of Remedies" and the Collateral Agency Agreement; and (vi) all other moneys received by the Trustee that are accompanied by directions that such moneys are to be deposited into such account.

If on any Interest Payment Date the funds on deposit in the Series 2018 Interest Account are not sufficient to pay the Interest Payment in full on such Interest Payment Date, the Trustee shall transfer moneys from the Series 2018 Principal Account to the Series 2018 Interest Account sufficient to make such payment. If on any Principal Payment Date there exists both (i) funds on deposit in the Series 2018 Interest Account in excess of the amount necessary to pay the Interest Payment due on such date, and (ii) insufficient funds on deposit in the Series 2018 Principal Account to make the principal payment due on such date in full, the Trustee shall transfer all or such portion of such excess funds on deposit in the Series 2018 Interest Account to the Series 2018 Principal Account as necessary to provide for such principal payment in full.

Moneys in each account of the Series 2018 Debt Service Fund shall be used solely for the payment (within each account) of the principal of and interest on and the Redemption Price of the Series 2018 Bonds; <u>provided</u>, that (i) moneys paid by the Issuer pursuant to the Indenture and moneys transferred pursuant to the Collateral Agency Agreement shall be used to pay the Redemption Price of the Series 2018 Bonds and (ii) moneys held in such account of the Series 2018 Debt Service Fund following an acceleration of the Series 2018 Bonds upon the occurrence of and during the continuance of an Event of Default shall be used as provided below under the heading "Use of Moneys Received from Exercise of Remedies" and the Collateral Agency Agreement.

Series 2018 Rebate Fund

The Series 2018 Rebate Fund shall be for the sole benefit of the United States of America and shall not be subject to the claim of any other Person, including without limitation, the Owners. The Series 2018 Rebate Fund is established for the purpose of complying with Section 148 of the Code and the Treasury Regulations promulgated pursuant thereto. There shall be deposited into the Series 2018 Rebate Fund all amounts to be transferred to such Fund pursuant to the Collateral Agency Agreement. The money deposited in the Series 2018 Rebate Fund, together with all investments thereof and investment income therefrom, shall be held in trust and applied solely as provided in the Non-Arbitrage Certificate. The Series 2018 Rebate Fund is not a portion of the Trust Estate and is not subject to any lien under the Indenture. Notwithstanding the foregoing, the Trustee with respect to the Series 2018 Rebate Fund is afforded all the rights, protections and immunities otherwise accorded to it under the Indenture. Notwithstanding to the contrary, neither the Issuer nor the Trustee shall be responsible or liable for any loss, liability or expense incurred as a result of the failure of the Company to fulfill its obligation with respect to the calculation and payment of the rebate amount. The Issuer and the Trustee shall be entitled to rely conclusively upon the calculations provided by the Company.

The Trustee, at the direction of the Company given in accordance with the Senior Loan Agreement, shall apply or cause to be applied the amounts in the Series 2018 Rebate Fund at the times and in at least the amounts required by Section 148 of the Code solely for the purpose of paying the United States of America in accordance with Section 148 of the Code.

Moneys held in the Series 2018 Rebate Fund shall be invested and reinvested upon the written direction of the Company by the Trustee in Permitted Investments that mature at such times specified in such written direction, which times shall not be later than such times as shall be necessary to provide money when needed for payments to be made from such Series 2018 Rebate Fund and in accordance with the provisions of the Indenture. The interest earned on moneys or investments in the Series 2018 Rebate Fund shall be retained in the Series 2018 Rebate Fund. Moneys held in the Series 2018 Rebate Fund shall be held by the Trustee for a period of not less than 75 days following the redemption or final maturity of the Bonds.

Moneys to be Held in Trust

The Series 2018 Debt Service Fund and any other Fund or account created under the Indenture (excluding the Series 2018 Rebate Fund and any Defeasance Escrow Account), shall be held by the Trustee in trust, for the benefit of the Owners as specified in the Indenture. The Series 2018 Rebate Fund shall be held by the Trustee for the purpose of making payments to the United States as provided above under the heading "Series 2018 Rebate Fund". Any Defeasance Escrow Account shall be held solely for the benefit of the Owners to be paid therefrom as provided in the agreement governing such Defeasance Escrow Account.

Investment of Moneys

All moneys held as part of any Fund or account shall be deposited or invested and reinvested by the Trustee, at the written direction of the Company, in Permitted Investments; <u>provided</u>, <u>however</u>, that (x) moneys in the Defeasance Escrow Account may only be invested in Defeasance Securities.

Earnings from the investment of moneys held in any Fund or account and losses from the investment of moneys held in any Fund or Account shall be credited or charged against the Fund or Account in which they were realized.

The Trustee shall sell and reduce to cash a sufficient amount of the investments held in any Fund or account whenever the cash balance therein is insufficient to make any payment to be made therefrom and the Trustee shall not be liable or responsible for any loss or tax resulting from such sale.

The Issuer and the Company (by its execution of the Senior Loan Agreement) acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Issuer or the Company the right to receive brokerage confirmations of security transactions as they occur, the Issuer and the Company specifically waive receipt of such confirmations to the extent permitted by Law. The Trustee will furnish the Issuer and the Company periodic cash transaction statements which shall include detail for all investment transactions made by the Trustee under the Indenture.

Covenants of the Issuer

The Issuer has made representations, warranties and covenants under the Indenture, including, but not limited to the following:

(a) The Issuer has not, except pursuant to the Indenture, pledged, granted or created in any manner any Security Interest on, or rights with respect to, the Trust Estate.

(b) The execution, delivery and performance of its obligations under the Indenture by the Issuer do not and will not conflict with or result in a violation or a breach of any Law or the terms, conditions or provisions of any restriction under any Law, contract, agreement or instrument to which the Issuer is now a party or by which the Issuer is bound, or constitute a default under any of the foregoing. All consents, approvals, authorizations and orders of governmental or regulatory authorities which are required to be obtained by the Issuer for the consummation of the transaction contemplated by the Indenture have been obtained. No authority or proceedings for issuance of the Series 2018 Bonds or documents in connection therewith have been repealed, revoked or rescinded or superseded.

(c) To the best knowledge of the Issuer there is no action, suit or proceeding at law or in equity, pending or threatened against the Issuer to restrain or enjoin the issuance or sale of the Series 2018 Bonds or in any way contesting the validity or affecting the power of the Issuer with respect to the issuance and sale of the Series 2018 Bonds or the documents or instruments executed by the Issuer in connection therewith or the existence of the Issuer or the power or the right of the Issuer to finance the Project.

(d) It is acknowledged and agreed by the parties to the Indenture that the representations and warranties made by the Issuer herein are made solely by the Issuer and not by any individual executing the Indenture in his or her own capacity, and no liability shall be imposed, directly or indirectly, on such individual. The Issuer agrees that it will cooperate at no expense to Issuer with the Company in connection

with their obligation to cause all documents, statements, memoranda or other instruments to be registered, filed or recorded in such manner and at such places as may be required by Law to fully protect the security of the registered owners and the right, title and interest of the Trustee and Collateral Agent in and to the Security Interests (whether now existing or arising after the Closing Date) and any moneys or securities held under the Indenture or any part thereof (including any re-filings, continuation statements or such other documents as may be required). The Issuer shall have no responsibilities for such filings whatsoever, other than executing the documents reasonably requested by the Company. The Issuer's approval shall not be required prior to the release of liens that have been properly discharged.

(e) The Issuer will not, except as specifically permitted pursuant to the Indenture or pursuant to any Security Document or with respect to any other Permitted Security Interest, pledge, grant, create or permit to exist in any manner any Security Interest on, or rights with respect to, the Trust Estate, except for a contract or agreement under which the financial obligations of the Issuer and the rights of any Person to require the Issuer to make any payment are (a) limited to (i) moneys in the Funds and accounts that are to be used pursuant to such contract or agreement for the purposes for which moneys in such Funds and Accounts may be used pursuant to the terms of the Indenture or (ii) moneys of the Issuer that are not part of the Trust Estate; and (b) subordinate to the rights of the Owners under the Indenture.

(f) The Issuer shall not take any action or omit to take any action with respect to the Bonds, the proceeds of the Bonds, the Trust Estate, the Project or any other funds or property of the Issuer, and it will not permit, to the extent of its control, any other Person to take any action or omit to take any action with respect to the Bonds, the Trust Estate, the Project or any other funds or property of the Issuer, if such action or omission would cause interest on any of the Bonds (for which the interest is federally tax-exempt) to be included in gross income for federal income tax purposes. In furtherance of this covenant, the Issuer agrees to comply with the procedures set forth in the applicable Non-Arbitrage Certificate for the Bonds. The covenants set forth in this paragraph shall remain in full force and effect notwithstanding the payment in full or defeasance of the Bonds, until the date on which all of the Issuer obligations in fulfilling such covenants have been satisfied. Pursuant to the Senior Loan Agreement and the Additional Parity Bonds Loan Agreement (if executed), all investments of the proceeds of the Bonds will be at the direction of the Company.

(g) The Issuer shall not create, incur, assume or permit to exist any indebtedness of the Issuer with respect to the Trust Estate pledged under the Indenture, other than the Bonds, unless the Company shall request the Issuer to issue Additional Parity Bonds pursuant to and in accordance with the Indenture.

Events of Default

Any of the following shall constitute an "Event of Default" under the Indenture with respect to all of the outstanding Bonds:

(a) Failure to pay any portion of the principal of or Redemption Price on, any outstanding Bond within three (3) Business Days after such principal or Redemption Price is due and payable;

(b) Failure to pay any portion of interest on any outstanding Bond within three (3) Business Days after such interest payment is due and payable;

(c) Failure by the Issuer to cure any noncompliance with any other provision of the Indenture within sixty (60) days after receiving written notice of such noncompliance from the Trustee or the Collateral Agent (with a copy to the Company and the Collateral Agent or Trustee, as applicable) with respect to the Bonds;

(d) A Senior Loan Agreement Default shall have occurred and be continuing; or

(e) The occurrence and continuance, with respect to the Issuer, of a Bankruptcy Event (provided that solely for purposes of this clause, all references to the "Borrower" within the definition of the term "Bankruptcy Event" shall be substituted with the "Issuer");

<u>provided</u> that where any such failure to pay described in clauses (a) or (b) above is a result of a technical or an administrative error caused by a party other than the Company in connection with the administration of the accounts from which such payment is made or is due to be made, no Event of Default shall occur until failure to pay within five (5) Business Days after notice is received by Company from the Trustee requiring such payment to be made.

Remedies Following and During the Continuance of an Event of Default

Upon the occurrence and during the continuance of an Event of Default, any Owner or the Issuer may deliver to the Trustee a written notice, with a copy to the Issuer, the Collateral Agent, MDOT and the Company, that an Event of Default has occurred and is continuing. The Trustee shall not be deemed to have any knowledge of the occurrence of an Event of Default, except with respect to an "Event of Default" described in clauses (a) or (b) above under the heading "Events of Default" or if such Event of Default is a result of a Bankruptcy Event with respect to the Company pursuant to the Senior Loan Agreement, unless and until it has received such a notice from the relevant party.

At any time during which an Event of Default has occurred and is continuing commencing on the date of delivery to the Trustee of the notice described in (a) above (except with respect to an Event of Default described in clauses (a) or (b) above under the heading "Events of Default" or if such Event of Default is a result of a Bankruptcy Event with respect to the Company pursuant to the Senior Loan Agreement in which no notice shall be required), the Owners of not less than twenty-five percent (25%) of the aggregate principal amount of outstanding Bonds shall have the right to give the Trustee one or more enforcement directions directing the Trustee to exercise on behalf of the Owners, subject to the terms of the Collateral Agency Agreement and the next paragraph, whatever action at law or in equity may appear necessary or desirable to enforce the rights of the Bondholders on behalf of the Bondholders.

Upon the occurrence and during the continuance of an Event of Default, if so instructed by the Majority Holders, the Trustee, subject to the immediately succeeding provisos, shall declare all Bonds, all interest accrued and unpaid thereon, and all other amounts payable in respect of the Bonds to be due and payable, whereupon the same shall become immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are waived by the Issuer; <u>provided</u>, that the Bonds may be accelerated pursuant to this paragraph only to the extent that (i) in the case of the Series 2018 Bonds, the Series 2018 Loan is concurrently being accelerated pursuant to the Senior Loan Agreement or (ii) in the case of any Additional Parity Bonds, the applicable Additional Parity Bonds have been loaned to the Company) is concurrently being accelerated pursuant to the applicable Additional Parity Bonds Loan Agreement.

The Majority Holders may, by written notice to the Trustee, on behalf of all of the Owners, rescind any acceleration and its consequences, if such rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest or premium that has become due solely because of the acceleration) have been cured or waived and the Issuer has paid or deposited, or caused to be paid or deposited, with the Trustee a sum sufficient to pay all sums paid or advanced by the Trustee under the Indenture and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel. In case of any such rescission, then and in every such case the Issuer, the Trustee and the Owners shall be restored to their former positions and rights.

All rights and actions and claims under the Indenture may be prosecuted and enforced by the Trustee on behalf of the Owners. In the case of pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization or other similar judicial proceeding relative to the Issuer or the Trust Estate, the Trustee, subject to the Collateral Agency Agreement, shall be entitled to file and prove a claim for the amount of the Issuer's and the Company's obligations to the Owners owing and unpaid and to file such other papers or documents as may be necessary in order to have the claims of the Owners allowed in such judicial proceeding and, to the extent permitted by Law, to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same in accordance with the terms in the Indenture and of the Collateral Agency Agreement.

Neither the Owners of the Bonds or the Trustee shall name or join the State, MDOT, any other agency, instrumentality or political subdivision of the State, or any elected official, member, director, officer, employee, agent or representative or any of them in any legal proceeding seeking collection of amounts owed with respect to

the Bonds or the foreclosure or other enforcement of the obligations owed to the Owners of the Bonds. Neither the Owners of the Bond or the Trustee shall seek any damages or other amount from the State, MDOT, 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, for amounts owed with respect to the Bonds.

Use of Moneys Received from Exercise of Remedies

After an acceleration as described above under the heading "Remedies Following and During the Continuance of an Event of Default," moneys received by the Trustee from the Collateral Agent pursuant to and in accordance with the Collateral Agency Agreement, the Indenture, and the other Security Documents in respect of the Issuer's obligations under the Indenture shall be applied first to pay the reasonable and proper fees and expenses (including the reasonable fees and expenses of counsel) of and indemnification payments owing to the Trustee pursuant to the Finance Documents, including those incurred in connection with the exercise of remedies following such Event of Default, and thereafter remaining amounts shall be applied promptly by the Trustee as follows:

First, to the payments then due and payable by the Company to the Series 2018 Rebate Fund;

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

<u>Third</u>, to the pro rata payment of all accrued and unpaid interest, principal and premium (by acceleration or otherwise), if any, due on all Bonds;

<u>Fourth</u>, to the pro rata payment of all other amounts, if any, due and payable under the Finance Documents to the Secured Parties; and

<u>Fifth</u>, upon the payment in full of all amounts in accordance with clauses "First" through "Fourth" hereof, to pay to the Company, or as may be directed by the Company, or as a court of competent jurisdiction may direct, any Proceeds then remaining.

Limitations on Rights of Owners Acting Individually

Subject to the Collateral Agency Agreement, no Owner shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any remedy under the Indenture or for the enforcement of the terms of the Indenture, unless an Event of Default under the Indenture has occurred and is continuing and (i) the Owner has made a written request to the Trustee, and has given the Trustee sixty (60) days, to take such action in its capacity as Trustee, (ii) the Trustee shall have been provided reasonable security and indemnity against the cost, expenses and liabilities to be incurred in connection with such action to be taken, (iii) the Trustee shall have refused or unreasonably neglected to comply with such request and (iv) during such sixty (60) day period, no direction inconsistent with such written request shall have been delivered to the Trustee by the Majority Holders. Nothing in this paragraph shall affect or impair the right of the Owner to enforce the payment of the principal of and interest on or the Redemption Price of any Bond at and after the date such payment is due, subject, however, to the limitations on remedies set forth above under the heading "Remedies Following and During the Continuance of an Event of Default". In addition, any action by any Owner taken with respect to the Trust Estate shall only be taken in accordance with the provisions of the Indenture, described above under the heading "Remedies Following and During the Continuance of an Event of Default."

Waivers of Events of Default

The Trustee, notwithstanding anything else to the contrary contained in the Indenture, shall waive any Event of Default upon the written direction of the Owners of not less than twenty-five percent (25%) of the aggregate principal amount of the outstanding Bonds; <u>provided</u>, <u>however</u>, that any Event of Default in the payment of the principal of or interest on, or the Redemption Price or purchase price of, any Bond when due shall not be waived (except as contemplated in the fourth paragraph above under the heading "Remedies Following and During the Continuance of an Event of Default") without the consent of the Owners of 100% of the Bonds, unless, prior to such waiver, all such amounts (with interest on amounts past due on any Bond at the interest rate on such Bond) and all expenses of the Trustee (with interest on amounts past due with respect to any expenses of the Trustee at a rate per year equal to the highest yield on any series of the outstanding Bonds) in connection with such Event of Default have been paid or provided for. In case of any such waiver, then and in every such case the Issuer, the Trustee and

the Owners shall be restored to their former positions and rights under the Indenture, but no such waiver shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Resignation or Replacement of Trustee

The present Trustee or any future Trustee may resign by giving written notice to the Issuer and the Collateral Agent (with a copy to the Company) not less than sixty (60) days before such resignation is to take effect. Such resignation shall take effect only upon the appointment of and acceptance by a successor qualified as provided in the third paragraph below under the heading "Resignation or Replacement of Trustee". If no successor is appointed within sixty (60) days following the date designated in the notice for the Trustee's resignation to take effect, the resigning Trustee may petition, at the reasonable expense of the Company, a court of competent jurisdiction for the appointment of a successor. The present or any future Trustee may be removed at any time by the Issuer in the event the Issuer reasonably determines that the Trustee is not duly performing its obligations under the Indenture or that such removal is in the best interests of the Issuer or the Owners.

In case the present or any future Trustee shall at any time resign or be removed or otherwise become incapable of acting, a successor may be appointed by the Issuer, with the written consent of the Company (such consent not to be unreasonably withheld, delayed or conditioned). Upon making any such appointment, the Issuer shall forthwith give notice thereof to each Owner, which notice may be given concurrently with the notice of resignation given by any resigning Trustee.

Every successor Trustee shall be a bank or trust company in good standing, qualified to do business in the State, duly authorized to exercise trust powers and subject to examination by federal or state authority, qualified to act under the Indenture and having a capital and surplus of not less than \$500,000,000. Any successor Trustee appointed under the Indenture shall execute, acknowledge and deliver to the Issuer (with a copy to the Company and Collateral Agent) an instrument accepting such appointment under the Indenture, and thereupon such successor shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its predecessor in the trust under the Indenture with like effect as if originally named as Trustee in the Indenture; but the Trustee retiring shall, nevertheless, on the written demand of its successor, or upon written demand by the Issuer, execute and deliver an instrument conveying and transferring to such successor, which shall duly assign, transfer and deliver to the successor all properties and moneys held by it under the Indenture. Should any instrument in writing from the Issuer be required by any successor for more fully and certainly vesting in and confirming to such successor the properties, rights, powers and duties vested or intended to be vested in the predecessor under the Indenture, such instrument in writing shall, at the reasonable discretion of the Issuer, be made, executed, acknowledged and delivered by the Issuer on request of such successor.

Every successor Trustee appointed under the Indenture shall execute, acknowledge and deliver to its predecessor and also to the Issuer and the Company an instrument in writing accepting such appointment under the Indenture, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Issuer, the Company, or any respective successor thereof, execute and deliver an instrument transferring to such successor all the estates, properties, rights, powers and trusts of such predecessor under the Indenture; and every predecessor Trustee shall deliver all securities and moneys held by it as the Trustee under the Indenture to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor Trustee the Trust Estate, rights, powers and duties vested or intended to be vested in the predecessor under the Indenture, together with all other resignation or removal of the Trustee and the appointment of a successor under the Indenture, together with all other instruments provided for in the Indenture and described under the heading "Resignation or Replacement of Trustee" shall be filed and/or recorded.

Supplemental Indentures Not Requiring Consent of Owners

The Issuer and the Trustee may, without the consent of, or notice to, the Owners, but with the written consent of the Company, enter into a Supplemental Indenture for any one or more or all of the following purposes;

<u>provided</u>, however, that, to the extent there are Insured Series 2018 Bonds, no Supplemental Indenture that adversely affects the rights and interests of the Insurer in its capacity as Insurer may be entered into without the written consent of the Insurer:

(a) to provide for the issuance by the Issuer of the Additional Parity Bonds in accordance with "Additional Parity Bonds" below;

(b) to add additional covenants to the covenants and agreements of the Issuer set forth in the Indenture;

(c) to add additional revenues, properties or collateral to the Trust Estate;

(d) to cure any ambiguity, or to cure, correct or supplement any defect, omission or inconsistent provision contained in the Indenture, <u>provided</u> that such action shall not materially adversely affect the rights of the Owners;

(e) to amend any existing provision in the Indenture or to add additional provisions which, in the opinion of Bond Counsel, are necessary or advisable (i) to qualify, or to preserve the qualification of, the interest on any Bonds for exclusion from gross income for federal income tax purposes; (ii) to qualify, or to preserve the qualification of, the Indenture or any Supplemental Indenture under the federal Trust Indenture Act of 1939, as amended; or (iii) to qualify, or preserve the qualification of, any Bonds for an exemption from registration or other limitations under the laws of any state or territory of the United States and under any federal law of the United States;

(f) to amend any provision in the Indenture relating to the Series 2018 Rebate Fund if, in the opinion of Bond Counsel, such amendment does not adversely affect the excludability of the interest on the Bonds from gross income for federal income tax purposes;

(g) to provide for or eliminate book-entry registration of any of the Bonds;

(h) to obtain or maintain a rating (but not a particular rating level) of the Bonds by a Nationally Recognized Rating Agency;

(i) to facilitate the receipt of moneys;

(j) to establish additional funds, accounts or subaccounts necessary or useful in connection with any other provision of this section; or

(k) in connection with any other change which does not materially adversely affect the rights of the Owners, including, without limitation, conforming the Indenture to the terms and provisions of the Project Agreement, which may be based upon a legal opinion with respect thereto of counsel selected by the Trustee, which legal counsel may rely on a certificate of an investment banker or financial advisor with respect to financial matters.

Supplemental Indentures Requiring Consent of Owners

The Issuer and the Trustee may enter into a Supplemental Indenture for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or modifying the rights of the Owners in any way under the Indenture (other than as contemplated above under the heading "Supplemental Indentures Not Requiring Consent of Owners") with the written consent of the Owners of a majority in the aggregate principal amount of the then outstanding Bonds or of any series of Bonds affected by the proposed amendment and with the written consent of the Company; provided, however, that, to the extent there are Insured Series 2018 Bonds, no Supplemental Indenture that adversely affects the rights and interests of the Insurer, if any, in its capacity as Insurer may be entered into without the written consent of the Insurer; provided, further, that no Supplemental Indenture modifying the Indenture in the way described below may be entered into without the written consent of the Owner of each Bond affected thereby:

(a) a reduction of the interest rates, principal of or interest on or Redemption Price payable on any Bond, a change in the maturity date of any Bond, a change in any Interest Payment Date for any Bond or a change in the redemption provisions applicable to any Bond;

(b) the release of or the subordination of all or any portion of the Trust Estate granted by the Indenture and the other Collateral, from the Security Interest securing the Bonds (other than in connection with (i) the sale, transfer, lease, assignment or other disposition thereof or (ii) a merger, liquidation, dissolution, consolidation, amalgamation or analogous arrangement, in each case to the extent permitted pursuant to the terms of the Finance Documents);

(c) the release or subordination of the Project Revenues or the Project Accounts from the lien of the Security Documents;

(d) the creation of a priority right in the Trust Estate of another Bond over the right of the affected Bond, except as permitted in the Finance Documents; or

(e) a reduction in the percentage of the aggregate outstanding Bonds required for consent to any Supplemental Indenture or the parties whose consent is required.

Conditions to Effectiveness of Supplemental Indentures

No Supplemental Indenture shall be effective until (i) it has been executed by the Issuer and the Trustee and, when applicable, the Company and (ii) Bond Counsel has delivered a written opinion to the effect that the Supplemental Indenture complies with the provisions of the Indenture and that will not adversely affect the excludability from gross income for federal income tax purposes of interest on any series of outstanding Bonds where the interest on such Bonds was excludable from gross income for federal income tax purposes on the original date of issuance of such Bonds.

No Supplemental Indenture entered into pursuant to the section above under the heading "Supplemental Indentures Requiring Consent of Owners" shall be effective until, in addition to the conditions set forth in the first paragraph under the heading "Conditions to Effectiveness of Supplemental Indentures", (i) a notice has been mailed to each Owner, which notice describes the nature of the proposed Supplemental Indenture and states that copies of it are on file at the office of the Trustee for inspection by the Owners and (ii) subject to the provisions of any Supplemental Indenture, Owners of the required percentage of the Bonds have consented to the Supplemental Indenture.

Anything in the Indenture to the contrary notwithstanding, if an Owner does not respond (in any way) to a request with respect to any Supplemental Indenture requiring consent of a majority of the Owners, but not requiring consent from greater than a majority of the Owners, pursuant to the section above described under the heading "Supplemental Indentures Requiring Consent of Owners" within ten (10) Business Days of delivery of such request, then any Bonds registered to such Owner shall not be counted for the purpose of calculating the consent of a majority of the Owners. For the avoidance of doubt, this provision of the Indenture (i) shall not apply to clause (a) to (d) above under the heading "Supplemental Indentures Requiring Consent of Owners," (ii) shall not be utilized to effectuate a Supplemental Indenture that materially adversely affects the interests of Owners and (iii) requires an opinion of Bond Counsel confirming the continued tax-exempt status of the Bonds. It shall not be necessary for the consent of the Owners under the Indenture to approve the particular form of any proposed Supplemental Indenture, but it is sufficient if such consent approves the substance thereof. A notice that describes the nature of the Supplemental Indenture shall be sent to Owners (or delivered in accordance with the procedures of DTC) promptly after the effectiveness of such Supplemental Indenture. Any failure to send such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such Supplemental Indenture.

Consent of the Company; Consent of MDOT

Anything in the Indenture to the contrary notwithstanding, a Supplemental Indenture pursuant to the terms of the Indenture shall not become effective unless and until (a) the Company shall have consented to the execution and delivery of such Supplemental Indenture and (b) if the amendment relates to a provision of the Indenture that

relates to MDOT, MDOT shall receive written notice thereof and shall have consented to the execution and delivery of such Supplemental Indenture.

Amendments to Senior Loan Agreement Not Requiring Consent of Owners

Except with respect to any proposed amendment, modification or waiver affecting the Reserved Rights, the Issuer delegates and assigns its right to amend, modify or waive any provision of the Senior Loan Agreement to the Trustee; provided, however, Issuer shall receive written notice of any proposed amendment, modification or waiver prior to it becoming effective. The Issuer (in the case of any amendment, modification or waiver affecting the Reserved Rights) and the Trustee (in the case of any other amendment, modification or waiver) may (i) upon receipt of an opinion of Bond Counsel to the effect that the proposed amendment will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes and is authorized by the Indenture and (ii) upon the receipt of the written consent of the Company, consent to any amendment, change or modification of a Senior Loan Agreement, without the consent of, or notice to, the Owners, for any one or more or all of the following purposes:

(a) to add additional covenants to the covenants and agreements of the Company set forth therein;

(b) to cure any ambiguity, or to cure, correct or supplement any defect or omission or inconsistent provision contained therein;

(c) to amend any existing provision thereof or to add additional provisions which, in the opinion of Bond Counsel, are necessary or advisable (i) to qualify, or to preserve the qualification of, the interest on any Bonds for exclusion from gross income for federal income tax purposes or (ii) to qualify, or preserve the qualification of, any Bonds for an exemption from registration or other limitations under the Laws of any state or territory of the United States;

(d) to facilitate the receipt of moneys;

(e) to establish additional funds, accounts or subaccounts necessary or useful in connection with any other provision of this section; or

(f) to facilitate the movement or relocation of the Operating Account to a replacement Deposit Account Bank; or

(g) in connection with any other change which, in the judgment of the Trustee (who may for such purposes rely entirely upon a legal opinion with respect thereto of counsel selected by, or reasonably satisfactory to, the Trustee, which legal counsel may rely on a certificate of an investment banker or financial advisor with respect to financial matters and on a certificate from the Issuer or Company as to factual matters), does not materially adversely affect the rights of the Owners, including, without limitation, conforming the Senior Loan Agreement to the terms and provisions of any other Finance Document.

Amendments to Senior Loan Agreement Requiring Consent of Owners

Except for the amendments, changes or modifications as provided in the section above under the heading "Amendments to Senior Loan Agreements Not Requiring Consent of Owners," the Issuer (in the case of any amendment affecting the Reserved Rights) and the Trustee (in the case of any other amendment, modification or waiver) may consent to any other amendment, change or modification of the Finance Documents with the prior written consent of the Majority Holders and with the written consent of the Company; provided, however, that, to the extent there are Insured Series 2018 Bonds, no amendment, change or modification of the ratings surveillance covenant in the Senior Loan Agreement or any Additional Parity Bonds Loan Agreement (if applicable) may be entered into unless the prior written consent of the Insurer has been obtained; provided, further, that no amendment, change or modification of any Senior Loan Agreement may be entered into in respect of the matters contemplated below unless the prior written consent of the Owners affected thereby and the Company has been obtained:

(a) (x) a reduction of the interest rate, principal of or interest on, or (y) a change in the maturity date, the Interest Payment Date or the prepayment provisions applicable to, the Series 2018 Loan or the Additional Parity Bonds Loan;

(b) the release or subordination of all or substantially all of the Trust Estate granted by the Indenture and the other Collateral, collectively taken as a whole, from the Security Interest securing the Bonds;

(c) the release or subordination of the Project Revenues or the Project Accounts from the lien of the Security Documents; or

(d) the deprivation of the Trustee or Collateral Agent of the Security Interest granted by the Security Documents.

The Trustee shall, upon notice of the same from the Issuer and upon satisfactory indemnification with respect to expenses, cause notice of such proposed amendment, change or modification to be given in the same manner as provided by the section above under the heading "Conditions to Effectiveness of Supplemental Indentures" with respect to Supplemental Indentures; provided, that prior to the delivery of such notice or request, the Trustee may require that an opinion of Bond Counsel be furnished to the effect that such amendment, change or modification complies with the provisions of the Indenture and will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the Designated Payment Office of the Trustee for inspection by all Owners.

Additional Parity Bonds Loan Agreement

In the event that the Senior Loan Agreement is amended pursuant to the Indenture prior to execution of any Additional Parity Bonds Loan Agreement, any such Additional Parity Bonds Loan Agreement shall be deemed to reflect such changes *mutatis mutandis*.

Actions of Trustee Requiring Owner Consent Pursuant to any Senior Loan Agreement

In the event that the Senior Loan Agreement, the Collateral Agency Agreement or any Additional Parity Bonds Loan Agreement, if applicable, requires certain actions by the Trustee at the direction of a designated portion of the Owners of the applicable Bonds, the Trustee agrees as follows:

(a) if the Company requests consent of the Trustee to be provided at the direction of a designated portion of the Owners of the applicable Bonds, the Trustee shall, upon notice of the same from the Company and upon being satisfactorily indemnified with respect to reasonable and documented expenses, cause notice of such requested consent or action to be given in the same manner as provided by the section above under the heading "Conditions to Effectiveness of Supplemental Indentures" with respect to Supplemental Indentures; <u>provided</u>, that prior to the delivery of such notice or request, the Trustee shall be furnished with an opinion of Bond Counsel to the effect that such consent or action complies with the provisions of the Indenture and will not adversely affect the excludability of the interest on the Bonds from gross income for federal income tax purposes. Such notice shall briefly set forth the nature of such requested consent or action and shall state that any copies of such request from the Company are on file at the Designated Payment Office of the Trustee for inspection by all Owners; and/or

(b) upon direction from Owners of not less than the required percentage in aggregate principal amount of the outstanding Bonds, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, take any such directed action in accordance with the Senior Loan Agreement or any Additional Parity Bonds Loan Agreement, if applicable; <u>provided</u>, that prior to the delivery of such notice or request, the Trustee shall be furnished with an opinion of Bond Counsel to the effect that such consent or action complies with the provisions of the Indenture and will not adversely affect the excludability of the interest on the Bonds from gross income for federal income tax purposes.

If the Series 2018 Loan Agreement, the Collateral Agency Agreement or any Additional Parity Bonds Loan Agreement requires certain actions by the Trustee upon direction of the Owners but does not designate a portion of the Owners of the applicable Bonds to direct the Trustee, the Trustee may act upon the direction of not less than twenty-five percent (25%) of the aggregate principal amount of Outstanding Bonds.

Discharge of Indenture

If 100% of the principal of and interest on and Redemption Price due, or to become due, on all the Bonds, fees and expenses due to the Trustee and all other amounts payable under the Indenture have been paid, or if provision shall have been made for the payment thereof in accordance with the section below described under the heading "Defeasance of Bonds" and the opinion of Bond Counsel required by the section below described under the heading "Opinion of Bond Counsel" has been delivered, then, (a) the right, title and interest of the Trustee in and to the Trust Estate shall terminate and be discharged (referred to as the "discharge" of the Indenture), (b) the Trustee shall transfer and convey to or to the order of the Issuer all property that was part of the Trust Estate, including but not limited to any moneys held in any Fund or Account under the Indenture, except any Defeasance Escrow Account created pursuant to the section below described under the heading "Defeasance of Bonds" (which Defeasance Escrow Account shall continue to be held in accordance with the agreement governing the administration thereof, and, consistent with the Indenture, subject to any applicable abandoned property law, the Trustee shall pay the Company upon request any money held by it for the payment of the principal of or interest on the Redemption Price that remains unclaimed for three years, and, thereafter, Owners entitled to the money must look to the Company for payment), and (c) the Trustee shall execute any instrument requested by the Issuer to evidence such discharge, transfer and conveyance.

Defeasance of Bonds

All or any portion of the outstanding Bonds shall be deemed to have been paid (referred to as "defeased") prior to their maturity or redemption if:

(a) the defeased Bonds are to be redeemed prior to their maturity, the Issuer has irrevocably instructed the Trustee to give notice of redemption of such Bonds in accordance with the Indenture;

(b) there has been deposited in trust in a Defeasance Escrow Account created with the Trustee either moneys in an amount which shall be sufficient, or Defeasance Securities, to pay the principal of and the interest on which when due, and without any reinvestment thereof, which will provide moneys which, together with the moneys, if any, deposited into or held in the Defeasance Escrow Account, shall be sufficient to pay when due the principal of and interest on or Redemption Price, as applicable, due and to become due on the defeased Bonds on and prior to the redemption date or maturity date thereof, as the case may be;

(c) a verification agent, acceptable to Bond Counsel, has delivered a verification report verifying the delivery of the instruction described in paragraph (a) above and the deposit described in paragraph (b) above; and

(d) the opinion of Bond Counsel required by the section below described under the heading "Opinion of Bond Counsel" has been delivered.

The Defeasance Securities and moneys deposited in a Defeasance Escrow Account pursuant to this section and the principal and interest payments on such Defeasance Securities shall not be withdrawn or used for any purpose other than, and shall be held in trust solely for, the payment of the principal of and interest on and Redemption Price of the defeased Bonds; <u>provided</u>, <u>however</u>, that (i) any moneys received from principal and interest payments on such Defeasance Securities that are not required to pay the principal of and interest on or Redemption Price of the defeased Bonds on the date of receipt shall, to the extent practicable, be reinvested in Defeasance Securities maturing at the times and in amounts sufficient to pay when due the principal of and interest on and Redemption Price to become due on the defeased Bonds on or prior to the redemption date or maturity date thereof, as the case may be; and (ii) any moneys or Defeasance Securities may be withdrawn from a Defeasance Escrow Account if (A) the moneys and Defeasance Securities that are on deposit in the Defeasance Escrow Account, including any moneys or Defeasance Securities that are substituted for the moneys or Defeasance Securities that are withdrawn from the Defeasance Escrow Account, satisfy the conditions set forth in paragraph (b) above and (B) a verification report and opinion of Bond Counsel are delivered that comply with the provisions of paragraphs (c) and (d) above.

Any Bonds that are defeased as provided in this section shall no longer be secured by or entitled to any right, title or interest in or to the Trust Estate, and the principal of and interest on and Redemption Price thereof shall be paid solely from the Defeasance Securities and money held in the Defeasance Escrow Account.

Opinion of Bond Counsel

Prior to any discharge of the Indenture pursuant to the section above described under the heading "Discharge of Indenture" or the defeasance of any Bonds pursuant to the section above described under the heading "Defeasance of Bonds," Bond Counsel must have delivered a written opinion to the effect that all requirements of the Indenture for such discharge or defeasance have been complied with and that such discharge or defeasance will not adversely affect the tax-exempt status of interest on any series of Bonds where the interest on such Bonds was excludable from gross income for federal income tax purposes on the original date of issuance of such Bonds.

Authorization for Additional Parity Bonds

Subject to the restrictions set forth in the Indenture and upon request by the Company, the Issuer may issue Additional Parity Bonds (i) pursuant to (and in accordance with the conditions set forth in) sub-part (b) of the definition of "Permitted Indebtedness" in the Collateral Agency Agreement, which shall be ratably and equally secured by the Trust Estate, upon execution of a Supplemental Indenture without consent of the Owners pursuant to the section above described under the heading "Supplemental Indentures Not Requiring Consent of Owners" and (ii) pursuant to (and in accordance with the conditions set forth in) sub-part (c) of the definition of "Permitted Indebtedness" in the Collateral Agency Agreement, which shall be ratably and equally secured by the Trust Estate, upon execution of a Supplemental Indentures Requiring Consent of Owners." Except to the section above described under the heading "Supplemental Indentures Requiring Consent of Owners." Except to the extent inconsistent with the express terms of the Additional Parity Bonds issued and the related Supplemental Indenture executed pursuant to the Indenture, all of the provisions, terms, covenants and conditions of the Indenture shall be applicable to any Additional Parity Bonds issued under the Indenture

Additional Parity Bonds

The Issuer may issue Additional Parity Bonds in accordance with the Indenture for any purpose contemplated under (and in accordance with the conditions set forth in) sub-parts (b) and (c) of the definition of "Permitted Indebtedness" in the Collateral Agency Agreement.

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

To the extent that any or all of the Series 2018 Bonds (or any Additional Parity Bonds) are outstanding at the time the Additional Parity Bonds are proposed to be incurred, the additional financing documents entered into in connection therewith (1) shall not prohibit the Company from incurring new indebtedness to refinance such Bonds (at least to the extent permitted under the Indenture and under the Senior Loan Agreement) and (2) shall provide that all principal and interest payment dates with respect to such Additional Parity Bonds will be the same principal and interest payment dates as for the Bonds to remain outstanding through maturity of such Bonds.

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

(a) a certificate of the Company, signed by a Borrower Representative, dated as of the date of issuance of such proposed Additional Parity Bonds stating that no Event of Default has occurred and is continuing or will result from the issuance of such Additional Parity Bonds; and

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

Notwithstanding anything to the contrary in the Indenture, any issuance of Additional Parity Bonds is subject to the further condition that it must comply with the refinancing requirements set forth in the Project Agreement.

Insurance Provisions

As used below, the following terms shall have following respective meanings:

- "Insurance Policy" means the insurance policy issued at the request of the Company by the Insurer guaranteeing the scheduled payment of the principal of and interest on the Insured Series 2018 Bonds when due.
- "*Insurer*" means Assured Guaranty Municipal Corp., a New York stock insurance company, or any successor thereto or assignee thereof.
- *"Insured Series 2018 Bonds"* means the Series 2018 Bonds maturing on June 30, 2035, December 31, 2038 and June 30, 2048 (having a rate of 4.500%).
- "Insurer Default" means the existence and continuance of any of the following: (a) the failure of the Insurer to pay when, as and in the amounts required any amount payable under the Insurance Policy, (b) the Insurer (i) files any petition or commences any case, proceeding or other action under any provision or chapter of any federal or state law relating to insolvency, bankruptcy, rehabilitation, dissolution, winding-up, arrangement, adjustment, composition, liquidation, reorganization or similar relief, (ii) makes a general assignment for the benefit of its creditors, or (iii) has an order for relief entered against it under any federal or state law relating to insolvency, bankruptcy, rehabilitation, dissolution, winding-up, arrangement, adjustment, composition, liquidation, reorganization or similar relief which shall not have been dismissed, stayed or bonded (pending appeal) within sixty (60) days after the entry thereof, (c) a court of competent jurisdiction, the Office of the Commissioner of Insurance of the State of New York or other competent regulatory authority enters an order, judgment or decree (i) appointing a custodian, trustee, agent or receiver for the Insurer or for all or any material portion of its property or (ii) authorizing the taking of possession by a custodian, trustee, agent or receiver of the Bond (or the taking of possession of all or any material portion of the property of the Insurer), which in each case shall not have been dismissed, stayed or bonded (pending appeal) within sixty (60) days after the entry thereof or (d) the Insurance Policy shall cease (or the Insurer shall claim in writing that it has ceased) to be in full force and effect.

Nonpayment by the Issuer

The Insurer will be entitled to pay principal or interest on the Insured Series 2018 Bonds that becomes Due for Payment (as such term is defined in the Insurance Policy) but will be unpaid by reason of Nonpayment by the Issuer (as such term is defined in the Insurance Policy) and any amounts due on the Insured Series 2018 Bonds as a result of acceleration of the maturity of such Insured Series 2018 Bonds in accordance with the Indenture, whether or not the Insurer has received a Notice of Nonpayment (as such term is defined in the Insurance Policy) or a claim upon the Insurance Policy.

Insurance Payment Procedures

As long as the Insurance Policy is in full force and effect, the Issuer, the Company and the Trustee have agreed to comply with the following provisions:

- If, on the third Business Day prior to an Interest Payment Date or Principal Payment Date on which the • principal of or interest on the Insured Series 2018 Bonds is payable (a "Payment Date") the Company has determined pursuant to the Collateral Agency Agreement that on the immediately succeeding Transfer Date, after making all transfers and deposits required under the Collateral Agency Agreement in respect of amounts due and payable under the Indenture, there will not be sufficient money to pay the principal of and interest on the Insured Series 2018 Bonds due on such Payment Date, the Company must give notice thereof to the Trustee and the Trustee must give notice to the Insurer and to its designated agent, if any (the "Insurer's Fiscal Agent"), by telephone or telecopy of the amount of such deficiency by 12:00 noon, New York City time, on such Business Day. If, on the second Business Day prior to the related Payment Date, there continues to be a deficiency in the amount available to pay the principal of and interest on the Insured Series 2018 Bonds due on such Payment Date, the Trustee must make a claim under the Insurance Policy and give notice to the Insurer and the Insurer's Fiscal Agent, if any, by telephone of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest on the Insured Series 2018 Bonds and the amount required to pay the principal of Insured Series 2018 Bonds, confirmed in writing to the Insurer and the Insurer's Fiscal Agent by 12:00 noon, New York City time, on such second Business Day by filing the form of Notice of Claim and Certificate delivered with the Insurance Policy; provided, however, that the Insurer will not be required to make any payment to the extent that on the Payment Date such deficiency of funds no longer exists.
- The Trustee must designate any portion of payment of principal on Insured Series 2018 Bonds paid by the Insurer, whether by virtue of mandatory Sinking Fund Installments, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Insured Series 2018 Bonds registered to the then current Owner, whether DTC, its nominee or otherwise, and must issue a replacement Bond to the Insurer, registered in the name of Assured Guaranty Municipal Corp., in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided, however, that failure by the Trustee to so designate any payment or issue any replacement Bond will have no effect on the amount of principal or interest payable by the Issuer on any Insured Series 2018 Bond or the subrogation rights of the Insurer.
- The Trustee must keep a complete and accurate record of all funds deposited by the Insurer into the Policy Payments Account (as defined below) and the allocation of such funds to payment of interest on and principal of any Insured Series 2018 Bond. The Insurer will have the right to inspect such records at reasonable times upon reasonable notice to the Trustee.
- Upon payment of a claim under the Insurance Policy, the Trustee must establish a separate special purpose trust account for the benefit of Owners of Insured Series 2018 Bonds, which account will be referred to in the Indenture as the "Policy Payments Account," over which the Trustee will have exclusive control and sole right of withdrawal. The Trustee will receive any amount paid under the Insurance Policy in trust on behalf of the Owners of Insured Series 2018 Bonds and must deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts must be disbursed by the Trustee to the Owners of Insured Series 2018 Bonds in the same manner as principal and interest payments are to be made with respect to the Insured Series 2018 Bonds. It will not be necessary for such payments to be made by check or wire transfers separate from the check or wire transfer used to pay the principal and interest that is payable on the Insured Series 2018 Bonds, following the payment of any claims under the Insurance Policy, and the amount of such defaulted interest will not be less than a penalty rate of two percent over the then current interest rate on the Insured Series 2018 Bonds.
- Funds held in the Policy Payments Account may not be invested by the Trustee and may not be applied to satisfy any costs, expenses or liabilities of the Trustee. Any funds remaining in the Policy Payments Account following a payment date must promptly be remitted to the Insurer.

Acceleration

If any maturity of the Insured Series 2018 Bonds is accelerated pursuant to the provisions of the Indenture as described above under "Remedies Following and During the Continuance of an Event of Default," the Insurer may elect, in its sole discretion, but has no obligation, to pay accelerated principal and interest accrued on such principal to the date of acceleration (to the extent unpaid by the Issuer) and the Trustee must accept such amounts. Upon payment of such accelerated principal and interest accrued to the acceleration date as provided above, the Insurer's obligations under the Insurance Policy with respect to such Insured Series 2018 Bonds will be fully discharged. If the Insurer does not so elect to pay the Insured Series 2018 Bonds on an accelerated basis, the Insurer must pay under the Insurance Policy the principal of and interest on the Insured Series 2018 Bonds at the time principal and interest would have been due had the maturity of the Insured Series 2018 Bonds not been accelerated.

Subrogation

Amounts paid by the Insurer under the Insurance Policy will not be deemed paid pursuant to any provision of the Indenture or of the Insured Series 2018 Bonds and the Insured Series 2018 Bonds relating to such payments will remain outstanding and continue to be due and owing until paid by the Issuer in accordance with the Indenture. The Indenture will not be discharged unless all amounts due or to become due to the Insurer have been paid in full or duly provided for. In the event that the principal of and/or interest on the Insured Series 2018 Bonds is paid by the Insurer pursuant to the Insurance Policy, the Insurer will be subrogated to the rights of the recipients of such payments in accordance with the terms of the Insurance Policy. Each obligation of the Issuer to the Insurer under the Transaction Documents will survive discharge or termination of such Transaction Documents.

Insurer as Bondholder

So long as no Insurer Default shall have occurred and be continuing, the Insurer is deemed to be the sole holder of the Insured Series 2018 Bonds for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the registered holders of the Insured Series 2018 Bonds are entitled to take. Any amendment, modification or waiver of, or any supplement to, any provision of any Finance Document that requires the consent of the Owner of an Insured Series 2018 Bond or adversely affects the rights and interests of the Insurer shall require the prior written consent of the Insurer.

Contractual Rights of the Insurer. The Issuer and the Trustee have acknowledged and agreed that:

(a) the rights granted to the Insurer under the Indenture to request, consent to or direct any action are rights granted to the Insurer in consideration of its issuance of the Insurance Policy;

(b) in determining whether any amendment, consent, waiver or other action to be taken, or any failure to take action under the Indenture would adversely affect the security for the Insured Series 2018 Bonds or the rights of the related Owners, the Trustee must consider the effect of any such amendment, consent, waiver, action or inaction as if there were no Insurance Policy;

(c) any exercise by the Insurer of such rights is merely an exercise of the Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit, or on behalf, of the registered holders of the Insured Series 2018 Bonds; and

(d) such action does not evidence any position of the Insurer, affirmative or negative, as to whether the consent of any of the registered holders of the Insured Series 2018 Bonds or any other person is required in addition to the consent of the Insurer.

Insurer as Third Party Beneficiary

To the extent that the Indenture or the Senior Loan Agreement confers upon or gives or grants to the Insurer any right, remedy or claim under the Indenture or the Senior Loan Agreement, the Insurer is intended to be and is explicitly recognized as being a third-party beneficiary of such right, remedy or claim and may enforce any such right, remedy or claim conferred, given or granted under the Indenture or the Senior Loan Agreement.

Notices, Etc.

While the Insurance Policy is in effect, the Trustee will provide the Insurer with (a) copies of any notices, financial statements, reports or information provided by or to the Trustee pursuant to the Finance Documents and (b) copies of any notices related to Events of Default, Senior Loan Agreement Defaults, or the exercise of any remedies provided by or to the Trustee (in its capacity as Trustee) pursuant to any other Finance Document. The Trustee must notify the Insurer of any failure of the Issuer or the Company to provide notices, certificates or other information required to be provided by such Person to the Trustee pursuant to the Indenture or the Senior Loan Agreement.

Applicability of the Insurance Provisions

These insurance provisions will govern notwithstanding anything to the contrary in the Indenture.

Applicable Law

The laws of the State shall be applied in the interpretation, execution and enforcement of the Indenture.

APPENDIX F

SUMMARY OF CERTAIN PROVISIONS OF THE SENIOR LOAN AGREEMENT

Summary of the Senior Loan Agreement between the Michigan Strategic Fund and Oakland Corridor Partners LLC

The following is a summary of selected provisions of the Senior Loan Agreement relating to the Project and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement. A copy of such agreement is available, free of charge, upon request from the Company or the Trustee. Unless otherwise stated, any reference herein to any agreement means such agreement and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof. Capitalized terms used but not defined in this summary have the meanings set forth in Appendix A—"DEFINITIONS OF TERMS."

Company to Provide Funds

In the event that proceeds derived from the Series 2018 Loan, or any other available (or to be available) funds, are not sufficient to finance the Project Costs, the Company will not be entitled to any reimbursement from the Issuer or the Trustee for the payment of such costs nor will the Company be entitled to any abatement, diminution or postponement of its payment obligations under the Senior Loan Agreement.

Loan to Finance Project Costs

The Company will use the proceeds of the Series 2018 Loan solely to pay a portion of the Project Costs as specified in the tax compliance certificate and consistent with the Base Case Model. At least ninety five percent (95%) of the net proceeds of the Series 2018 Loan will be expended on Eligible Project Costs to provide a "qualified highway or surface freight transfer facility" within the meaning of Section 142(m)(1)(A) of the Code (as in effect on August 10, 2005) by the date that is five (5) years following the Closing Date. If at least ninety-five percent (95%) of such net proceeds is not expended in such manner and within such five (5)-year period, all unspent proceeds of the issue will be used to redeem or defease the Series 2018 Bonds within ninety (90) days after the end of such five (5)-year period in accordance with Section 5.02(g)(i)C of the Collateral Agency Agreement, unless an extension is granted pursuant to the Code.

Security for Repayment of Loan

Prior to or simultaneously with the delivery of the Senior Loan Agreement, the Company will deliver the Security Documents and Collateral to the Trustee and the Collateral Agent as security for the payments and obligations of the Company under the Senior Loan Agreement.

Compliance with the Indenture

In accordance with any applicable provisions of the Indenture, the Issuer will take any action directed by the Company to the extent required under the provisions of the Indenture or the Senior Loan Agreement. The Company will take all action required to be taken by, and will comply with all obligations of, the Company in the Indenture as if the Company were a party to the Indenture.

Amounts Payable

The Company covenants and agrees to repay the Series 2018 Loan, as follows: on or before any Interest Payment Date for the Series 2018 Bonds or any other date that any payment of interest, principal or Redemption Price on the Series 2018 Bonds is required to be made in respect of the Series 2018 Bonds pursuant to the Indenture (which payments for principal and interest will be in the respective amounts set forth on the debt service schedule attached as Attachment A to the Senior Loan Agreement and as amended from time to time pursuant to the Indenture), until the payment of interest, principal, or Redemption Price on the Series 2018 Bonds will have been fully paid or provision for the payment thereof will have been made in accordance with the Indenture, in immediately available funds, a sum which, together with any other moneys available for such payment in the applicable account of the Series 2018 Debt Service Fund, as applicable, will enable the Trustee to pay to the Bondholders the amount due and payable on such date as interest, principal or Redemption Price on the Series 2018

Bonds as provided in the Indenture. All payments made by the Company will be made free and clear of (and grossed up for) any tax or stamp duty.

The Company also will pay the Issuer's reasonable costs, fees and expenses directly related to the issuance of the Series 2018 Bonds, including the reasonable fees and expenses of its external counsel, the reasonable and documented fees and expenses of the Trustee pursuant to the Indenture, and certain other costs pursuant to the Senior Loan Agreement and the Indenture.

Obligations of Company Unconditional

The obligations of the Company to make the payments described in "Amounts Payable" above and to perform and observe the other agreements contained in the Senior Loan Agreement will be absolute and unconditional and will not be subject to any defense or any right of setoff, counterclaim or recoupment arising out of (a) any breach by the Issuer or the Trustee of any obligation to the Company, whether under the Senior Loan Agreement or otherwise, or (b) any indebtedness or liability at any time owing to the Company by the Issuer or the Trustee, and, until such time as the principal of, premium, if any, and interest on the Series 2018 Bonds will have been fully paid or provision for the payment thereof will have been made in accordance with the Indenture, the Company (1) will not suspend or discontinue any payments provided for in "Amounts Payable" above, (2) will perform and observe all other agreements contained in the Senior Loan Agreement and the Security Documents and (3) except as otherwise provided in the Senior Loan Agreement, will not terminate the Senior Loan Agreement or any of the Security Documents for any cause, or any failure of the Issuer or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Senior Loan Agreement. Nothing contained in this paragraph will be construed to release the Issuer from the performance of any of the agreements on its part contained in the Senior Loan Agreement, and in the event the Issuer should fail to perform any such agreement on its part, the Company may institute such action against the Issuer as the Company may deem necessary to compel performance so long as such action does not abrogate the obligations of the Company contained in the first sentence of this paragraph.

Prepayment and Redemption

The Company will have the option to prepay its obligations under the Senior Loan Agreement at the times and in the amounts as necessary to cause the Issuer to redeem the Series 2018 Bonds in accordance with the terms of the Indenture and the Series 2018 Bonds. The Issuer, at the request of the Company and at the Company's reasonable cost and expense, if applicable, will forthwith take all steps (other than the payment of funds necessary to effect such redemption) necessary under the applicable redemption provisions of the Indenture to effect redemption of all or part of the Outstanding Series 2018 Bonds, as may be specified by the Company, on the date established for such redemption.

Covenants of the Company

Covenants made by the Company under the Senior Loan Agreement include, but are not limited to, the following:

Accounts and Reporting

The Company will keep proper records and books of accounts, and permit inspection of such records and books and of the Project by the applicable Agent and the Insurer and their respective representatives upon reasonable notice at reasonable times, subject at all times to compliance with applicable safety standards and requirements, provided that, absent a Default or Event of Default, the Company will not be responsible for the costs of such inspection.

The Company will deliver the following financial statements and reports to the Trustee and the Insurer (and file on EMMA, to the extent provided in the Continuing Disclosure Agreement):

(a) audited financial statements of the Company within 120 days after the end of each fiscal year of the Company together with an unqualified audit opinion thereon and unaudited financial statements of the Company within 45 days after the end of each fiscal quarter of the Company, in each case, prepared in accordance with GAAP or IFRS (except as approved by the auditor or the responsible officer of the Company, as the case may be, and disclosed therein);

- (b) promptly after receipt by the Company, copies of any financial statements of the Design-Build Contract Guarantors provided to the Company pursuant to the terms of the Design-Build Contract and Design-Build Guarantee;
- (c) simultaneously with delivery of the financial statements in clause (a) above, a certificate of a responsible officer of the Company certifying to his or her knowledge that there is no Default or Event of Default;
- (d) not later than 15 days prior to the commencement of each calendar year, the Annual Operating Budget (together with a certificate of an authorized officer of the Company that such budget is consistent with, and not in excess of 115% of, the Project budget set forth in the Base Case Model (as such Base Case Model may be amended from time to time with the approval of the Lenders' Technical Advisor) and has been prepared in good faith and are based upon reasonable assumptions) in each case in the form of an extract of the Base Case Model or any other form reasonably acceptable to the Majority Holders;
- (e) from the commencement of D&C Work to the Substantial Completion Date, within five (5) days of delivery to MDOT, a copy of the Periodic MDOT Report;
- (f) from the commencement of D&C Work to the Substantial Completion Date, within 30 days after the end of each month, to the extent such information is not provided in the Periodic MDOT Report described in clause (e) above, a construction progress report together with or as part of a monthly Lenders' Technical Advisor's report providing (i) an assessment of the overall construction progress of the D&C Work since the date of the last report (or, with respect to the first such report, the Closing Date) and setting forth a reasonable estimate as to the completion date for the applicable D&C Work and (ii) a reasonably detailed description of any material delays encountered or anticipated in connection with such D&C Work, and a reasonably detailed description of the proposed course of action with respect to such delay;
- (g) from and after the Substantial Completion Date, within five (5) days of delivery to MDOT, a copy of the quarterly and annual maintenance report required to be submitted to MDOT pursuant to Section 24.5.8 of Schedule 17 (Technical Requirements) to the Project Agreement; and
- (h) from and after the Substantial Completion Date, within 30 days after the end of each fiscal quarter, to the extent such information is not provided in the quarterly and annual maintenance report furnished to MDOT described in clause (g) above, an operating report setting forth: (i) the operating data for the Project for the previous quarter, including total Project Revenues, total Maintenance Expenditures and total Renewal Expenditures incurred; and (ii) the variances for such period between the actual Project Revenues, budgeted Maintenance Expenditures and budgeted Renewal Expenditures, together with a brief narrative explanation of the reasons for any such variance of 10% or more.

Notices

The Company shall promptly deliver the following notices and information to the Trustee and the Insurer (and file on EMMA, to the extent provided in the Continuing Disclosure Agreement):

- (a) details of litigation in respect of the Company, pending or threatened in writing, by or before any arbitrator or Governmental Authority, in which (i) the amount involved exceeds \$5,000,000 and is not covered by insurance or (ii) a remedy requested in the litigation is the stoppage or delay of the Project;
- (b) details of any penalties or damages due from the Company under any Material Project Contract in excess of \$5 million in the aggregate,
- (c) details of any event of default or "Default" as defined in, or any material breach (in each case by the Company) under, any Material Project Contract and copies of all written notices of default or termination of any such Material Project Contract delivered to the Company;
- (d) notice and details of any Default or Event of Default and the action the Company is taking or proposing to take to remedy the same;

- (e) notice of any material insurance claims or loss or damage to the Project for which the aggregate cost of repair or restoration is expected to be in excess of \$1 million or any series of losses or damage to the Collateral (whether or not related) during any 12-month period in excess of \$5 million;
- (f) notice of any claim by the Company under the Project Agreement in respect of the occurrence of a Delay Event or Relief Event;
- (g) notice of the imposition of Deductions (as defined in the Project Agreement) in any single calendar month in excess of \$30,000, together with confirmation of the aggregate amount of Deductions imposed by MDOT under the Project Agreement since the date of execution of the Project Agreement;
- (h) notice of the filing or commencement by any Governmental Authority of any Taking of the Project or any material portion thereof;
- (i) notice of any dispute under Schedule 15 of the Project Agreement or under any other Material Project Contract, which, if adversely determined, would reasonably be expected to result in a Material Adverse Effect;
- (j) notice of any exercise by MDOT of its right to set-off in excess of \$1 million pursuant to Section 19.3.1 of the Project Agreement that could reasonably be expected to result in a Material Adverse Effect;
- (k) notice of any exercise by MDOT of its step-in rights pursuant to Section 20.1 of the Project Agreement;
- (l) notice of any material defect with respect to the D&C Work;
- (m) notice of any material amendment of, supplement to or other modification of any Material Project Contract (together with copies thereof);
- (n) notice of any event of force majeure (howsoever defined) under a Material Project Contract or any other event entitling a party thereto to suspend performance of any material obligation thereunder;
- (o) notice of the occurrence of any ERISA Event;
- (p) notice of the Company's auditors' resignation or the Company electing to change auditors;
- (q) notice of any event of default by a counterparty under any Material Project Contract not remedied within the applicable cure period (if any), including an MDOT Default, and the action the Company is taking or proposing to take with respect to the same;
- (q) notice of the incurrence of Noncompliance Points over the course of 12 consecutive months (determined on a rolling basis) or over the course of 36 consecutive months (determined on a rolling basis) which exceed 75% of the Noncompliance Points which would result in a Persistent Developer Default;
- (r) within ten (10) Business Days after receipt by the Company of a written request therefor from the Trustee (acting at the direction of the Bondholders), a copy of the Final Acceptance Certificate;
- (s) copies of any reports or ratings on the Series 2018 Bonds or, if applicable, any Additional Parity Bonds, from any Nationally Recognized Rating Agency rating the Series 2018 Bonds or such Additional Parity Bonds;
- (t) any revisions to the Base Case Model or any replacement model (for greater certainty, such revisions to be made only in in accordance with the Finance Documents);
- (u) notice of the Company's actual knowledge of, or a copy of any notice received by the Company of, the downgrade of any issuer of an Acceptable Letter of Credit such that such issuer is no longer an Acceptable Bank;

- (v) provide the Lenders' Technical Advisor with a copy of the Preliminary Project Handback Condition Report (as defined in the Project Agreement) delivered to MDOT pursuant to Section 18.2.1 of the Project Agreement and consult with the Lenders' Technical Advisor in the preparation of the Prefinal Project Handback Condition Report to be delivered to MDOT pursuant to Section 18.2.2 of the Project Agreement; provided, however, that the Prefinal Project Handback Condition Report shall not be required to be approved by the Lenders' Technical Advisor prior to delivery to MDOT;
- (w) notice of the occurrence of any other event or condition that would reasonably be expected to have a Material Adverse Effect; and
- (x) within ten (10) Business Days after receipt by the Company, a copy of the Substantial Completion Certificate.

Notice of Suspension of the Project

The Company will promptly (but in any event within five (5) Business Days following Company's knowledge thereof) notify the Trustee and the Insurer of any suspension of the D&C Work (except to the extent the suspension is permitted under the Project Agreement, in which case no notice is required, and except to the extent the suspension is as a result of an emergency, in which case notification will be provided as reasonably promptly as possible following the Company's knowledge thereof).

Disclosure Requirements

The Company will comply with all continuing disclosure requirements as agreed between the Company and the Trustee in the Continuing Disclosure Agreement, including, but not limited to, those required to satisfy SEC Rule 15c2-12; provided that the Company will not be obligated to provide reporting with respect to the construction progress of the Project during the D&C Term beyond reporting required pursuant to "Accounts and Reporting" above.

Maintenance of Existence

The Company shall maintain its legal existence, qualification to do business and good standing and obtain all relevant material rights, franchises and privileges required for the development, construction, and maintenance of the Project (if applicable) and in order to perform its obligations and exercise its remedies under the Transaction Documents.

Limited Liability Company Agreement

The Company will not amend or modify the special purpose provisions of its organizational documents or make any other amendment to its organizational documents in a manner that is materially adverse to the Secured Parties, other than any amendment or modification to permit a transfer of Equity Interests of the Company that would not result in a prohibited Equity Transfer under Section 23 of the Project Agreement (unless such prohibition is waived by MDOT) or is otherwise acceptable to the Majority Holders.

Governmental Approvals and Laws

The Company will obtain, maintain and comply, or cause the Design-Build Contractor to obtain, maintain and comply, in all material respects with all required Governmental Approvals and all applicable laws, in each case, for which failure to so obtain, maintain or comply would reasonably be expected to have a Material Adverse Effect.

Taxes

The Company will pay all Taxes imposed upon the Company or the Project prior to the date on which penalties, fines or interest attach thereto, provided that the Company may permit any such Taxes to remain unpaid if (a) they are being contested in good faith by appropriate proceedings and adequate reserves have been provided and are maintained in accordance with GAAP and/or IFRS or (b) the failure to pay such Taxes would not reasonably be expected to have a Material Adverse Effect.

Insurance

The Company will maintain, or cause to be maintained, all insurance required pursuant to the terms of the Project Agreement.

Use of Proceeds; Tax Covenant

The Company will use the proceeds of the Series 2018 Loan solely to pay a portion of the Project Costs.

The Company shall:

- (a) use the proceeds of the Series 2018 Bonds only for the purposes described under the heading "Loan to Finance Project Costs" above and, for avoidance of doubt, at least ninety-five (95%) percent of the Series 2018 Loan proceeds will be used in a location permitted by 23 USC § 133(c) for a surface transportation project as defined in Section 142(m)(1)(A) of the Code and 23 USC § 133(b) as 23 USC § 133(b) was in effect on August 10, 2005;
- (b) aid and assist the Issuer in connection with preparing and submitting to the IRS a Form 8038 (or other applicable information reporting statement) at the time and in the form required by the Code; provided that Company will not be responsible for late or non-conforming filings (except to the extent Company fails to timely provide information required for such filings);
- (c) comply at all times with the Non-Arbitrage Certificate and not take any action, or omit to take any action, which, if taken or omitted, would violate its Non-Arbitrage Certificate;
- (d) construct and operate the Project as a "qualified highway or surface freight transfer facility" within the meaning of Section 142(m)(1)(A) of the Code; and
- (e) without limiting the generality of the foregoing, pay from time to time all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code and any temporary, proposed or final treasury regulations as may be applicable to the Series 2018 Bonds.

The Company shall not:

- (a) take any action or omit to take any action with respect to the Series 2018 Bonds, the proceeds thereof or any other funds of the Borrower if such action or omission (1) would cause the interest on the Series 2018 Bonds to lose its excludability from gross income for federal income tax purposes under Section 103 of the Code, (2) would cause interest on the Series 2018 Bonds to lose its exemption from income taxation in the State or (3) would otherwise violate the Non-Arbitrage Certificate;
- (b) permit any use of the proceeds of the Series 2018 Bonds, or take or omit to take any action which would cause the Series 2018 Bonds to be classified as "arbitrage bonds" within the meaning of Section 148 of the Code; or
- (c) sell, assign or otherwise transfer all or substantially all of its interest in the Project unless the Company, in addition to satisfying the other requirements of the Finance Documents, shall have delivered to the Trustee and the Issuer an opinion of Bond Counsel to the effect that such transaction will not adversely affect either the legality of the Series 2018 Bonds or the exclusion of interest on the Series 2018 Bonds from gross income of the holders thereof for Federal income tax purposes.

Security Interests; Further Assurances

The Company will execute, deliver and file, or cause the execution, delivery and filing of, further instruments and cause all necessary Uniform Commercial Code financing statements (including continuation statements), if any, to be recorded and filed in such manner and in such places as may be required by law to maintain and perfect the Security Interests created by the Security Documents (whether now existing or hereafter arising).

Project Accounts; Project Revenues

The Company will not establish and maintain any bank accounts except for (i) the Project Accounts, the Distribution Account, the Operating Account and such separate operating accounts as may be permitted by the Finance Documents, (ii) any accounts required to be established pursuant to the Project Agreement, (iii) any accounts as may be contemplated to be established pursuant to the Design-Build Contract, (iv) any accounts permitted to be established pursuant to the Finance Documents, and (v) any other bank accounts established in the

name of the Company if, in the reasonable judgment of the Company, the creation of such accounts will enable the Company to facilitate construction or operations or better administer the Project; provided that, to the extent any such account is held outside of the Collateral Agency Agreement, such account shall be held at an Acceptable Bank and the Company will, prior to depositing any monies into any such account, enter into a control agreement covering such account so as to create and perfect a Security Interest created in favor of the Collateral Agent over such account and the monies therein.

The Company will ensure that all Project Revenues received by the Company will be applied in accordance with the Finance Documents, including as set forth under Article V and Article VI of the Collateral Agency Agreement.

Nationally Recognized Rating Agencies; Auditors

The Company will:

- (a) enter into a reasonable and customary "ratings surveillance" agreement with one (1) Nationally Recognized Rating Agency rating the Series 2018 Bonds and, if applicable, any Additional Parity Bonds;
- (b) use commercially reasonable efforts to cooperate with each such Nationally Recognized Rating Agency rating the Series 2018 Bonds and, if applicable, any Additional Parity Bonds, in connection with any review of a rating which may be undertaken by such Nationally Recognized Rating Agency with respect to the Series 2018 Bonds; and
- (c) maintain independent auditors of nationally recognized standing.

Change in Name, Jurisdiction or Fiscal Year

The Company will not change its name, jurisdiction of formation or fiscal year without providing the Collateral Agent prior written notice.

Business Activities; Limitation on Fundamental Changes; Sale of Assets, Etc.

The Company will not directly or indirectly engage at any time in any business other than the development, design, supplying, building, financing, and maintenance of the Project and any business that is ancillary and related thereto. The Company will not merge, liquidate or dissolve or enter into any consolidation, amalgamation, demerger, reconstruction, partnership, or any analogous arrangement or wind up, liquidate or dissolve or take any action that would result in the liquidation or dissolution of the Company. The Company will not sell, lease, assign or otherwise dispose of, or direct the Collateral Agent, as applicable, to sell, assign, lease or otherwise dispose of, any assets of the Project except for any Permitted Disposition.

Permitted Indebtedness

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

Permitted Security Interests

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

Permitted Investments

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

Arm's-Length Transactions

Other than the Transaction Documents in effect on the Closing Date, the Company will not enter into any transactions with any Affiliates unless such transaction is fair and commercially reasonable to Company and contains terms no less favorable to the Company than those which would be included in an arm's-length transaction with a non-Affiliate; provided that the Design-Build Contract, the Design-Build Guarantee and any TAMSA and any development fees or letter of credit fees in amounts not exceeding the amount set forth in the Base Case Model

payable to the Sponsors or to any future holders of Equity Interests of Company will be deemed not to violate the foregoing.

Restricted Payments

The Company will not make any Restricted Payment other than a Permitted Distribution; provided that this restriction will not be deemed to preclude the Company from making any payments to any Affiliates of the Company other than the payments described in clauses (3), (4), (5) and (6) of the proviso in the definition of Restricted Payment.

Material Project Contracts

The Company will not amend, assign, waive or modify in any material respect or terminate (or, if the Company has a right to consent, consent to the assignment or termination) prior to the expiration of its term any Material Project Contract without the prior written consent of the Majority Holders; provided that, without the consent of any Bondholders,

(a) the Company and MDOT may enter into change orders under the Project Agreement, Company and the Design-Build Contractor may enter into change orders under the Design-Build Contract, and Company may enter into any amendments of any Material Project Contract or new agreements, in each case, required for compliance with and to avoid a default under the Project Agreement or any change order or directive letter issued under the Project Agreement;

(b) the Company and the Design-Build Contractor may enter into change orders or amendments under the Design-Build Contract if such change will not require the payment by Company, net of any payments received from MDOT or any other party for payment of the change order or amendment, in any year to exceed in the aggregate an amount equal to \$15 million, provided that any change order or amendment that results in exceeding the \$15 million threshold on an individual basis will be permitted without the consent of any Bondholders if:

(1) it is required by applicable law,

(2) the scope of work under the Design-Build Contract will not have been changed materially as a result thereof, or

(3) the Lenders' Technical Advisor has certified that, in its reasonable opinion, (A) there are sufficient funds available to Company to pay for such change order or amendment, together with other Project Costs, necessary to complete the Project by the Substantial Completion Deadline and (B) such change order or amendment would not reasonably be expected to have a Material Adverse Effect, and

(c) the Company may amend, waive or terminate prior to the expiration of its term any Material Project Contract (other than the Project Agreement) upon satisfaction of the following Replacement Conditions:

(1) no Specified Default or Event of Default has occurred and is continuing,

(2) such amendment, waiver or termination would not reasonably be expected to have a Material Adverse Effect,

(3) in connection with any amendment of any Material Project Contract that replaces the counterparty thereto, the replacement party to such Material Project Contract is an Acceptable Replacement Party, provided that if a direct agreement existed with respect to such Material Project Contract, Company will cause a new (or amended and restated as the case may be) direct agreement to be entered into by the Acceptable Replacement Party, in form and substance substantially similar to the one being replaced or otherwise that is reasonably acceptable to the Collateral Agent within 90 days of entry into such amendment;

(4) in connection with any termination of any Material Project Contract, such Material Project Contract is replaced by a replacement agreement between Company and an Acceptable Replacement Party within sixty (60) days of termination thereof, or solely in the case of a replacement of Jay Dee within one hundred and twenty (120) days, that provides projected economic benefits for the Project that are, in light of the material risks and liabilities of such replacement contract taken as a whole, at least as favorable as the economic benefits for the Project of continuing under the existing contract, in light of the material risks and liabilities of such replacement contract taken as a whole, at least as favorable as the economic benefits for the Project of continuing under the existing contract, in light of the material risks and liabilities of such existing contract; provided that if such Material Project Contract being terminated is a Design-Build Guarantee, it is replaced by a guarantee of a person having a credit quality at least as great as the relevant Design-Build Guarantor on the Closing Date taking into account the remaining obligations to be guaranteed, provided that if a direct agreement existed with respect to such Material Project Contract prior to its replacement, Company will cause a new (or amended and restated as the case may be) direct agreement to be entered into by any counterparty to such Material Project Contract, in form and substance substantially similar to the one being replaced or otherwise that is reasonably acceptable to the Collateral Agent within 90 days of entry into such replacement or amended and restated Material Project Contract,

(5) no termination right of MDOT has arisen under the Project Agreement and is continuing that would not be cured by the replacement of the relevant counterparty or Material Project Contract,

- (6) the Company has certified that no Funding Shortfall exists or will result therefrom; and
- (7) the Lenders' Technical Advisor has certified that, in its reasonable opinion,

(A) based on the projected costs set forth in the current Project construction budget (taking into account the fixed-price nature of the Design-Build Contract) sufficient funds are available to Company to achieve Substantial Completion,

(B) Substantial Completion is reasonably expected to occur on or prior to the Lenders' Longstop Date; and

(C) it does not dispute the certification given by the Company that no Funding Shortfall exists or will result therefrom.

Additional Material Project Contracts

The Company will not enter into any material agreement or material contract other than the Transaction Documents or as necessary or desirable for the Company to maintain its existence and to comply with its obligations under the Transaction Documents and, in each case, agreements or arrangements ancillary thereto or contemplated thereby, except that the Company may:

(a) enter into employment contracts, contracts for the engagements of advisors and consultants and other agreements and contracts in the ordinary course of business, in each case to the extent consistent with the Annual Operating Budget then in effect;

(b) enter into agreements or contracts with unrelated third parties on an arm's-length basis or with Affiliates subject to the provisions related to "Arm's Length Transactions" described above that provide for services otherwise self-performed by the Company at a cost not greater than 115% of the amounts set forth for such self-performed services in the Base Case Model (without double counting increases in the annual operating budget over amounts in the Base Case Model);

(c) enter into agreements or contracts that in the aggregate provide for payments by the Company of not more than \$10 million (Indexed) per fiscal year; and

(d) enter into any agreement or contract in replacement of any Material Project Contract in accordance with the Replacement Conditions,

provided that any such agreement must be capable, without consent, of assignment as security to the Collateral Agent for the benefit of the Secured Parties.

Sanctions

The Company will not (i) become (including by virtue of being owned or controlled by any Person), own or control any Person that is the target of Sanctions or listed on any Sanctions List, or (ii) directly or indirectly have any investment in or engage in any dealing or transaction (including, without limitation, any investment, dealing or transaction involving the proceeds of the Series 2018 Bonds) with any Person if such investment, dealing or transaction is prohibited by or subject to sanctions under any Sanctions laws.

Derivatives

Except as otherwise permitted under the Finance Documents, the Company will not enter into any derivative transactions for speculative purposes.

Performance and Enforcement of Obligations

The Company will perform all of its covenants and obligations under the Finance Documents and the Material Project Contracts and use commercially reasonable efforts to enforce against any counterparty to a Transaction Document each material covenant or obligation of such party in accordance with its terms, except, in each case, to the extent that the failure to do any of the foregoing would not reasonably be expected to have a Material Adverse Effect.

Abandonment of the Project

Unless required or permitted under the Project Agreement, the Company will not abandon the Project, which abandonment will be deemed to have occurred if (i) Company demonstrates through statements, acts or omissions an intent not to continue the Work, for any reason other than as permitted under the Project Agreement or (ii) no significant Work (taking into account the Project Schedule, if applicable, and any Relief Event or Delay Event) on the Project or a material part thereof is performed for a continuous period of more than sixty (60) days.

Payment of Insurer Fees

The Company will pay or reimburse the Insurer any and all documented charges, fees, costs and expenses that the Insurer may reasonably pay or incur in connection with (i) the administration, enforcement, defense or preservation of any rights under the Transaction Documents, (ii) the pursuit of any remedies under the Transaction Documents or otherwise afforded by law or equity, (iii) any amendment, waiver or other action with respect to, or related to, the Transaction Documents or the transactions contemplated thereby initiated by third parties, other than costs resulting from the failure of the Insurer to honor its obligations under the Bond Insurance Policy. The Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of the Transaction Documents.

Patents, Copyrights and Intellectual Property

The Company will maintain rights to all patents, copyrights and intellectual property required for the development, construction, maintenance and operation of the Project, to the extent the failure to maintain would reasonably be expected to have a Material Adverse Effect.

Prohibited Business Activities

Except as permitted under the Project Agreement, the Finance Documents or with the Trustee's consent (as directed by the Majority Holders), the Company will not (i) enter into any partnership, joint venture, profit-sharing or similar arrangement whereby the Company's income or profits are shared with any person (except as may be contemplated by the limited liability company agreement of the Company) or (ii) form or have any subsidiaries.

Events of Default

Each of the following events will constitute an "Event of Default" under the Senior Loan Agreement (subject to certain cure periods, materiality and other qualifications, as applicable):

(a) The Company fails to pay:

(1) principal or interest when due pursuant to the Senior Loan Agreement within three (3) Business Days after the same has become due and payable; provided that where such failure to

pay principal is a result of a technical or an administrative error caused by a party other than the Company in connection with the administration of the accounts from which such payment is made or is due to be made (and, for clarity, without limiting Company's other cure rights set forth in the Senior Loan Agreement), Company will have three (3) additional Business Days after notice is received by Company from the Trustee requiring such payment to be made in which to cure such failure to pay; or

(2) any other sum owed by the Company under any of the Finance Documents within ten (10) Business Days after the same has become due and payable; *provided* that where such failure to pay is a result of a technical or an administrative error caused by a party other than the Company in connection with the administration of the accounts from which such payment is made or is due to be made (and, for clarity, without limiting Company's other cure rights set forth in the Senior Loan Agreement), Company will have five (5) additional Business Days after notice is received by Company from the Trustee requiring such payment to be made in which to cure such failure to pay;

- (b) Any representation or warranty made by Company, Equity Member or HoldCo in any Finance Document proves to have been incorrect in any material respect when made, and a Material Adverse Effect would reasonably be expected to result therefrom unless the effect of such misrepresentation is capable of remedy and is remedied, as reasonably determined by the Trustee, within thirty (30) days after Company's receipt of written notice from the Trustee of such misrepresentation;
- (c) Company fails to comply with any affirmative or negative covenant under any of the Finance Documents (other than those specified elsewhere in "Events of Default"), unless such failure is capable of being remedied and is remedied within forty-five (45) days after the earlier of (1) written notice specifying such failure shall have been given to the Trustee by Company or (2) written notice specifying such failure and requesting that it be remedied shall have been given to Company by the Trustee, provided that to the extent the Company is acting diligently to cure such failure or breach, the Company shall have an additional one hundred and thirty-five (135) days to cure such failure or breach or such longer period agreed to with the prior written approval of the Trustee, acting with the consent (or at the direction) of, the Majority Holders pursuant to the Indenture;
- (d) A Bankruptcy Event occurs with respect to the Company or HoldCo;
- (e) Any Finance Document (except to the extent otherwise permitted and other than any Acceptable Letter of Credit) ceases to be in effect as against the Company unless such document shall be replaced by a contract on substantially similar terms with a counterparty reasonably acceptable to the Trustee (acting in accordance with the Indenture) within five (5) days following the earlier of (i) Company's actual knowledge of such occurrence or (ii) the delivery of written notice thereof to Company by the Collateral Agent or the Trustee, or such longer period reasonably necessary to effect such replacement;
- (f) Either (1) a Developer Default under the Project Agreement occurs and is continuing beyond any applicable cure period and has not been waived by MDOT and MDOT is entitled to serve a notice of termination pursuant to the terms of the Project Agreement as a result thereof, or (2) Company fails to perform or observe any material term or obligation in any Material Project Contract (other than the Project Agreement) and such failure constitutes an event of default under such Material Project Contract that shall not have been cured or waived within the grace period provided in such Material Project Contract and would reasonably be expected to result in a Material Adverse Effect; *provided, however*, that, in each case, Company shall be entitled to an extension of such time (such extension not to exceed one hundred and eighty (180) days) if corrective action is instituted by Company within the applicable period and diligently pursued until such failure is corrected and so long as the Company has been granted a concurrent extension by the applicable counterparty under such Material Project Contract and, if applicable, such extension would not diminish the

rights of the Secured Parties under the applicable Material Project Contract or the applicable direct agreement;

- (g) A non-appealable final judgment for the payment of money in excess of \$10,000,000 (Indexed) (and not covered by insurance) individually or such lesser aggregate amount which would reasonably be likely to have a Material Adverse Effect is entered against Company and such judgment remains unsatisfied without any procurement of a stay of execution within thirty (30) days;
- (h) Any Security Document shall cease (other than as expressly permitted under the Finance Documents) to be effective to grant a perfected Security Interest on any material portion of the Collateral described therein other than as a result of actions or failure to act by the applicable Agent or any other Secured Party, and with the priority purported to be created thereby and such event continues for five (5) Business Days after the applicable Agent has given notice thereof to Company;
- (i) The Project Agreement ceases to be valid and binding and in full force and effect (other than as a result of its expiration or any termination of the Project Agreement in accordance with its terms) and such invalidity has not been remedied within five (5) Business Days;
- (j) If any Material Project Contract (other than the Project Agreement) is terminated for any reason without the consent of the Majority Holders, unless it is replaced by a replacement agreement in accordance with the Replacement Conditions;
- (k) The Company fails to make any payment when due of principal or interest on any Indebtedness involving in the aggregate in excess of \$10,000,000, beyond the grace period (if any) provided in the applicable instrument or agreement under which such Indebtedness was created or the Company defaults in the performance of any obligation contained in any agreements or instruments evidencing any such Indebtedness involving in the aggregate in excess of \$10,000,000, beyond the grace period (if any) provided in the applicable instrument or agreement under which such Indebtedness was created and as a result thereof the maturity of such Indebtedness is accelerated or declared due and payable before its scheduled maturity date;
- (1) An Equity Transfer resulting in a Change in Control that is prohibited under Section 23.2 of the Project Agreement has occurred and has not been waived or consented to by MDOT;
- (m) The occurrence of a termination of the Project Agreement pursuant to Section 30.7 thereof;
- (n) The Company fails to reach Substantial Completion by the Lenders' Longstop Date;
- (o) Either:

(1) the provider of any Equity Letter of Credit fails to honor its obligations to fund any draw request appropriately submitted thereunder (an "Equity LC Draw Failure") and either (X) a replacement Acceptable Letter of Credit is not issued within twenty (20) days following such Equity LC Draw Failure on substantially the same terms or (Y) the applicable Equity Member or Sponsor has not cash collateralized its respective obligations in substitution of such Equity Letter of Credit within twenty (20) days following such Equity LC Draw Failure on Equity LC Draw Failure of Sponsor has not cash collateralized its respective obligations in substitution of such Equity Letter of Credit within twenty (20) days following such Equity LC Draw Failure, or

(2) the Equity Members or Sponsors shall fail to make in full any equity contributions when required in accordance with the terms of the Equity Contribution Agreement (provided that if such Equity Member's or Sponsor's obligations are secured by an Equity Letter of Credit with an undrawn amount equal to or greater than the amount of such equity contribution (or such Equity Letter of Credit shall have been previously drawn and the proceeds thereof shall have been deposited in the Equity Contribution Sub-Account as security), before any such failure shall constitute an Event of Default, the Collateral Agent shall

have made a drawing under the applicable Equity Letter of Credit supplied by such Equity Member or Sponsor pursuant to the Equity Contribution Agreement (or shall have withdrawn the applicable amount from the Equity Contribution Sub-Account), and the proceeds of such drawing (if any) shall have been insufficient to make the amount of such equity contribution in full), and such failure shall continue unremedied or unwaived for a period of twenty (20) days;

provided that with respect to each of clauses (1) and (2) above, no Event of Default shall occur if before the last day in which such Default could have been remedied prior to an Event of Default occurring, any one or more Equity Members or Sponsors have made a cash contribution or replaced the Equity Letter of Credit with an Acceptable Letter of Credit sufficient to fund any deficiencies resulting after the applicable Equity Letters of Credit have been drawn (or after the withdrawal of any applicable cash collateral (it being understood that, in each case, any draw on a letter of credit provided by an Equity Member or Sponsor pursuant to the Equity Member or Sponsor with respect to equity contributions to be made by such Equity Member or Sponsor and cure any default in respect thereof)); provided, however, that if any of the events set forth above is caused by, or results from the action or inaction of, one (and not all) of the Equity Members or Sponsors, such event shall not constitute an Event of Default so long as such event is capable of being remedied by the other Equity Members or Sponsors and is remedied within twenty (20) days after the applicable Agent gives written notice thereof to such Equity Member or Sponsor, or, with the prior written approval of the Majority Holders, such longer period as is reasonably necessary under the circumstances to remedy such event;

- (p) The Design-Build Contract becomes void, voidable, unenforceable or illegal or is terminated by any party thereto during the effective period of such contract, and such event or circumstance would reasonably be expected to have a Material Adverse Effect, unless the Design-Build Contract is replaced in accordance with the requirements set out in "Covenants of the Company – Material Project Contracts" within sixty (60) days following delivery of written notice thereof to Company or such longer period as reasonably necessary to effect such replacement so long as Company is diligently pursuing such replacement, provided that in no event shall such period exceed one hundred twenty (120) days in the aggregate;
- (q) One or more ERISA Events occur in respect of the Company that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect;
- (r) Subject to Company's right to effect an Equity Cure Action (described below under "Equity Cure Action"), DSCR for any twelve (12) consecutive month period ending on a Calculation Date after the first anniversary of the Substantial Completion Date is less than the Minimum DSCR; or
- (s) A Bankruptcy Event occurs in respect of the Design-Build Contractor, any Design-Build Contractor Member or any Design-Build Guarantor, for so long as the Design-Build Contractor or such Design-Build Guarantor has any obligation under the Design-Build Contract or the Design-Build Guarantee unless:
 - (3) with respect to any Design-Build Contractor Member:

(A) not later than 60 days after the occurrence of the Bankruptcy Event with respect to such Design-Build Contractor Member (or not later than 120 days after the occurrence of the Bankruptcy Event with respect to Jay Dee), such Design-Build Contractor Member has been replaced by an Acceptable Replacement Party that has assumed all of the obligations of such Design-Build Contractor Member;

(B) no other Design-Build Contractor Default has occurred and is continuing;

(C) the Contractor Obligations (as defined in the Design-Build Contract) have continued and continue to be carried out by the Design-Build Contractor in accordance with the Design-Build Contract;

(D) at least one Required Non-Defaultor is not in breach or default of its obligations under the Design-Build Contract and a Bankruptcy Event has not occurred with respect to such Required Non-Defaultor; and

(E) no termination right of MDOT has arisen under the Project Agreement with respect to a Design-Build Contractor Default and is continuing that would not be cured by the replacement of the relevant Design-Build Contractor Member.

(4) with respect to the Design-Build Contractor, the following shall have been satisfied:

(A) not later than 60 days after the occurrence of the Bankruptcy Event, the Design-Build Contractor has been replaced by an Acceptable Replacement Party that has assumed all of the obligations of the Design-Build Contractor pursuant to a fixed price replacement agreement between Company and an Acceptable Replacement Party that provides projected economic benefits for the Project that are, in light of the material risks and liabilities of such replacement contract taken as a whole, at least as favorable as the economic benefits for the Project of continuing under the existing Design-Build Contract, provided that if a direct agreement existed with respect to such Material Project Contract prior to its replacement, Company will cause a new (or amended and restated as the case may be) direct agreement to be entered into by the Acceptable Replacement Party, in form and substance substantially similar to the one being replaced or otherwise that is reasonably acceptable to the Collateral Agent;

(B) no termination right of MDOT has arisen under the Project Agreement and is continuing that would not be cured by the replacement of Design-Build Contractor;

(C) a Required Non-Defaultor is not in breach or default of its obligations under the Design-Build Contract or the Design-Build Guarantee; and

(D) the Lenders' Technical Advisor has certified that, in its reasonable opinion, (i) based on the projected costs set forth in the current Project construction budget (taking into account the fixed-price nature of the replacement Design-Build Contract) sufficient funds are available to Company to achieve Substantial Completion and (ii) Substantial Completion is reasonably expected to occur on or prior to the Lenders' Longstop Date; or

(5) with respect to any Design-Build Guarantor, if a Bankruptcy Event has not occurred in respect of at least one Required Non-Defaultor and a Required Non-Defaultor is not otherwise in breach or default of its obligations under Design-Build Contract, the Design-Build Guarantee or the D&C Direct Agreement.

Equity Cure Action

In the event of any Event of Default pursuant to clause (r) above under "Events of Default" for failure to achieve the Minimum DSCR, the Equity Members may, at their option at any time, make an Additional Equity Contribution but no Equity Member shall have any obligation to make any Additional Equity Contribution. Any proceeds from any Additional Equity Contribution made within twenty (20) days following the relevant Calculation Date will, at the written request of the Company, be added to Project Revenues solely for the purposes of determining compliance with the Minimum DSCR pursuant to such clause (r) on the applicable Calculation Date and any subsequent period that includes such Calculation Date (any such Additional Equity Contribution); provided that:

(a) the amount of any Cure Action and the use of proceeds therefrom will be no greater than the amount required to cause the Company to be in compliance with the Minimum DSCR;

(b) all Cure Actions and the use of proceeds therefrom will be disregarded for all other purposes under the Finance Documents (including calculating DSCR for purposes of determining whether the Restricted Payment Conditions have been satisfied or determining satisfaction of DSCR for purposes of incurrence of Other Permitted Senior Secured Obligations);

(1) (i) there shall be no more than five (5) Cure Actions made during the term of the Senior Loan Agreement, (ii) a Cure Action may not be made in more than three (3) successive fiscal quarters; and (iii) the proceeds of all Cure Actions are actually received by the Company; and

(2) to the extent that the Company has applied the aggregate proceeds of a Cure Action to repay a portion of the Series 2018 Bonds, such repayment shall be ignored for purposes of calculating the DSCR for purposes of determining satisfaction with the Restricted Payment Conditions or incurrence of Other Permitted Senior Secured Obligations until such time that the Cure Action ceases to be added to Project Revenues pursuant to the foregoing provisions.

The Company will provide notice to the Trustee of its intention to cause to be made a Cure Action on or within five (5) Business Days after the relevant Calculation Date. If, after giving effect to the foregoing recalculations, the Company shall then be in compliance with the Minimum DSCR, the applicable Event of Default that had occurred shall be deemed cured for the purposes of the Finance Documents.

Remedies on Event of Default

Upon the occurrence and during the continuance of an Event of Default, any Bondholder or the Issuer may deliver to the Trustee written notice, with a copy to each of MDOT, the Company and the Insurer, that an Event of Default has occurred and is continuing.

Whenever any Event of Default as described above shall have occurred and be continuing, the Trustee, or the Issuer with the written consent of the Trustee, shall have the right to, in conjunction with its available remedies under the Indenture, take one or any combination of the following remedial steps, by notice to the Company and the Collateral Agent:

- (a) commencing on the date of delivery of the notice referred to above, the holders of not less than twentyfive (25%) of the aggregate principal amount of the outstanding Series 2018 Bonds shall have the right to give the Trustee, or the Issuer with the written consent of the Trustee, one or more enforcement directions under the Indenture directing the Trustee to take on behalf of the Bondholders whatever action at law or in equity may appear necessary or desirable to enforce the rights of the Bondholders;
- (b) if so instructed by the holders of not less than twenty-five (25%) of the aggregate principal amount of the outstanding Series 2018 Bonds in accordance with the Indenture, the Trustee or the Issuer with the written consent of the Trustee (except with respect to a Bankruptcy Event of the Company or HoldCo, in which case no instruction shall be required to either the Trustee or the Issuer), shall declare the Series 2018 Loan, all interest accrued and unpaid thereon, and all other amounts payable in respect of the Series 2018 Loan to be due and payable, whereupon the same shall become immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are waived by the Company;
- (c) have reasonable access to and inspect, examine and make copies of the books and records and any and all accounts, data and income tax and other tax returns of the Company during regular business hours of the Company and following prior reasonable notice; or
- (d) if so instructed by the holders of not less than twenty-five (25%) of the aggregate principal amount of the outstanding Series 2018 Bonds in accordance with the Indenture, take on behalf of the Bondholders whatever other action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Company under the Senior Loan Agreement or the rights of the Bondholders.

Any amounts collected pursuant to action taken pursuant to the foregoing provisions and the Security Documents will be paid to the Trustee and applied in accordance with the Indenture.

Any rights and remedies as are given to the Issuer under the Senior Loan Agreement will also extend to the Trustee for the benefit of the Trustee and the Bondholders, subject to the provisions of the Indenture, which will be entitled to the benefit of all covenants and agreements contained in the Senior Loan Agreement, subject to the terms of the Security Documents.

No Remedy Exclusive

Subject to the Indenture, no remedy under the Senior Loan Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Senior Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in the Senior Loan Agreement, it shall not be necessary to give any notice, other than such notice as may be required by law or under the Senior Loan Agreement or under any other Finance Documents. Any such rights and remedies as are given to the Issuer under the Senior Loan Agreement shall also extend to the Bondholders, and, subject to the provisions of the Indenture, the Trustee and the Collateral Agent shall be entitled to the benefit of all covenants and agreements herein contained, subject to the terms of the Security Documents.

Term of Agreement

Except to the extent otherwise provided, the Senior Loan Agreement will be effective upon its execution and delivery and will expire at such time as all of the Series 2018 Bonds and the fees and expenses of the Issuer and the Trustee will have been fully paid or provision made for such payments, whichever is later; provided, however, that the Senior Loan Agreement may be terminated prior to such date pursuant to the prepayment provisions of the Senior Loan Agreement and the redemption provisions of the Indenture, but in no event before all of the obligations and duties of the Company under the Senior Loan Agreement have been fully performed, including, without limitation, the payments of all costs and fees mandated under the Senior Loan Agreement or under the Indenture.

Amendments, Changes and Modifications

Subsequent to the issuance of the Series 2018 Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), and except as otherwise expressly provided in the Senior Loan Agreement, the Senior Loan Agreement may not be effectively amended, changed, modified, altered or terminated except in accordance with the provisions of the Indenture.

Indemnification

The Company will indemnify and hold harmless the Issuer and the Trustee, and their respective members, directors, officers, employees and agents (each, an "Indemnified Party" and collectively, the "Indemnified Parties") against and from all claims by or on behalf of any Person arising from the Senior Loan Agreement, the Indenture or the transactions contemplated thereby or the design, build, operation or maintenance of the Project during the term of the Senior Loan Agreement, in each case by the Company or on its behalf, including without limitation (1) any condition of the Project, (2) any breach or default on the part of the Company in the performance of any of its obligations under the Senior Loan Agreement, (3) any act or negligence of the Company or of any of its agents, contractors, employees or licensees, (4) any untrue statement of a material fact contained in information provided by the Company with respect to the transactions contemplated hereby or (5) any act or negligence of any assignee or lessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or lessee of the Company. The Company will indemnify and save the Indemnified Parties harmless from any such claim arising as aforesaid, or in connection with any action or proceeding brought thereon, and upon notice from the Issuer or the Trustee, the Company shall defend such parties, as applicable, in any such action or proceeding.

Without the consent of the Company, which consent shall not be unreasonably withheld, the Issuer shall not settle, compromise or consent to the entry of any judgment in any claim in respect of which indemnification may be sought under the indemnification provision of the Senior Loan Agreement, unless such settlement, compromise or consent (1) includes an unconditional release of the Company from all liability arising out of such claim and (2) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of the Company.

The Company shall have no liability to indemnify the Issuer or the Trustee against claims or damages resulting from such parties' own fraud, gross negligence or willful misconduct.

Governing Law

The Senior Loan Agreement will be governed by and construed in accordance with the laws of the State of Michigan.

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APPENDIX G LENDERS' TECHNICAL ADVISOR'S REPORT

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MICHIGAN I-75 MODERNIZATION PROJECT (SEGMENT 3) DBFM LTA PRE-FINANCIAL CLOSE REPORT

NERSHIP

RT

DATE: November 2, 2018 VERSION NO: 1.2

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APPENDICES

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About WT:

WT Partnership is one of the fastest growing advisory firms in North America.

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1.0 PREAMBLE

1.1 PURPOSE OF THIS REPORT

The purpose of this report is to provide a broad independent assessment of the various components of Oakland Corridor Partners' (the "Consortium") design, construction, and maintenance solution for the Michigan I-75 Modernization Project (Segment 3) DBFM.

1.2 RELIANCE STATEMENT

This report provides a technical review of the Michigan I-75 Modernization Project (Segment 3) DBFM for the benefit of the Consortium, the Lenders and related parties. This report does not extend to any opinion relating to an investment in funds or secondary market bonds, any forecast of potential financial returns to third-party investors, a valuation of the assets, or a recommendation to purchase the assets.

- 1. This Report is prepared for and is addressed to "the Parties" being:
 - the "Lenders" i.e. any person or entity who provides or who intends to provide financial accommodation, facilities or assistance to the Consortium for the purposes of the Proposed Transaction including, for the avoidance of doubt, any party which becomes a Lender following financial close of the Project and any purchaser, holder or beneficial owner of bonds issued by Michigan Strategic Fund or other conduit issuer where the net proceeds of such bonds are loaned by the bond issuer to Oakland Corridor Partners LLC and any person or entity who provides a bond insurance policy for such bonds.;
 - underwriters;
 - ratings agencies; and
 - such other entity or individual approved in writing by WT (such approval not to be unreasonably withheld) (the "Addressees") but does not include any third party who intends to or becomes an investor to an investment vehicle offered by the Consortium, in relation to the bid for the I-75 Modernization Project.
- 2. The purpose of this report is to provide an objective assessment of the technical risks associated with the design and construction of the proposed facilities set out within the Project Documents, to assist the Parties in evaluating, assessing and deciding whether to proceed with financing of the proposed project.
- 3. We confirm the Parties may rely upon this report for a period of 5 years in connection with the purpose referred to in paragraph 2 above. In giving this confirmation WT is not taken to have assumed any particular duty to advise any individual Parties or to consider their circumstances or position.
- 4. This Report is strictly confidential to the Parties who agree that, subject to paragraph 6 below they will not disclose, show, copy, disseminate or give to any other person or entity this report without WT Partnership's express written consent, which may be withheld in its absolute discretion. However, if a Party is required by law, court order, government authority, administrative or judicial body, or the rules of any stock exchange with which the party is required to comply to disclose the



Report, it may do so provided WT is advised in writing (as soon as practicable) after the legal obligation to disclose arises.

- 5. WT consents to this report being made available to each Party, their employees, directors, offices, affiliates, professional advisers, related bodies corporate and contractors and to disclosure by any party to the extent required by law or regulation.
- 6. It is the responsibility of the relevant Party to determine the suitability of the Report for its own purposes. Distribution of the Report under the terms of Paragraph 5 to any party other than the Addressees will be on a no reliance basis with no surviving liability or recourse to WT.
- 7. WT undertakes no obligation to provide any Party with any additional information nor to update any of the information or opinions contained in the Report.
- 8. This Report is subject to the qualifications, assumptions and disclaimers expressed in it and the terms and conditions in Attachment 2.
- 9. The Report has been compiled from information provided to WT by third parties, however WT does not warrant the accuracy of that information. If the information provided to WT is inaccurate or incomplete, then it may invalidate the conclusions and advice contained in the Report.
- 10. Before placing any reliance upon the Report for any purpose, any Party should undertake their own inquires to ensure there have been no material changes to the items discussed in the Report.
- 11. The liability of WT for and in relation to this Engagement as defined in Contract Documents (whether in contract, tort or otherwise) is limited to all parties both in the individual and in aggregate to \$5,000,000 USD.
- 12. This report does not extend to any opinion relating to investment in Project Bond, any forecast of potential financial returns to Bond investors, a valuation of the Assets, or a recommendation to purchase the Assets.

1.3 DISCLOSURE & CONFIDENTIALITY

This report and the information within it are confidential and may be privileged. If you have received the Report in error, please notify WT immediately. You should not copy it for any purpose or disclose its contents to any other person. The Report is qualified in its entirety by and should be considered in the light of WT's Scope of Services as referenced in Attachment 1 to the LTA Consultancy Agreement, and herein attached as Appendix A

1.4 COMMENTS/QUERIES

All queries, comments, or discussions in relation to this document should be directed to the following members of the LTA team:

Joshua Lalonde | Vice-President (P3 Advisory) E joshua.lalonde@wtpartnership.co C +1 647.521.8730 Adam Shaw | Executive Vice-President <u>E</u> adam@wtpartnership.co C: +1 323 620 1654

2.0 EXECUTIVE SUMMARY

2.1 **REPORT OVERVIEW**

RISK RATING	
Green	No current adverse or exceptional risk to the Lenders
Amber	Risk observed, may be accepted or require close monitoring/ further action
Red	Significant risk to Project Company / must be addressed/mitigated

Table 1- Executive Summary Table

AREA	COMMENTS	STATUS
Project Management	The Consortium comprises a range of industry specialists experienced in the delivery of highway and tunnelling infrastructure. The DB LLC comprise a group of experienced local contractors with demonstrated experience working in collaboration to deliver comparable Projects.	The Identified Consortium members possess the expertise to respond to the requirements of the Project throughout the design, construction, and maintenance term.
Project Contracts	The Project Agreement terms are generally consistent with DBFM P3 procurements for highway infrastructure in North America. WT have reviewed the DB Contract and confirm that the terms are reflective of market standard.	WT have not identified any areas of material risk under the PA which cannot be appropriately managed by the Consortium via drop-downs to the DBLLC or appropriate management at the Developer level. WT opine that the terms of the DB Contract appropriately pass down the risk for Design and Construction onto the DBLLC.
Existing Site Conditions	MDOT commissioned a series of investigative surveys and tests through the I-75 corridor program. Copies of a variety of technical reports have been provided to the Consortium on a non- reliance basis. These are detailed further in Section 6.1.	As noted in our commentary hereunder, the DBLLC has reviewed the existing data in detail and proactively developed mitigation strategies to reduce the risk around contamination (predominantly gases) and geotechnical sub- surface conditions. Whilst there will inevitably need to be more due diligence undertaken pre- construction and when permitted by MDOT, we believe the Consortium has mitigated the risk so far as practical for this stage of the transaction.
Planning and Approval Issues	There are a number of statutory, environmental and governmental approvals that the project will be subject to. In regard to Environmental Impact, an existing EIS was in place for the I-75 program however a re-evaluation was required by federal regulations for subsequent phase/segments and so this Project was re-assessed, evaluated and again given approval by appropriate parties.	The details of these requirements are relatively well set out by MDOT and well understood by the Consortium partners who have undertaken many projects in the jurisdiction before. Such requirements have been reflected in the schedule with adequate contingencies and float.
Design & Construction Review	Construction activities will be required to follow defined traffic management procedures in order to undertake the work, in addition to a defined winter shutdown period for works on the freeway. The Project includes construction of a 14' diameter drainage tunnel (and associated pump station infrastructure) along the alignment, which will	The DBLLC's proposed construction solution accounts for the identified seasonal constraints and traffic management/lane closure requirements. The DBLLC have proposed an appropriate design and construction strategy for the tunneling works in order to mitigate prospective risks.

AREA	COMMENTS	STATUS			
	necessitate the utilization of a Tunnel Boring Machine ("TBM") to construct.				
Construction Schedule	The project schedule runs approximately 57 months from Financial Close to the Scheduled Substantial Completion Date. The Project will be undertaken in several stages Substantial Completion is scheduled for Aug 31, 2023. Tunnel & Pump Handover is scheduled for Oct 3, 2022.	WT have reviewed the draft interim schedule and note that it adequately displays the general progression of the project and accounts for specific restrictions identified in the Project Agreement. WT consider the schedule to be overall achievable.			
Construction Cost Review	The current design and construction cost estimate falls within a comparative range to prior highway P3 projects within the WT benchmark sample, in addition to tunnel benchmarks provided by the DBLLC for past projects WT have received and reviewed the DBLLC's DB Contract Price and associated cashflow in the amount of \$629,245,356. This value is inclusive of ATC's and negotiated items agreed between the PA Parties following notification of preferred proponent.	Based on WT's cost analysis and benchmarking, the overall costs are considered to be adequate for the completion of the Project. The high percentage of the overall DB Contract Price which will be self-performed by the parent companies of the DBLLC is considered a substantive benefit and affords the Consortium with a significant measure of cost certainty at the outset of the Project.			
Contractor Replacement	 The DBLLC will provide the following performance security A Performance Bond equal to the value of the Design-Build Contract Price, with 75% assignable to the Developer and 25% available to MDOT. The 75% portion available to the Developer equates to a total security value of \$471,934,017 Liquid security by way of a separate "ondemand" Liquidity Bond in the amount of 7.77% of the DB Contract Price or \$48,904,296. This value will be subject to adjustment based on the final debt service amounts. Parent Company Guarantees from the DB LLC members up to a liability cap of 40% of the Contract Price \$251,698,142. 	The proposed performance security is considered reflective of market standard. Based on the results of our replacement analysis, it is WT's opinion that the proposed security package is sufficient to cover the immediate and long-term costs of replacing the DBLLC in the event of a Default.			
Maintenance Review	WT have received and reviewed the Interim and Long-Term Maintenance requirements specified in the Project Agreement, in addition to the Consortium's proposed approach methodology and staffing plans in order to satisfy them.	The maintenance and renewal specifications are considered suitably defined and should not pose undue risk to an appropriately managed team, despite the relatively stringent performance requirements. Based on our review of the documentation provided by the Consortium, it is WT's opinion that appropriate consideration has been given to the requirements of the PA in the development of the maintenance approach, which is considered feasible for the delivery of the Project.			

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AREA	COMMENTS	STATUS
Maintenance Cost Review	WT have received and reviewed detailed budgeting for the long-term maintenance period, provided by the Consortium, split between SPV and Maintenance Costs. The average annual maintenance cost for steady state operations is \$1,488,363 inclusive of the on the ground maintenance staff and equipment. SPV costs total \$29,807,424 over the 25-year term and are inclusive of administrative management as well as the key Developer personnel identified in the PA, excluding insurances.	Based on benchmarking analysis and cost interrogation, WT opine that the proposed annual maintenance budget falls within appropriate ranges and is considered appropriate to deliver the services. The SPV costing provided is considered appropriately sized and reflective of the proposed maintenance strategy.
Lifecycle Cost Review	WT have received and reviewed the renewal works budget prepared by the Consortium. The Lifecycle Works are valued at \$25,270,793 which represents 4.0% of the DB Contract Price, and an average of \$1,010,832/yr. over the 25-year term.	The proposed lifecycle budget is considered appropriate based on the results of our independent benchmarking and interrogation of the detailed costing. Assumptions are consistent with the noted renewal work plan and appropriately respond to the residual lifecycle requirements under the PA.
Payment Mechanism	The Quarterly Availability Payments will be subject to monetary deductions for Lane Unavailability and Noncompliance. The Noncompliance Regime is considered to be stringent due to the relatively onerous response times for incidents and severity of noncompliance points relative to the Default Threshold under the PA.	The Consortium have acknowledged the associated risks with the deduction and noncompliance regime and have incorporated a deduction allowance into the annual maintenance budget. It is WT's opinion that the general deduction risk is low and has been appropriately accounted for in the Consortiums maintenance approach and inclusion of an appropriately sized NCP allowance in the maintenance budget.
Equator Principles	The Project is considered to be an economic and social benefit. Appropriate mitigation measures have been put in place to respond to acute environmental impacts identified in the NEPA review.	Based on our assessment of the Equator Principles, it is WT's opinion that the Project scheme is a Category B project.

3.0 INTRODUCTION

3.1 PROJECT OVERVIEW

The Michigan Department of Transportation ("MDOT") issued a Request for Proposals ("RFP") for the design, supply, build, finance and maintenance of the Michigan I-75 Modernization Project (Segment 3) DBFM (the "Project") to a short-list of four proposers from the five statements of qualifications received in response to their Request for Qualifications.

The Consortium, along with three other shortlisted respondents, submitted a response to the RFP on August 21, 2018. Following the submission and selection process, MDOT subsequently selected the Consortium as preferred proponent for the Project. As of October 12, 2018, MDOT and the Consortium have entered into a Design-Build-Finance-Maintain Agreement (the "Agreement" or "PA") with the Consortium acting as "Developer" as defined therein.

WT have been retained by the Consortium to provide Lenders' Technical Advisory services for the Project's Lenders. The equity members of the Consortium are led by John Laing Investments Limited (40%) and AECOM Capital, Inc (30%) with participation from the Lead Contractors: Dan's Excavating, Inc., Ajax Paving Industries, Inc. and Jay Dee Contractors, Inc. who will each have a 10% equity share. Together the equity members will form the non-recourse special purpose vehicle which will act as the Developer under the PA.

The I-75 Modernization Project is the culmination of over 20 years of planning and design. The purpose and need for the widening and reconstruction of 18 miles of freeway in Oakland County is to improve and increase the capacity of the I-75 roadway, interchanges and ramps to support the mobility needs of local and interstate commerce as well as national and civil defense; and to accommodate existing and future traffic, population and employment growth, land use changes, safety issues and to reduce congestion along the I-75 corridor.

With the exception of the recent completion of Segment 1 of the I-75 Modernization Project, no major improvements have been made to this corridor since it was built in the 1960s. Traffic is expected increase by 10% in 2035 to 112,000 to 193,000 vehicles. Before moving to an alternative delivery structure for the remaining two segments, it was expected to be completed in 9 segments over 17 years finishing in 2034.

A Final Environmental Impact Statement is in place for the Project with the Record of Decision being issued in January 2006 along with the required Re-evaluation completed in February 2018. MDOT will provide use of the Planned ROW Limits and anticipates completing further acquisitions by April 2019.

The Project meets the definition of a "major project" under 23 U.S.C § 106, and accordingly requires a "major project review" by the Federal Highway Administration ("FHWA") prior to the award of the Project Agreement and submission of annual reports by MDOT to the FHWA concerning the Project. This is a standard process for this type of contract and should not present any barriers, however the status of the FHWA review is currently being determined.

MDOT's stated goals for the Project are as follows (in no particular order of importance):

- Improve travel efficiency;
- Optimize risks by allocating risks to parties best able to manage them;
- Develop a high-quality Project that optimizes the whole-life performance;



- Develop and maintain the Project consistent with the Project Documents, including the Technical Requirements;
- Avoid or minimize impacts to the environment;
- Avoid or minimize construction related impacts;
- Allow for innovative ideas to improve the Project;
- Collaborate with the team undertaking the delivery of the northern Segment 2 to provide seamless interface between projects and avoid an impact to either segment's delivery or schedule;
- Maintain the Project to achieve the performance and Handback Requirements in accordance with the Project Documents;
- Make the most and best use of available funding and financing to deliver the Project within MDOT's constraints; and
- Obtain Substantial Completion by fall of 2023.

One of the unusual aspects that must be accommodated by the Developer is that from November 15th through March 1st of each year, unless a shorter time period is approved by MDOT, no Project Work as defined Schedule 17 (Technical Requirements) may take place except maintaining certain Storage and Drainage Tunnel work, soil erosion and sediment control facilities, agreed upon maintenance items, and routine maintenance. Further, all roadways, ramps, bridges and sidewalks must be open, and their traffic generally returned to same status that existed prior to the start of the D&C Work, with certain exceptions for service drives. Further details are found in PA Schedule 17, Articles 18.5 and 24.3. WT have confirmed that this requirement can be accommodated in the Project Schedule, but it does reduce the available time to accelerate work if a schedule problem develops.

During the Term, access and cooperation is required with the following designated Interface Parties:

- MDOT Contractors;
- Utility Owners;
- The Segment 2 Contractor;
- The P3 Lighting Contractor; and
- The Oakland County Water Resources Commissioner (OCWRC).

Pursuant to the terms of PA Section 9.4, the Developer will provide safe and unrestricted access to the Relevant Infrastructure (as defined in Report Section 5.2.4), safe access during normal business hours to Project offices and maintenance buildings and unrestricted access to data respecting Project design, construction and maintenance as is relevant or necessary to each respective Interface Party. The Developer is obligated to assume the risk for the Interface Parties and will not be entitled to make a claim against MDOT, its subcontractors or the Interface Parties performing work on or around the Project ROW or any schedule of identified activities provided by MDOT. *Figure 1 - I-75 Segment DBFM Project Map*





However, there exists provisions in the PA with regards to non-performance on the part of the Interface Parties which provides elements of protection to the Developer for this assumed risk. Please refer to Section 5 for further details on these mechanisms.

Three specific Interface Parties that bear further discussion are:

- There is a third-party agreement between MDOT and OCWRC that has been provided and must be complied with, particularly as it relates to the completion and turnover of the Tunnel and Pump Station to achieve Milestone 2 as further discussed in PA Section 14.7.
- The Segment 2 Contractor who will be delivering a design-build contract for Segment 2 of the I-75 Modernization Project as further described below; and
- The P3 Lighting Contractor who is implementing the Metro Region Freeway Lighting DBFOM Project dated August 2015 with a scope to design, construct and maintain as further described below.

3.1.1 SEGMENT 2 CONTRACTOR INTERFACE

It is anticipated that the Segment 2 construction will begin in the fall of 2018 with a substantial completion in November 2020. Related to the I-75 (Segment 2) Contractor, the Agreement states that the Developer is required to:

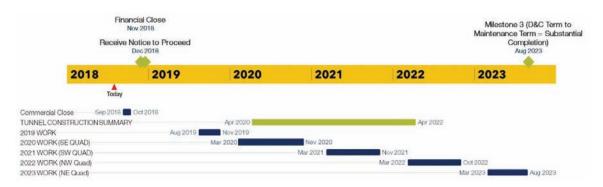
- coordinate and cooperate with the Segment 2 Contractor to ensure a seamless connection at the match line;
- MDOT has the right to request that the Developer review and comment on submissions of the Segment 2 Contractor or inspect any of their work that MDOT is required to inspect including providing written comments;
- provide the Segment 2 Contractor or MDOT any requested information reasonably necessary for the interface;
- participate with and assist MDOT in inspection, testing and acceptance of element of the Segment 2 Contractor's work that interface with the Project Work;
- except as provided in the PA, prior to proceeding with Project Work that depends on the Segment 2 Contractor's work, inspect and prompt report to MDOT any Defect that impact proper execution; and
- have the right to request information from the Segment 2 Contractor related to the Project Work and Segment 2 Contract construction plans.

The Project Interfaces Article 4 of Schedule 17 (Technical Requirements) includes the following:

- Tie into the I-75 (Segment 2) section and match the existing condition constructed by the Segment 2 Contractor, the final design of the alignment, plan and profile plus typical cross sections is to be available by June 1, 2019.
 - Developer must transition to the I-75 (Segment 2) in accordance with MDOT guidelines detailed in Schedule 17, Article 11 (Roadway and Grading). The Developer is also required to coordinate with the Segment 2 Contractor relative to the construction, use and maintenance of the temporary cross-over located within the D&C Limits as further described in Schedule 17, Article 2;
 - The drainage and lighting systems for the two projects are independent and will not have an interface; and
 - For Intelligent Transport Systems ("ITS"), the Developer is required to closely coordinate with Segment 2 Contractor for all design and construction activities.

WT PARTNERSHIP

The Segment 2 Contractor is stated to be responsible for the installation and testing of fiber optic cables for Segment 2 to be terminated at a splice cabinet at 13 Mile Road. PA Schedule 17, Article 4.1.3.1 then details the Developer responsibilities associated with fiber optic cable installation and testing, which essentially comprises installation and testing a section of fiber optic cable from the Segment 2 splice point to a further splice point at the end of Segment 3.



Based on our review of the Consortiums design and construction approach, we note that the contemplated work progression for the Segment 3 works will commence at the opposite and of the road alignment from Segment 2. Works to the Northwest and Northeast quadrants of the freeway (discussed in Section 8.0) which tie into Segment 2 are not scheduled to commence until March 2022, thus providing a full season of work in the event that the Segment 2 contractor suffers delays. Further, we note that any detrimental impact to the works caused by the Segment 2 contractor equates to a Compensable Delay Event entitling the Developer to appropriate cost and schedule relief.

3.1.2 P3 LIGHTING CONTRACTOR INTERFACE

The I-75 mainline lighting is subject to a separate contract with the P3 Lighting Contractor who is responsible for the Long-Term Maintenance of that lighting. PA Section 14.8 and Article 4.2 of Schedule 17 provides the requirements related to the P3 Lighting Contract, which are further described as part of the Substantial Completion process in Section 8.5 of this report. In general, the Developer will regularly coordinate with the P3 Lighting Contractor, provide any MDOT requested information to them, perform Interim Maintenance for the I-75 mainline lighting until Substantial Completion and follow specific requirements for the review of lighting submittals and turnover of the lighting, as further discussed in Report Section 7.1. In addition, MDOT may request that the Developer review and comment on any submissions from the P3 Lighting Contractor as well as inspect work and provide written comments, both are only for items related to the Project. After Substantial Completion, the maintenance of the Freeway lighting work will be the responsibility of the P3 Lighting Contractor.

Subsequent drafts of the PA have since clarified the responsibilities related to the P3 Lighting Contractor. Other than the coordination requirements, WT considers the remaining potential issues to be related to design and substantial completion elements that are further discussed in Report Sections 7.1 and 8.5.



3.1.3 NON-MAINTAINED FACILITIES

In addition to the Interface Parties, the Developer is also required to consult with the Facility Owners during the D&C Term to ensure that their requirements are identified and completed for the Non-Maintained Facilities (as listed below in Report Section 3.4). The Facility Owners are allowed to inspect the Non-Maintained Facilities and the Developer will handover to the relevant owner upon Substantial Completion.

WT considers this type of coordination to be typical to similar P3 U.S. roadway projects and well within the Consortium's abilities to manage well.

3.1.4 COMPARISON WITH OTHER PROJECTS

Public-private partnership project delivery has become common in the U.S. over the last two decades although it is less widespread than in Canada, Europe and Australia. As part of P3 approach, the Availability Payment model has steadily been shown of value with either projects that do not generate a revenue stream or where the owning agency wishes to retain tighter control of the revenue parameters. The first availability payment concession for transportation in the U.S. was the I-595 Corridor Improvements in Ft Lauderdale, Florida that closed in 2009 followed that same year by the Port of Miami Tunnel. This approach opens up additional projects to the DBFM delivery method as public funds are used for the periodic availability payments. While this does add the potential risk of appropriation by the owning public agencies, the majority of lenders consider it a minimal issue, particularly for a well-established and funded agency such as the Michigan Department of Transportation.

The Michigan I-75 Modernization Project (Segment 3) is a DBFM that is both adding capacity and reconstructing existing lanes. It is being procured as an availability payment project without any tolling component and this is the first P3 project of this type being undertaken by the MDOT. The Developer is required to collaborate with the contractor that is delivering the northern Segment 2. In searching for comparable projects, while there are many P3 highway projects in the U.S., there are fewer to choose from that include this combination of traits.

Arguably, highway projects have experienced the greatest degree of insolvency and litigation of P3 asset classes, primarily owing to traffic volume / revenue forecasts not bearing out in accordance with the financial model. In this instance, as an availability-payment P3, this transaction will not bear such a risk as the debt service is not reliant on a patronage or traffic volume. Of course, design parameters and asset management assumptions on traffic volumes will be critical to the Realistic Outside Cost (ROC) of the construction cost, FM service and lifecycle pricing but the sensitivity of these estimates is exponentially lower by comparison to the effect on a revenue-based deal.



A selection of the most comparable U.S. roadway P3 procurements is detailed in the following table:

PROJECT	LOCATION	CAPEX (\$ USD)	STATUS
Southern Ohio Veterans Highway (Portsmouth Bypass)	Portsmouth, OH	\$554m	Under Construction
Central 70 – Colorado Department of Transportation, Highway/Express Lanes	Denver, CO	\$1,271m	Under Construction
I-4 Ultimate – Florida Department of Transportation, Highway/Express lanes, Availability Payment	Orlando, FL	\$2,300m	Under Construction,
US36 Express Lanes (Phase 2), Colorado Department of Transportation/Colorado High Performance Transportation Enterprise, Highway/Managed Lanes	Denver, CO	\$120m	Completed 2016
Ohio River Bridges East End Crossing, Indiana Finance Authority & Indiana DOT, Availability Payment	Southern Indiana/Louisville, KY	\$763m	Completed 2016
I-595 Corridor Roadway Improvements. Florida Department of Transportation, Highway/Managed Lanes, Availability Payment	Broward County, FL	\$1,760m	Completed 2014
Presidio Parkway (Phase II), California Department of Transportation, Highway, Availability Payment	San Francisco, CA	\$362m	Completed 2012

Note: With the exception of I-595 Corridor Roadway Improvements, WT (or our designated LTA team members under prior employment) have provided relevant consultant services or project experience in relation to the above projects.

WT considers the ample amount of U.S. and international precedent P3's to be demonstrative of the suitability of the DBFM Availability Payment model for Highway Projects. Acknowledging the drainage tunnel (discussed within Section 8.0) and typical challenges associated with large corridor highway projects, the I-75 project does not present any significant technological or unique engineering risks to those examples cited in Table 2.

3.2 LOCATION AND GEOGRAPHY

The Project is the Segment 3 portion of MDOT's overall, I-75 Modernization Project. The I-75 Modernization Project encompasses approximately 18 miles of freeway from north of M-102 (8 Mile Road) to south of M-59. Segment 1 was completed in September 2017, Segment 2 is being procured as a design-build contract which was awarded in late June of 2018. Segment 3 consists of 1.5 miles of rural freeway and 4 miles of urban depressed freeway and a storage and drainage tunnel and pump station. The Project is in the cities of Madison Heights, Royal Oak and Hazel Park, which are all within Oakland County.

WT PARTNERSHIP

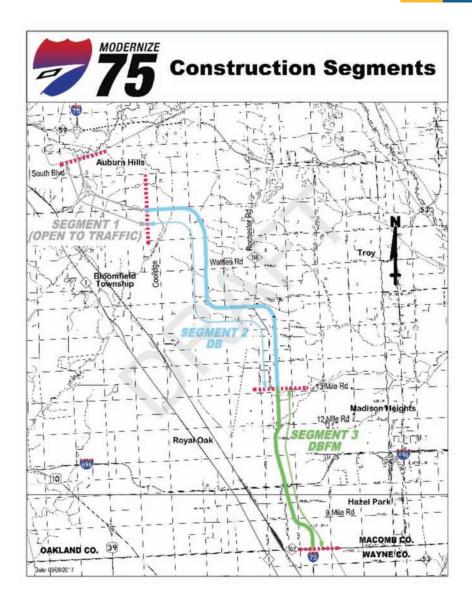


Figure 2 - I-75 Construction Segments

3.3 PROJECT SCOPE

The Project Work to be completed by the Developer encompasses the design and construction work (the "D&C Work"), the Maintenance Work and all other obligations under the Agreement.

The D&C Term will end upon Substantial Completion and the Maintenance Term will commence ending upon the Expiration Date which is expected to be 25 years after the Substantial Completion Deadline unless an early termination should occur.

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The D&C Work includes the design and construction of approximately 5.5 miles of freeway including 1.5 miles of rural freeway and 4 miles of urban depressed freeway with service drives. The Project includes the addition of one general purpose lane in each direction from 8 Mile Road to 12 Mile Road, the addition of an HOV lane in each direction from 12 Mile Road to 13 Mile Road, reconstruction of the existing freeway lanes and the replacement of 25 bridges - one new bridge and two bridge removals. The Project also includes a storage and drainage tunnel 4 miles in length with a 14-foot diameter to be constructed beneath the northbound I-75 service drive and a new pump station at the George W. Kuhn Retention Treatment Facility as well as Intelligent Transport Systems upgrades. Early construction of the tunnel and pump station are a priority for the Project.

The Project Work also includes grading, environmental compliance, site work, landscaping, aesthetics, traffic signals, noise and retaining walls, maintenance of traffic, maintenance during construction, paving, pavement marking, signing, certain Utility work and coordination, quality, construction safety, permitting and public information, maintenance of existing drainage during construction, commissioning of the new Storage and Drainage Tunnel and Pump Station as well as demolishing and removing the existing seven (7) pump stations.

D&C Work on the roadway is not allowed to commence until March 1, 2020 unless Developer has otherwise satisfied all conditions precedent to the commencement of construction work and completed all Utility Relocations. Schedule 17 (Technical Requirements) does outline in <u>Article 2.2</u> certain requirements related to the timing and coordination elements with the Segment 2 Contractor on temporary crossovers and sound walls prior to March 1, 2020. Work related to the Storage and Drainage Tunnel is not restricted by this requirement.

The D&C Work contemplates four key construction milestones which are tied to lump sum payments under the PA (refer to Report Section 5.2.2). These milestones are summarized below with further details provided in Report Section 8.5 as to the requirements to achieve each Milestone:

- <u>Milestone 1</u>: requires the Tunnel Boring Machine ("TBM") to be in place along with other specified requirements for the Storage and Drainage Tunnel ("SDT").
- <u>Milestone 2</u>: Completion and turnover of Tunnel and Pump Station. SDT and all appurtenances are complete along with additional specific conditions including those listed in PA Section 14.7.
- <u>Substantial Completion</u>: the balance of the D&C Work is complete and meets the specified performance requirements under the PA. As previously indicated, the deadline for Substantial Completion will be set by the Proposal Schedule but in no case will be more than 1,826 days after Financial Close (Substantial Completion Deadline). In other words, bidders are free to set their own shorter schedules but at a minimum must submit a schedule which includes Substantial Completion by 1,826 days. Should there be delays, the Long Stop Date is twelve months after the Substantial Completion Deadline (the Substantial Completion Deadline being the date that is according to the Proposer's own schedule);
- <u>Final Acceptance</u> requires the balance of the D&C Work not completed as part of Substantial Completion have been completed. The maximum deadline for Final Acceptance is six months after Substantial Completion.

The Developer will also be responsible for routine and long-term maintenance of certain asset categories during the Maintenance Term as well as routine maintenance during the D&C Term. The complete detail on the scope is contained within the Technical Requirements which have been released as Volume II of the RFP.



The Maintenance Work includes both Interim Maintenance and Long-Term Maintenance. The Developer is responsible for Interim Maintenance Work of the following during the relevant portions of the D&C Term as further detailed below.

- Roadway, underdrains and roadside;
- existing facilities that are to be later replaced or reconstructed as part of the D&C Work;
- seven (7) existing pump stations until the earlier of Milestone 2 Completion or the decommissioning/demolition of said pump stations as part of the D&C work;
- existing facilities that are to remain in place but are within the designated limits of the D&C Work (the "D&C Limits");
- haul routes within the D&C Limits;
- Project facilities damaged by normal wear, forces of nature, or acts of third parties;
- temporary roads and temporary noise walls;
- temporary structural works required for structure erection;
- Non-Maintained Facilities, Existing and new Freeway Lighting System prior to Substantial Completion;
- incident management;
- street sweeping, litter pick-up and graffiti removal;
- mowing and landscaping;
- debris removal; and
- Winter operations for pedestrian crossings, approaches and sidewalks leading to crossings.

In general, the Long-Term Maintenance Work (for the balance of the Project Term) will include the following elements within the designated Maintenance Limits including Routine Maintenance, Renewal Work and Handback Work:

- In general, all Project ROW, the I-75 Segment 3 and Long-Term Maintenance Work except for those described below as Non-Maintenance Facilities or MDOT responsibilities (discussed below);
- Storage and Drainage Tunnel and Pump Station commencing at Milestone 2. The Pump Station will be operated by Oakland County Water Resources Commission;
- retaining walls, noise walls and fencing;
- pedestrian crossings over I-75 within the Maintenance Limits including all associated winter operations;
- Structural Elements of cross road bridges over I-75 (Segment 3);
- new carpool lot adjacent the to the 12 Mile Road interchange including winter operations;
- drainage facilities, underdrains, drains and catch basins;
- I-75 mainline regulatory and non-regulatory signage;
- landscaping and mowing;
- litter removal, debris removal and sweeping including Roadways, pedestrian crossings and the carpool lot;
- graffiti removal for structures, retaining walls and noise walls except for the bridges at I-696 interchange structures; and
- incident management within the Maintenance Limits including service drives.



As noted above, some elements of the D&C Work for which the Developer will not bear an obligation to maintain following completion (the "Non-Maintained Work"). The Non-Maintained Work (as further described in PA Schedule 17, Article 2.4) will be turned over to non-Developer entities upon Substantial Completion and include:

- Service drive signals and signage owned and maintained by the municipalities (NMF);
- MDOT ITS equipment (NMF);
- Elements outside the Maintenance Limits (NMF);
- I-75 Segment 3 Freeway Lighting System; and
- Pump Station Operations.

The items notated with "NMF" fall into the definition of Non-Maintained Facilities.

In addition, there are specific maintenance and renewal responsibilities that MDOT and its subcontractors will retain responsibility for during the Term, listed as follows:

- Winter operations (snow and ice control) for I-75 mainline, service drives, cross road bridges, and associated sidewalks (except for pedestrian crossings);
- Adopt-a-Highway Program;
- MDOT ROW outside the D&C Limits or Maintenance Limits (as applicable);
- MDOT traffic signals and traffic signal timing;
- I-696 existing structures;
- Maintenance and operation of MDOT ITS equipment (Maintenance Term);
- Freeway Courtesy Patrol (Maintenance Term); and
- Freeway Lighting System maintained by P3 Lighting Contractor (Maintenance Term).

The timing for Maintenance Work obligations is as follows as detailed in PA Section 17.1:

- Interim Maintenance
 - Existing pump stations from issuance of NTP until issuance of Milestone 2 Completion or demolition of existing pump stations, whichever is earlier; and
 - Defined Roadway and Freeway Lighting Systems from issuance of NTP until the Substantial Completion Date.
- Long Term Maintenance
 - Tunnel and Pump Station from the Tunnel Maintenance Commencement Date until the Expiration Date; and
 - o Roadway from the Project Maintenance Commencement Date until the Expiration Date.

Having regard for the above-defined elements and responsibilities, WT considers the scope of the Project to be clear and well considered by the granting Authority. From a technical perspective, the alignment is a relatively short segment of roadway, but it does encompass both urban and rural surrounding with the additional components of the drainage tunnel and pumping station. This said, the segment is part of a broader highway corridor which benefits from the prior studies, investigations, construction history as well as a proven performing DB LLC group with years of experience successfully delivering similar types of civil work in the region for MDOT. Acknowledging the collective ability, experience and credentials of the Consortium discussed hereafter, WT opines that the I-75 project is a viable pursuit for this team to deliver successfully and is well within the capabilities of the Consortium members

4.0 PROJECT MANAGEMENT

4.1 CONSORTIUM OVERVIEW

The Consortium, Oakland Corridor Partners, will be led by John Laing Investments Limited (40%) and AECOM Capital, Inc (30%) with participation from the Lead Contractors: Dan's Excavating, Inc., Ajax Paving Industries, Inc. and Jay Dee Contractors, Inc. who will each have a 10% equity share. Together the equity members will form the non-recourse special purpose vehicle (SPV) to be established prior to a Financial Close.

4.1.1 JOHN LAING INVESTMENTS LIMITED

John Laing Investments Limited (John Laing) is a wholly owned subsidiary of John Laing Group plc starting with their first investment in 1969. It is a London based international originator, investor and active manager of infrastructure projects. business is focused on major P3 transportaion, social and environmental infrastructure projects across a range of international markets including the UK, Europe, Asia Pacifci and North America.

John Laing's expertise and credentials are the product of more than 100 P3 project closed in the last 30 years. They are involved in the following sectors: social infrastructure, commuter rail, rolling stock, roads and renewable energy. In the U.S. market, John Laing has experience with a broad range of debt structures including TIFIA, PABS and bank debt. They have invested in five transportation P3s in the U.S. to date including three highway projects (the I-4, I-66, and I-77) all of which have O&M and rehabilitation works either being performed or contracting for at the SPV level. Most recently, John Laing was awarded the Boston Massachusetts Bay Transportation Authority Automated Fare Collection System P3 in March of this year with a base contract award of circa \$700 million.

4.1.2 AECOM CAPITAL, INC.

AECOM is a U.S.-based investor and developer of infrastructure, renewable energy, and real estate projects across North America and select international markets leveraging AECOM's design and construction capabilities for deal flow, due diligence, execution and project delivery. They provide equity investment and integrated project development by leveraging AECOM's technical and managerial global services. They were formed in 2013 and target high quality, risk adjusted investments.

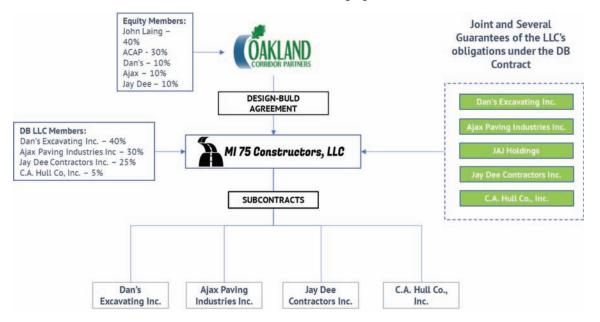
4.1.3 DESIGN-BUILD LIMITED CONTRACTOR

The Design-Build Limited Liability Company ("DBLLC") will be the Lead Contractor signing the Design-Build Contract and based on their Memorandum of Understanding ("MOU"), will be formed by the following members with their equity interests as shown: Dan's Excavating (40%), Ajax Paving Industries, Inc (30%), (Ajax), Jay Dee Contractors, Inc. (25%) and C.A. Hull Co, Inc. (5%). As mentioned above, 3 of the 4 DBLLC members are 10% equity members of the SPV. By the MOU, they have agreed to enter into a Design-Build Contract that will pass down substantially all of the design and construction obligations in the Project Agreement.



The overarching credentials and experience of the DBLLC members are summarized as follows:

- Dan's Excavating Dan's is a Michigan based multi-discipline heavy-highway contractor which has been self-performing underground utilities, grading, structural concrete construction and pump station work since the 1970s. Dan's has completed more than 260 MDOT projects over the past 10 years, exceeding \$2.275 billion in contract value.
- Ajax Paving Industries, Inc. Ajax is Michigan based and has been the leader in the asphalt and concrete paving industries in the state for more than 66 years. Ajax has invested in six stationary state of the art asphalt production plants located strategically throughout the Metro Detroit area and nine portable concrete batch plants that will be erected on or near the project.
- Jay Dee Contractors Inc. Jay Dee is based in Michigan and with 52 years of experience they have become the largest tunnel contractor in the state. They are nationally recognized, having constructed and rehabilitated more than 224 miles of water, sewer, drainage and transportation tunnels throughout North America including 30 miles of pressurized face TBM in the last 10 years. Credited as the pioneer of the pipe jacking tunneling method and an industry leader in pressurized face TBM tunneling, they were. awarded "Tunneling Contractor of the Year" at the 2011 International Tunneling Awards.
- C.A. Hull Co, Inc. For over 80 years, Oakland County, Michigan based C.A. Hull has successfully completed approximately 500 projects for MDOT, including seven design-build and three CMGC projects. They specialize in bridge construction, rehabilitation and maintenance along with protective coatings and other heavy civil capabilities,



The overall structure of the DBLLC is illustrated in the following figure:

Figure 3 - DBLLC Structure

Per their MOU, the DBLLC will have a managing Executive Committee with the Dan's Excavating representative as the Chairperson. The Executive Committee will appoint a Project Director to be the DBLLC's representative on the Project.



We note that while the members of the DBLLC have not previously participated in a DBFM project, they possess extensive experience delivering Projects for MDOT (including the I-75 Segment 1 Project) in addition to Design-Build experience. Given the expertise of the collective equity members, we believe the Consortium to have the requisite expertise to deliver this project successfully.

The D&C Contract Value is \$629,245,356 million.

4.1.4 LEAD ENGINEERING FIRM AND DESIGN SUBCONSULTANTS

The Lead Engineering Firm for the Consortium is AECOM. AECOM is Ranked as the #1 Design Firm globally and the #1 Transportation Firm for 17 consecutive years by Engineering-News Record. AECOM maintains a proven portfolio alternative delivery projects serving as lead designer for 100+ design-build projects in North America in the past 10 years. AECOM Great Lakes Inc. is the pre-qualified entity with MDOT with the applicable prequalification in Design – Bridges (complex), Roadway (complex), Hydraulics, Utilities: Pump Stations.

In addition, AECOM report being the top-awarded designer for MDOT contracts over the last 20 years, as well as having been contracted by MDOT to serve as Owner's Representative for Innovative Contracts including over 20 Design Build Projects, and the Authority's first P3 project for freeway lighting. In total, AECOM's experience is understood to encompass more than 1,000 miles of tunneling and trenchless technology projects.

AECOM staff will lead the Road Design, Bridge/Wall Design, Tunnel Design/Pump Station, Traffic, Freeway lighting, Environmental and ITS disciplines. AECOM have supplemented their expertise with the following locally experienced subconsultants:

Design Subconsultants

The following firms have been retained as subconsultants for the following key disciplines:

<u>Design</u>

Bergmann Associates are architects, engineers and planners based out Rochester, New York with
offices in Grand Rapids & Lansing, MI and 7 other locations. They were founded in 1980 and are a
privately held company with more than 400 professional and technical staff acros the Northeast,
Midwest and Atlantic regions. The major sectors are retail, educational, institutional, governmental
and industrial.

Geotechnical

Professional Services Industries, Inc was the only current listed as Engineer Subconsultant with
prequalification in design- Geotechnical: Advanced with MDOT. Professional Service Industries, Inc.
(PSI) is a nationally recognized consulting engineering and testing firm providing integrated services
in several disciplines, including geotechnical engineering, construction materials testing and
engineering, facilities engineering and consulting, environmental consulting, asbestos management
and industrial hygiene. PSI is a leader among the nation's independent testing organizations and
ranks among the largest consulting engineering firms in the country. They employ approximately
2,300 skill personnel across the country, are headquartered in Illinois and they list seven offices in
Michigan.



- NTH Consultants, Ltd is a geotechnical and environmental and facilities engineering firm founded in 1968 and based on Michigan with over 100 professionals in offices throughout Michigan and Ohio including over 30 Professional Engineers plus Professional Geologist and Certified UST Professionals. Their markets include energy, urban renewal, water resources and public infrastructure. Their geotechnical engineering services include: construction materials and geotechnical testing, underground engineering, subsurface utility engineering and other investigations.
- Materials Testing Consultants, Inc. ("MTC") specializes in geotechnical engineering, construction and environmental consulting. MTC was founded in 1968 and has earned a reputation in engineering innovations that provide reliable and cost effective solutions. They regularly team with municipalities, state agencies, architects, developers and private clients. They have offices in Grand Rapids Michigan and Ann Arbor Michigan; their services cover the entire Great Lakes Region.

<u>Survey</u>

 Advanced Geomatics is a professional land surveying corporation that has been in business since 1888, under family ownership for over 50 year serving Michigan with a variety of land services. Originally known as Charlevoix Abstract and Engineering, they are now doing business as Advanced Geomatics. Advanced Geomatics is a registered Disadvantaged Business Enterprise (DBE) and is Michigan Department of Transportation prequalified for most surveying services.

4.1.5 LEAD MAINTENANCE FIRM

Oakland Corridor Partners has determined that, following Substantial Completion, the responsibility for the maintenance scope of work will be retained at the Developer level, through a combination of self-performance, on-call subcontracting arrangements and outsourced bids. The Equity Members will apply their many years of experience in pricing and delivering of maintenance services, to develop a highly efficient maintenance plan which is competitively priced.

The planned Long-Term Maintenance structure is a Developer's Project Manager with direct reports of the two additional Key Personnel the Maintenance Quality Manager and Maintenance Manager. A Roadway Supervisor will coordinate with and report to the Maintenance Manager with a five-person routine maintenance team. All other functions will be subcontracted in three major categories: Inspection, Routine Maintenance and Major Maintenance.

The responsibility for all Interim Maintenance will be included in the contract with the DB LLC and the cost will be included in their fixed price contract.

Whilst self-performance of O&M may appear like a departure from common practice in the P3 market, horizontal infrastructure such as highways do require a different profile of resource than vertical assets. O&M firms typically come from the building maintenance / asset management world, whereas highway maintenance tends to be a more localized and public contracts market (for non-P3 assets) meaning there is greater segregation of skillsets than an integrated O&M provider. As such, the same contractor would not maintain both streetlighting and the road surface, two specialist firms in those areas would service that section of the highway. On this basis, and the specific skillsets we know to exist within AECOM and John Laing (particularly as a cyclical investor P3 assets), we believe a relatively modest sized team within the Consortium would be capable of managing the O&M oversight, coordination and delivery through the use of on-call, market bid and contracted sub-contractors and vendors.

4.2 CONSORTIUM CAPABILITIES

4.2.1 JOHN LAING INVESTMENTS LIMITED

John Laing's expertise and credentials are the product of more than 100 P3 projects closed in the last 30 years. Since making their first investment in 1969, John Laing has committed to invest in 133 projects worldwide. As of December 2017, John Laing's investment portfolio comprised 41 projects in 9 countries valued at \$1.7 Billion. Total assets under managementment were \$4.2 billion. John Laing (JLG) holds the investments in the projects listed below. In the U.S., John Laing has participated in P3 transactions similar to I-75 with the notable examples included in Table 3 below.

Table 3 - John Laing F	P3 Projects			
PROJECT	ROLE	COST (\$000) USD	JOHN LAING PARTICIPATION	PROJECT TYPE
Transform 66 Managed Lanes, Virginia	Equity Member Secured investment- grade PABs f	\$3,552,391	10% Equity, \$152 million	DBFOM – 50-year concession
I-4 Ultimate, Orlando, Florida	Equity Member,	Capex \$2,300,000	50% Equity, \$30.3 million	DBFOM/Availability Payment – 40-year concession period
I-77 Managed Lanes	Equity Member Secured investment- grade PABs	\$650,000	10% Equity	DBFOM – 50-year concession
Denver Eagle P3, Denver, Colorado	Equity Member Secured investment grade PABs	\$1,600,000 total \$452,100 (private funding)	45% Equity, \$24.4 million	DBFOM/Availability Payment – 30-year concession period

4.2.2 AECOM CAPITAL, INC.

To date, AECOM Capital has invested over \$240 million in North American projects. They have closed or are under contract for roughly \$4.5 billion in total assets or 10 million square feet under development in 17 projects. The projects that they have closed to date are focused on real estate and include: 3300 Main Street, Houston Texas (mixed use, 29-story development); DTLA South Park (mixed use multiphase development); Flushing Commons Phase 1 (mixed-use urban development); Ivy Station, Culver City, CA (mixed use development); The Morgan at Provost Square (3 building complex); Town & Country Resort, San Diego, CA (hotel and convention center) and Union Place, Washington, DC (mixed use development).



4.2.3 EQUITY MEMBER COLLABORATIVE EXPERIENCE

Collectively, John Laing (JL) and AECOM Capital (ACAP) have demonstrated broad experience with the P3 procurement model. They are both actively involved in the P3 market and are considered to have a high degree of familiarity with this project structure.

Project Name	OCP Members		Del	ot Finan	icing Sources	
		TIFIA	PABs	Bank	Taxable Bond	Insurance
I-4 Ultimate, FL	JL	ST+LT	ST	ST		
Transform 66 (Outside the Beltway), VA	JL	LT	LT			
I-77 Express Lanes, NC	JL	LT	LT			
Eagle P3, Denver, CO	JL		LT			
A-6 (Netherlands)	JL			MT		
Portsmouth Bypass, OH	ACAP*	LT	LT			LT
Central 70, CO (underbidder)	JL, ACAP	LT	ST + LT			
Purple Line, MD (underbidder)	JL	LT	ST + LT	ST		
Pennsylvania Rapid Bridge Replacement Project, PA (underbidder)	JL, ACAP		LT			
George Massey Tunnel Replacement Project, BC (underbidder)	JL			ST + MT	MT + LT	
MBTA Automated Fare Collections Systems, MA	JL			MT		

Table 4 - Equity Member Financing Commitments

* Joseph Abitbol, the Respondent Financial Lead from AECOM Capital, Inc. in a role with previous employer.

4.2.4 DESIGN-BUILD CONTRACTOR EXPERIENCE

The members of the DB LLC are considered one of the most experienced local contractor groups for this type of construction in Michigan. The ownership of the local supply chain is of importance including quarries, batching facilities, plants and trucking. They also have a solid experience and track record with MDOT.

WT have summarized the relevant Project expertise for each of the DB LLC members below.

Dan's Excavating. Dan's has over 40 years of experience in airports, bridges, highways, marine, municipal, structural concrete, site development and pump stations. They the top awarded contractor for MDOT in 14 out of the last 16 years. They have over 400 employees and direct access to resources including trucks, crushers, sites, limestone pit and sand pits. Since 2008, Dan's has completed all five design-build contracts awarded by MDOT. These include I-75 Segment 1 - three mile highway segment including replacing three bridges and two interchanges (Prime, \$92 million); University Drive over I-75 interchange replacement (Prime, \$24 million); I-75 Ambassador Gateway Completion involving reconstruction of three miles of freeway and 24 bridges; the I-96 Reconstruction of seven miles of 8-lane highway and the Crooks Road over M-59 and M-21 over I-75 (DBF) which was self-financed by Dan's. The I-75 Segment 1 Design-Build project was completed seven months early and impacted traffic less than 50% of the days allowed. The largest project value listed for Dan's as a prime contractor was a design-bid-build I-96 reconstruction in Wayne County, MI for \$149 million. They have an extensive fleet of equipment that is up-to-date and maintained in-house. The Construction Manager for the Project will be a Dan's employee and they will also lead the Roadway, Structure, Electrical/ITS construction aspects as well as provide the Lead Superintendent.



- Ajax Paving Industries, Inc. Ajax is focused on asphalt paving in Michigan and Florida for both highways and test tracks. They are ranked as the top asphalt paving company in southeast Michigan. They have the largest asphalt paving, manufacturing and liquid terminal in southeast Michigan with six high-capacity hot-mixed asphalt plants with AASHTO accredited labs. They also have the largest concrete paving operation in Michigan with nine portable concrete batch plants. They are also one of the top contractors for MDOT and has been involved in three design-build projects for them including the I-75 Segment 1 with Dan's and I-75 West Branch Concrete Overlay. In addition, Ajax have completed two design-build projects for the Florida Department of Transportation: I-75 Widening Lee and Collier Co (DBF, 50% JV Partner, \$457 million) and I-275, SR 60 to Hillsborough, Tampa. Ajax will provide the Construction Pavement Manager and sub-leads for the Project. They are also part of the I-96 Reconstruction project with Dan's.
- Jay Dee Contractors Inc. Jay Dee is a heavy underground construction firm and are the largest tunnel contractor in Michigan. Some of their significant projects include the Northgate Link TBM Tunnels in Seattle, Washington that included two light rail tunnels as well as station excavation (JV Managing Partner (40%), \$485 million), Oakland Macomb Interceptor Drain Segment 3 Repair Program of an existing aging sewer Contract 4 in Michigan, Division P First Street Tunnel combined sewer (DB, JV Tunnel Construction Manager (40%), \$155 million) in District of Columbia, University Link Contract U230 to construct twin precast concrete light rail tunnels in Seattle Washington and the Big Walnut Augmentation/Rickenbacker Interceptor in Ohio to increase capacity of the existing wastewater system. Jay Dee will provide the Tunnel Manager, Tunnel Construction Manager and Tunnel Construction Superintendent for the Project.
- C.A. Hull Co, Inc. C.A. Hull has the ability to self-perform all aspects of bridge construction and rehabilitation along with exceptional expertise in structural concrete and walls as well as concrete coatings. They have almost 300 employees with 11 cranes and extensive support equipment. They have performed work on 15 projects on I-75 in Oakland and Wayne Counties in the last 10 years. Some of their major projects include the I-75 Segment 1 (Design-Build), MLK Blvd over M-10 (design-build), I-75 over Rouge River (Prime, \$150 million), I-96 Reconstruction, M-231 over Grand River and M-39 Reconstruction. C.A. Hull will provide a Structure Manager, Structures Construction Manager and Structures Construction Superintendent for the Project.



Some additional details are shown below for some of the particularly relevant contracts that have been completed by the members of the DBLLC.

COMPANY	PROJECT	COST (\$000)	PROJECT TYPE	PARTICIPATION	ROLE
Dan's	I-75 (Segment 1), Oakland County, MI	\$104,200	DB	100% involvement Bonus for early completion	Prime Contractor
Dan's	I-96 Reconstruction, Wayne County, MI	\$149,000	DBB	100% involvement	Prime Contractor
Dan's	University Drive over I-75, Auburn Hill, MI	\$24,000	DB	100% involvement	Prime Contractor
Ajax	I-75 Widening, Lee and Collier Counties, FL	\$457,000	DBF	100% involvement	Prime Contractor
C.A. Hull	I-75 over Rouge River, Wayne County, MI	\$149,900	DBB	100% involvement	Prime Contractor
Jay Dee	Northgate Link TBM Tunnels, Seattle, WA	\$484,789	DBB	100% involvement	Prime Contractor

4.2.5 LEAD ENGINEERING FIRM

AECOM are an established design and engineering firm established in 1990 with predecessor firms dating back some 110 years. AECOM has demonstrated experience in major transportation projects.

A sample summary of AECOM's relevant Technical Experience in Design is summarized in the below table.

Table 6 – AECOM Design Projects				
PROJECT	ROJECT COST (\$000) PROJECT		PARTICIPATION	ROLE
I-75, Segment I, Oakland County	\$91,600	DB	60% involvement, road bridge design and MOT	Lead Designer
I-595 Corridor, Broward County, FL	\$1,400,000	P3/DBFOM	55% involvement project management and design	Lead Designer
North Tarrant Express, Segment 1, Tarrant County, TX	\$1,450,000	P3/DBFOM	50% involvement, design management for all three segments	Lead Designer
Northeast Anthony Henday Drive, Edmonton, AB	\$1,440,000	P3/DBFOM	70% involvement, project management and design	Lead Designer
I-90 Eastbound Innerbelt Bridge, Cleveland, OH	\$273,000	DB	97% involvement, complete design services	Lead Designer
Big Walnut Tunnel System Projects, Columbus, OH	\$90,600	DBB	100% involvement, design, construction management and engineering support	Lead Tunnel Designer
Blacklick Creek Sanitary Interceptor Sewer, Columbus, OH	\$109,000	DBB	100% involvement, design, construction services	Tunnel Designer of Record

We understand that AECOM possess a substantive local presence in Michigan with over 350 staff across multiple locations, including two offices in Southfield and Detroit. AECOM's portfolio of work includes over 50 MDOT projects in excess of \$1 billion over the last 10 years, which indicates an appropriate level of familiarity with MDOT standards, specifications and approach to design development.



The most notable Project relative to AECOM's local expertise is the I-75 (Segment 1) Project which was delivered with Dan's, Ajax and C.A. Hull. AECOM provided 60% of the design for this project and five of the staff who worked on that project are listed as being included on the I-75 Project team including the Design Quality Manager and Lead Traffic Engineer. This lends confidence that appropriate personal experience having delivered MDOT-specified designs will be leveraged in the implementation of the Project.

The proposed Lead Tunnel Design Engineer was the Project Engineer for the Big Walnut Tunnel System Projects (\$169 million) in Ohio and a Tunnel Engineer for an Interceptor Sewer (\$26 million) also in Ohio and a proposed Tunnel Design Engineer was the Tunnel Designer and Lead Tunnel Engineer, respectively, for those two projects.

Based on the foregoing, it is WT's opinion that AECOM have leveraged an appropriate mix of both local and asset-specific expertise to successfully deliver the design for the Project.

4.2.6 COLLABORATIVE EXPERIENCE P3 DESIGN & CONSTRUCTION EXPERIENCE

The DBLLC team members have noted experience working together and with AECOM. The I-75 Segment 1 Design-Build Project included Dan's, Ajax, C.A. Hull, AECOM and Bergmann; that team was also together for an I-75 project over the Rouge River. Dan's and AECOM worked together on the University Drive Design-Build and the M-21 over I-75 Design-Build-Finance. The I-75 Ambassador Gateway Design-Build involved Dan's and C.A. Hull while the Crooks Road over M-59 Design-Build included Dan's and Ajax. The Consortium have identified an additional five projects where Dan's, Ajax and C.A. Hull have worked together, three where Ajax, C.A. Hull and AECOM have combined (including two design-builds) and four involving both Dan's and Jay Dee. They have also provided a Dan's/Ajax/C.A. Hull past performance track record totaling \$1.4 billion that shows early and on-time completions although it does not cover all of the projects listed in this paragraph. Table 7 below shows this experience graphically.

WT PARTNERSHIP

Project Experience	Dan's	Ajax	Jay Dee	C.A. Hull	AECOM	Bergman
I-75 (Segment 1) Design-Build	•	•		•	•	•
University Drive over I-75 Design-Build	•				•	•
I-75 Ambassador Gateway Design-Build	•					
Crooks Road over M-59 Design-Build	•	•				
M-21 over I-75 Design-Build-Finance	•				٠	
I-96 Reconstruction	•	•		•		
I-75 over Rouge River	•					•
Blacklick Creek Sanitary Interceptor Sewer			•		•	
Big Walnut Augmentation/Rickenbacker Interceptor						
I-75 West Branch Design-Build		٠			•	•
I-75 at I-675 Reconstruction						
I-75, Dixie to I-275, Monroe County	٠	٠		٠		
I-75, Dixie to Hess, Saginaw County						
I-94, Telegraph Arch	•	•		•	•	
I-94 BL/ M-37 Design-Build		۲				
M-231 over Grand River				٠	•	•
I-94 over Black River	•					
M-39 Southfield Freeway	•	•		•	•	
M-6 & 131 Interchange		•		•	•	
15 Mile Road Interceptor Repair - Lining of Interceptor	•					
Michigan Avenue (US 12)	•		•			
Combined Sewer Overflow Facilities, Contract 2	•		•			
Davison Freeway Rehabilitation			•			



To further demonstrate the DBLLC's ability to successfully undertake highway infrastructure Projects of similar scope, the Consortium have provided relevant details of a number of the above-referenced Projects which were completed by Dan's, Ajax, and C.A. Hull as part of a team.

Dproject	CAPEX	LENGTH	NO. OF STRUCTURES	DURATION	PRODUCTION \$ PER DAY	EARLY COMPLETION (DAYS)
I-75 Segment 1 (2017)	\$104,240,000	3 Miles	8 Bridges	128 days	\$964,814	20 days
MDOT's I-96, Livonia (2014)	\$149,000,000	7 Miles	35 Bridges / 16,000 ft. Retaining Walls	167 days	\$892,215	21 days
MDOT'S I-75, Monroe County (2015-2016)	\$101,800,000	5.6 Miles	5 Bridges	333 days	\$305,705	20 days
MDOT's US-23 Flex Lane (2016-2017)	\$99,700,000	11 Miles	16 Bridges	371 days	\$268,733	20 days
MDOT's M-39, Outer to Hubbard (2011)	\$73,000,000	10 Miles	24 Bridges	276 days	\$264,492	15 days
I-75 Segment 3 DBFM	\$629,245,356	5.5 Miles	28 Bridges	1,739 days	\$361,843 (\$281,740 without tunnel)	N/A

Table 5 - DBLLC Project Details

While the I-75 Segment 3 DBFM is a considerably higher CAPEX Project than the above-referenced Projects, we note that the respective Production \$ per day are indicative of significantly higher outputs which provides confidence that the DBLLC team possess the requisite expertise to maintain scheduled progress or implement acceleration measures as required.

Further, we note that all referenced Projects (including I-75 Segment 1) were delivered in advance of the scheduled dates, thus demonstrating the DBLLC team's ability to appropriate manage MDOT projects successfully.

4.2.7 LEAD MAINTENANCE FIRM

The projects listed for Technical Experience in Maintenance for the RFQ included two AECOM projects – one as General Engineering Consultant for the Illinois Tollway and the second Highway Maintenance and Inspection for the LoHAC in London (650 miles). Jay Dee Contractors was Prime for the Oakland-Macomb Interceptor Drain Contract. John Laing has listed two UK projects where operations and maintenance was provided by the developer, as well as three US projects where similar arrangements are in place. Table 8 below provides further details on these projects.



COMPANY	PROJECT	COST (\$000)	LENGTH OF ROAD	PARTICIPATION	ROLE
AECOM	Illinois Tollway GEC, Northern Illinois	\$36,000	286 miles	100% involvement	General Engineering Consultant
AECOM	LoHAC, London, UK	\$68,000	650 miles	50% involvement	Highway Maintenance and Inspection
Jay Dee Contractors	Oakland-Macomb Interceptor Drain	\$50,196	N/A	100% involvement	Prime Contractor
John Laing	M4 Second River Crossing and M48 Severn	\$17,400	5-km bridge	35% involvement	Operations and Maintenance Provider (through Developer)
John Laing	Docklands Light Railway, UK	\$12,100	4.6-km light rail corridor	52% involvement	Operations and Maintenance Provider (though Developer)
John Laing	I-4 Ultimate, Florida	\$23.5m average annual OM&R	21 miles	50% equity	Operations and Maintenance Provider (though Developer)
John Laing	I-77 Express Lanes, North Carolina	\$9.5m average annual OM&R	26 miles	10% equity	Operations and Maintenance Provider (though Developer)
John Laing	I-66 Outside the Beltway, Virginia	\$14.5m average annual OM&R	22 miles	10% equity (\$155m)	Operations and Maintenance Provider (though Developer)

In addition, AECOM has expertise in the operations and maintenance of major transportation networks including highways, airports, commuter rail lines and toll roads. In the toll road area, they manage hundreds of miles throughout the U.S. providing asset management and inspection services, on-call engineering and toll collection procedures including facilities such as the Orlando Orange County Expressway Authority in Florida. They also have an extensive resume as a major contractor for the U.S. federal government supporting the operation of large, complex military installations, warehouses, distribution centers and other government facilities.

As the responsibility for the Interim Maintenance will be taken on by the DB LLC, a summary of their capabilities area relevant as well. While the majority of the DB LLC do not have specific maintenance contract experience, their work with MDOT and other public entities encompass the majority of functions that will be required under the Interim Maintenance.

Ajax examples of relevant work over approximately the last year include, all have a 3-year materials and workmanship warranty:

- Hot mix asphalt cold milling and resurfacing, concrete pavement, curb, gutter, sidewalk, ramp and drainage repair, pavement markings in Oakland County;
- Hot mix asphalt cold milling and resurfacing, concrete patching in City of Detroit;
- Hot mix asphalt cold milling and resurfacing, full in-depth pavement repairs, pavement markings in Wayne County, Michigan: and



 Hot mix asphalt cold milling and resurfacing, joint repairs, pavement markings in City of Birmingham, Oakland County.

Jay Dee Contractors, Inc. has several repair and rehabilitation projects including:

- Repair and rehabilitate Detroit River Interceptor Great Lakes Water Authority;
- 15 Mile Road Interceptor Repair Macomb Interceptor Drainage;
- Nine Mile Drain Cleaning (box sewer) repair existing taps and structural cracks Southeast Macomb Sanitary District; and
- Rehabilitation and Upgrade Program for Wastewater Treatment Plant Detroit Water and Sewerage Department.

CAH has completed over 30 highway rehabilitation jobs for the Michigan Department of Transportation over the past three years.

Please refer to Section 11 of our report for details on the proposed maintenance strategy.

4.3 CONSORTIUM SUMMARY

WT considers the Consortium to have ample expertise for this project. AECOM is a well-known engineering firm with a solid reputation for delivering design roles for similar P3 projects in the U.S.

The Design-Build Contractor will be an LLC comprised of local firms who have design-build experience and have a solid background working together as demonstrated above. The design-build projects they have been involved with have all been substantially smaller than the I-75 P3. The DBLLC is also slated to provide the Interim Maintenance function; outsourced maintenance is not a traditional expertise of any of the firms although there is extensive rehabilitation experience and Jay Dee has been involved in a maintenance agreement.

The member of the DBLLC have exceptional experience and knowledge of working with MDOT and the local Oakland County jurisdictions. We believe it to be a particularly valuable risk mitigation that the DB LLC brings a significant amount of resources in employees and equipment as well as quarries, batch plants, etc. They propose that they will self-perform at the following levels: Dan's 39.7% (civil works and structural), Ajax Paving 8.8% (pavement), Jay Dee Contractors 21% (tunnel) and CA Hull 17.4% (structural) for a total of circa 87% of the work which is not typically seen in the market.

However, since the DBLLC do not have previous experience with such a large size of project or an Availability Payment P3 project, we would see the need for AECOM and John Laing to play a stronger role in oversight of compliance with all of the complexities of the Agreement during the D&C Term. AECOM is the lead designer and has selected local partners to play specific key roles such as geotechnical and survey plus supplementing their expertise in design.

The nominated Developer Project Manager (David Nachman) possesses the capabilities to play a key role in assuring the proper resources are made available to support the DBLLC with previous experience as a Technical Director for the much larger \$2.3 billion I-4 Ultimate project which is the largest availability payment project completed in the U.S. He has also participated in 9 additional US P3 Projects for a total construction value over \$15B including the Central 70 Project in Denver, Colorado where he also served as Technical Director.

The Maintenance Manager Brad White also has an extensive background which should provide appropriate guidance for the Interim Maintenance during the D&C period.



The SPV is retaining the responsibility for the Maintenance Term. The qualifications of John Laing and AECOM demonstrate they have maintenance experience; the issue is application to this project. A key element for success will be appropriate balancing of internal resources with subcontracting and major bids. Again, the two key resources that are available to provide guidance and support appear to be the Developer PM whose experience and background includes maintenance and contract administration for P3 projects. Brad White, the designated Maintenance Manager has more than 30 years of operations and maintenance experience and has the capabilities to effectively manage this program.



5.0 PROJECT CONTRACTS

5.1 CONTRACTUAL STRUCTURE

We have illustrated the overall contractual structure of the Project in the following diagram:

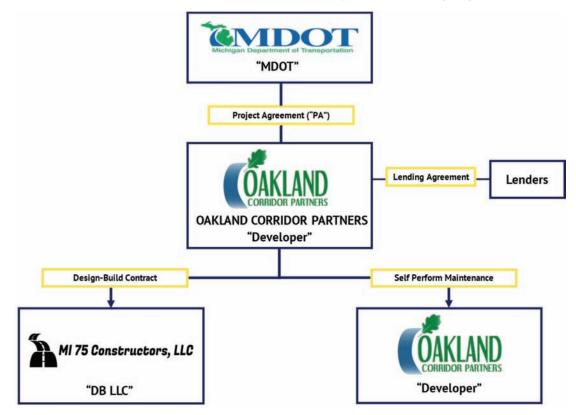


Figure 4 - Project Contractual Structure

On the Effective Date, the Consortium will enter into the PA with MDOT for the purposes of delivering the Project, acting as Developer under the document. Please refer to PA Section 5.2 for commentary on the pertinent aspects of the PA. The Consortium will in turn "pass down" their obligations under the PA via a Design-Build Contract t but retain responsibility for the Long-Term Maintenance.

The DB LLC will be the Lead Contractor signing the Design-Build Contract and will be formed by the following members with their ownership interests as shown; Dan's Excavating (40%), Ajax Paving Industries, Inc (30%), Jay Dee Contractors, Inc. (25%) and C.A. Hull Co, Inc. (5%). The DB LLC will assume the Developers risk for the design and construction. The following entities will provide joint and several guarantees of the LLC's obligations under the design-build contract: Dan's Excavating, Inc.; Ajax Paving Industries Inc.; JAJ Holdings; Jay Dee Contractors Inc. and C.A. Hull Co, Inc. The DB LLC will then enter into separate subcontracts for components of the work with the DB LLC members plus AECOM for design/

Oakland Corridor Partners will also enter into a financing agreement(s) with the Lenders for the purposes of obtaining financing for the Project.

WT PARTNERSHIP

In addition, the Developer and Lenders will be required to enter into a direct agreement with the MDOT (Schedule 6-B Form of Direct Agreement) which affords the Lenders specific rights and remedies in the event of a Developer default, MDOT termination of the Agreement, or their exercise of step-in rights or suspension of the Project.

The Consortium has made the decision to retain responsibility for the maintenance scope of work at the Developer level. This will be combination of self-performance and subcontracting arrangements. Please refer to Section 11 of our report for further details.

This contractual structure, including the direct agreement, is typical for U.S. P3 procurements.

5.2 PROJECT AGREEMENT REVIEW

Consistent with our remit under the LTA Consultancy Agreement, WT have conducted a review of the Project Agreement and its accompanying appendices to identify key areas of technical risk. The commentary that follows outlines the salient points which are either pertinent from project delivery standpoint or deemed atypical from standard contractual structures in North America.

From a general perspective, the content of Project Agreement is consistent with similar public-private partnerships procured in the US, albeit with certain specific variances as noted.

The sections of the PA are listed as follows:

- Definitions and Interpretation; Order of Precedence; Reference Information Documents;
- 2. Financing Terms; Financial Model; Financial Model Updates and Disputes
- 3. Financial Close;
- 4. Term;
- 5. Representations and Warranties;
- 6. General Responsibilities of the Parties;
- 7. Personnel and Subcontracts;
- 8. Governmental Approvals, Environmental Compliance, Hazardous Materials, Local Agencies and Public Information;
- 9. Project ROW;
- 10. Utilities;
- 11. Federal and State Requirements;
- Project Schedule; Float; Project Recovery Schedule; D&C and Maintenance Reports; Monitoring of Project Work;
- 13. Performance Security;
- 14. D&C Work Requirements;
- 15. Completion of Milestones; Substantial Completion;
- 16. Final Acceptance;
- 17. Maintenance Requirements;
- 18. Handback Requirements;

- 19. Payments to Developer;
- 20. MDOT Step-in and Suspension Rights;
- 21. Refinancing Gain Share;
- 22. Records, Information and Audit;
- 23. Assignment and Change in Control;
- 24. General Provisions Applying to Delay Events and Relief Events;
- 25. Relief During the D&C Term;
- 26. Relief During the Maintenance Term;
- 27. Chang in Law and Standards;
- 28. Change Orders and Work Orders;
- 29. Dispute Resolution Procedures
- 30. Developer Default;
- 31. MDOT Default;
- 32. Termination Prior to Financial Close;
- 33. Non-Default Termination;
- 34. Effect of Termination;
- 35. Intellectual Property;
- 36. Insurance Provisions;
- 37. Risk of Loss and Damage;
- 38. Indemnities;
- 39. Limitation on Special, Consequential, Indirect or Punitive Damages;
- 40. Dispute Resolution Procedures;
- 41. Submittal Requirements; and
- 42. Miscellaneous Provisions.



Additional technical aspects and contractual mechanisms are further detailed in the following Schedules to the PA:

- 1. Definitions and Interpretations;
- 2. Project Specific Information;
- 3. Developer Commitments;
- 4. Payment Mechanism;
- 5. Costs Schedule;
- 6. Finance Documents;
- 7. Payment and Performance Security;
- 8. Insurance Requirements;
- 9. Change Procedures;
- 10. Submittal Requirements;

- 11. [Not Used];
- 12. Subcontract Requirements
- 13. Federal and State Requirements;
- 14. MDOT'S DBE/SBE and EEO Special Provisions;
- 15. Dispute Resolution Procedures;
- 16. Termination Compensation;
- 17. Technical Requirements;
- 18. Update to Base Map; and
- 19. Report of Property Damage Form.

Finally, MDOT have specifically allowed limited reliance on the specific Reference Information Documents listed below; all others are to be utilized at the Developer's risk:

- Geotechnical Data Report to be used only related to a Compensable Delay Event or Compensable Relief Event;
- Information relevant to Hazardous Materials Relief Event;
- Information relevant to Basic Configuration to be used only related to a Necessary Basic Configuration Change; and
- Utility Information to be used only related to a Utility Relief Event.

The relief events indicated above are further described in this Project Agreement Review in Report Section 5.2.4. In preparing the commentary on the Agreement, the contractual language has been summarized and does not necessarily reflect the exact wording of the current draft Agreement. All references to an Insurance Policy refer to the required coverages under the Agreement and the Agreement states that the same actions apply regardless of whether the policy was in effect or if the required coverages should have been in effect. The use of the term Developer-Related Entity within the Project Agreement encompasses the Developer, each Non-Equity and Equity Member.

5.2.1 PROJECT TERM (PA SECTION 4)

The Agreement is effective as of the Commercial Close Date (execution date of the Agreement) and will terminate on the Scheduled Expiration Date (25 years from Substantial Completion Date) except in the case of early termination where the date it would expire is the Expiration Date.

Developer is required before Notice to Proceed or "NTP" (the notice issued by MDOT authorizing Developer to proceed with the Project Work) to assist in all work to satisfy conditions for Financial Close and NTP. No Project Work is to be performed ahead of the NTP unless the Developer decides to proceed at risk. The detailed conditions for the NTP are outlined in PA Section 14.



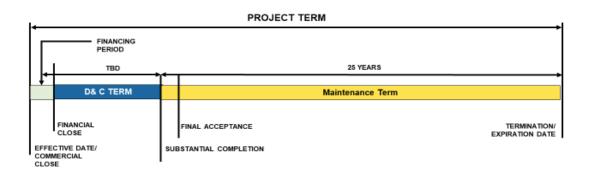


Figure 5 – Project Term Overview

The Commercial Close Date occurs when the Agreement is executed by the Developer and MDOT. The Developer sets the deadline for the Financial Close; the Agreement provides that date will be no later than 45 days after the Commercial Close Date, subject to certain extensions. The conditions precedent to Financial Close are outlined in Section 3 of the Agreement.

NTP is issued at Financial Close and commences the D&C Term which runs through to Substantial Completion. During the D&C Term, the Project Work includes the D&C Work along with Interim Maintenance and certain Long-Term Maintenance (as previously discussed in the Project Scope of this Report Section 3.4) The Substantial Completion Deadline will be set by the Proposal Schedule but will be no more than 1826 days after the Financial Close Deadline. The Maintenance Term starts, in general, the first day after the later of the Substantial Completion Date and the Substantial Completion Deadline and is known as the Project Maintenance Commencement Date. The Tunnel and Pump Station maintenance has an earlier start date which is after issuance of the Milestone Completion Certification for Milestone 2 as described above in the Project Scope of this Report Section 3.4.

WT considers the contractual wording relative to the Project Term to be well defined and we have no specific concerns from a technical perspective.

5.2.2 PAYMENTS TO DEVELOPER AND REDUCTION OF PAYMENTS (PA SECTION 19, SCHEDULE 4)

The scheduled payments to the Developer are the Milestone and Availability Payments. For all payments, the Developer will first submit an invoice to MDOT that complies with all of the requirements of Schedule 4 (Payment Mechanism) within 30 days including any required adjustments previously approved by MDOT. Within 15 days after receipt of the invoice, MDOT will advise the Developer if the invoice is approved or, if there are any disputes, the revised payment amount along with a statement of the disputed amounts. Payment will then be paid on the first Thursday following: for Milestone Payments 30 days after receipt of invoice and for Availability Payment 45 days after receipt of the invoice.

The Developer is required under PA Section 19.9 to pay the first-tier subcontractors including the DBLLC and Maintenance Contractor for the completed work no later than 30 days from the earliest of satisfactory completion or the end of the month in which the work was performed. The subcontracts then require payments to lower tier subcontractors within 10 days of receipt of payment.

All MDOT payments due under this Agreement are subject to appropriation by the State legislature. This is a typical risk in U.S. Availability Payment scenarios and is not considered an undue risk.



Milestone Payments

Milestone Payments as detailed in the Table 8 below will be made to Developer during the D&C Term.

Table 8 – Milestone Payments		
DESCRIPTION	MILESTONE	MAX PAYMENT
Milestone 1 (Tunnel Boring Machine	Issue of Milestone Completion	\$20,000,000
Delivered and Accepted)	Certificate for Milestone 1	
Milestone 2 (Storage & Drainage Tunnel	Issue of Milestone Completion	\$40,000,000
And Pump Station in Service)	Certificate for Milestone 2	
Milestone 3 (Substantial Completion)	Issue of a Substantial Completion Certificate	\$40,000,000
Milestone 4 (Final Acceptance)	Issue of a Final Acceptance Certificate	\$1,000,000

While the treatment of Milestone Payments varies significantly across Availability Payment Projects, WT considers the payments shown here are within the range of what has typically been seen in the U.S. for similar P3 projects.

Availability Payments During the Maintenance Term

The Availability Payments are made in arrears starting at the later of the Original Substantial Completion Deadline or the actual Substantial Completion Date, if later. To clarify, as stated in PA Section 15.4, even though MDOT may certify Substantial Completion earlier, it will not commence Availability Payments prior to the Substantial Completion Deadline. These are made at the end of each quarter and continue until the Expiration Date based on the following formula:

$$AP_{q,y} = QTMAP_{q,y} - QUA_{q,y} - QNCA_{q,y}$$

The components for each quarter are the applicable Quarterly Total Maximum Availability Payment ("QTMAP") which is the Quarterly Maximum Availability Payment (QMAP) + the Quarterly Renewal Work Payment (QRWP) less any outstanding Quarterly Unavailability Adjustment ("QUA") or Quarterly Non-Compliance Adjustment ("QNCA") based on the cumulative Noncompliance Points for that quarter. The QRWP is the Base Renewal Work Payment for the applicable period as set forth in Appendix C of Schedule 4 and indexed for inflation as provided in the Agreement. The methodology for the deductions is further discussed below.

The annual Maximum Availability Payment ("MAP") for the applicable contract year is indexed for inflation according to the following formula:

$$MAP_{y} = BaseMAP \times k \times \frac{I_{y}}{I_{Base}} + BaseMAP \times (1-k)$$

The components are the base Availability Payment bid for that year by the Developer ("BaseMAP") factored for the indexed portion of the BaseMAP ("k") which is to be bid in the range of 10-20% of the total BaseMAP. That number is multiplied by the ratio of the MAP Index (which is a weighted index defined in the Agreement) calculated as defined in Schedule 4 divided by the MAP Index as of 8/1/18; the unindexed portion of the BaseMAP is then added.



The total Availability Payments in any quarter will never be less than zero or greater than the applicable QTMAP.

Termination Payments

Upon a Termination, Schedule 16 details the available Termination Compensation including:

- Termination for Convenience and MDOT Termination Amount (as further described in this Report Section 5.2.12) if terminated for convenience of MDOT or terminated by Developer based on a MDOT Default (further details provided in Report Section 5.2.11);
- Developer Default Termination Amount if Termination resulted from Developer Default (further details provided in Report Section 5.2.10);
- Extended Force Majeure and Unobtainable Coverage Event Termination Amount (as further described in this Report Section 5.2.12) or in the cases of Force Majeure events extending for more than 180 continuous days or a defined Unobtainable Coverage Event; and
- Adverse Event Termination Amount (as further described in this Report Section 5.2.12) upon a Termination prior to Financial Close due to a defined adverse event.

Other Payments

Additional payments that may be made to the Developer are for Compensable Relief Event (D&C Term) and Compensable Delay Events (Maintenance Term) as discussed in this Report Section 5.2.4: Conditions for specific relief events are also addressed including a Hazardous Material Relief Event (as defined in this Report Section 5.2.5), uninsured Force Majeure Event (further discussed in Report Section 5.2.6) or Utility Relief Event (as defined in Report Section 5.2.4). Payments may also be made based on a Change Order; the further details of which are described in Report Section 9.5.

Reductions to Payments

WT note two defined mechanisms in the PA with regards to payment adjustments to the Milestone Payments and/or Availability Payments.

Noncompliance Adjustments

Either Milestone or Availability Payments may be reduced for Noncompliance Events and will be calculated based on accumulated Noncompliance Points in accordance with Schedule 4 (Payment Mechanism).

Noncompliance Events may result from a D&C Failure or a Maintenance Failure, which represent a material failure to comply with the noted standards or specifications of the PA with regards to the D&C Work or Maintenance Work respectively. A Noncompliance Event with NCE numbers 14.1 to 14.5 in both Appendix A and Appendix B of Schedule 4 are termed Incident Management Noncompliance Events. This distinction applies within the Persistent Developer Default definition. Noncompliance Points are assessed if a Noncompliance Event is not mitigated within the allowable period and MDOT must agree that the Event has been mitigated. In Schedule 4, specifics for D&C Failures are in Appendix A and Maintenance Failures in Appendix B. The points that may be assessed for a particular Noncompliance Event range from 1 -20 points for each event. MDOT can assess \$1,500 (indexed annually) per Noncompliance Point for each deduction event.

Further, if the root cause of a series of Noncompliance Events is deemed substantially the same and the Developer fails to take the appropriate actions to resolve these Noncompliance Events, the



Deduction will be increased to \$4,000 (indexed annually). These are triggered after three Noncompliance Events in a single day or after four Noncompliance Events in a rolling consecutive seven-day period. WT note that "rachet" mechanism of this type have become common practices for P3 procurements in North America in order to incentivise corrective action.

<u>Unavailability Adjustments</u>

Payments may also be reduced to account for Unavailability Events, triggered when the Developer (a) fully or partially closes a lane for any purpose or (b) fully or partially blocks ingress to or egress from a Lane for any purpose and such blockage is not a Permitted Lane Closure.

Unavailability Adjustments are calculated by multiplying the number of one-hour intervals (lesser minutes are rounded up to the hour interval) for each Unavailability Event by the Unavailability Factor, specifics are provided in Schedule 4 – Table A. The factors range from \$50 - \$3,500 for each event during the D&C Term and \$100 - \$6,000 during the Maintenance Term depending on the type of event.

The total Deductions and Unavailability Adjustments cannot cause Milestone Payments 1 and 2 or the Quarterly Total Maximum Availability Payment to be less than 65% of the applicable maximum Milestone payment or Quarterly Total Maximum Availability Payment other than the final payment during the Maintenance Term. However, if the full deduction is not made, it will be carried over and applied against the next payment. The Agreement further provides that the Deductions and Unavailability Adjustments are considered liquidated damages. If a single event would result in a D&C Deduction, Maintenance Deduction and Unavailability Adjustment being applied (or any combination), the highest dollar amount will apply.

MDOT also has the right to deduct from any payment owing to the Developer any amount due and payable to MDOT, any sums expended by MDOT in performing any Developer obligations or any claims.

WT considers the overall payment mechanisms as discussed are consistent with similar P3 contracts; the payment of Milestone Payments prior to the completion of the D&C Work is a benefit in reducing the carrying costs during construction. The quarterly availability payments are often seen in similar U.S. projects. There are several specific provisions where we see some variations.

The concept of a Final Acceptance payment is considered atypical and could be considered an incentive to complete those final remaining Punch List items despite the low value of the payment.

Other provisions that are less standard relate to the restriction that although MDOT may certify Substantial Completion earlier, it will not commence any Availability Payments prior to the Substantial Completion Deadline. This removes some of the incentive for achieving completion ahead of the agreed upon schedule, however WT note that this has become more frequently used on infrastructure P3's in recent years.

WT opine that the overall structure of the deduction regime shown in this Agreement are consistent with comparable U.S. P3 availability payment projects. Further analysis of the deduction regime is included in Report Section 14.

5.2.3 MDOT STEP-IN AND SUSPENSION RIGHTS (PA SECTION 20)

Step-In Rights

MDOT may exercise their Step-In Rights if any of the following Step-in Events occur:



- An Emergency occurs, defined as any unplanned event or condition which:
 - Presents an immediate threat to the infrastructure, adjacent property, the environment, or public safety;
 - Has already caused some form of injury or damage to the infrastructure/adjacent properties; or
 - Has been identified by relevant state or federal bodies (such as FEMA) as an emergency.
- MDOT is required by law to discharge a statutory power or duty; or
- if a Developer Default (as further described in Report Section 5.2.10 below) occurs and is not cured within the defined cure period.

The extent and period of time for the step-in is subject to MDOT's sole discretion. If any of these events occur, MDOT will provide notice as soon as practicable to the Developer and Lenders. Subject to the terms of the Direct Agreement, MDOT can assume total or partial management and control in full or in part, access the Project ROW, perform the Project Work and take such other steps as they deem necessary. While these provisions make sense in a Default situation, they are not typical for a non-default scenario.

If MDOT exercises Step-In Rights, then the Developer's directly affected obligations will be suspended for the period and to the extent necessary to enable MDOT to exercise Step-In Rights. Failure for the Developer to perform obligations so suspended will not constitute a breach. MDOT will give 5 days' notice when they have ceased to exercise the Step-in Rights and Developer must immediately recommence performing any of the obligations that were suspended. This only applies to the suspended work and does not provide any relief for the remainder of the work.

PA Section 20 further describes how costs and expenses are allocated depending on whether the Step-In Event results from a Developer Default or not. In the case of a Developer Default, all liabilities incurred by MDOT will be a debt to MDOT due upon demand. If not due to Developer Default, then MDOT will not make any deductions from payments due except for avoided costs, but it is not a Compensable Delay Event or Compensable Relief Event (as described in Report Section 5.2.4) if the MDOT action causes delays in time or increased costs.

The Step-In Rights are subject to the rights of the Surety to assume performance and the Lender's rights to cure any Developer Default under the Direct Agreement but in an Emergency MDOT has the right to Step-In immediately until actions may be taken by the Surety or Lender.

We would expect that MDOT would exercise these rights only under appropriate and necessary situations and would not cause undue impact to the project.

Suspension

Under PA Section 20.6, subject to any Lender's rights under the Direct Agreement, MDOT has the right to suspend the Project Work by notice for the following reasons regardless of whether a cure period has lapsed:

- for MDOT's convenience;
- an uncured breach of the agreement;
- failure to comply with Applicable Law or Governmental Approval;
- uncured failure to pay Subcontractors; and
- existence of unsafe conditions and uncured failure to comply with Work Orders as well as failure to
 provide required insurance and performance securities.



If MDOT orders a suspension for any of the causes listed above except for convenience, but it is determined via Dispute Resolution that those grounds did not exist, then it will be treated as a suspension for convenience.

The right to impose these actions is based on MDOT making a good faith determination that such action is needed and is conclusive unless there is clear and convincing evidence to the contrary.

WT considers that in general the provisions for Step-In and Suspension fall within the range of provisions found in similar P3 agreements.

5.2.4 DELAY EVENTS AND RELIEF EVENTS (PA SECTIONS 24,25,26)

As several relief items that are typically shown as separate contract sections such as adverse site conditions and hazardous materials are included only in the definitions, a condensed version of the elements for Compensable Delay and Relief Events is shown below: As is typically found in agreements, each of the items listed are considered for relief to the extent that they interfere directly and adversely or cause a failure of performance of the work.

A Delay Event is related to D&C Work, Interim Maintenance Work or the Long-Term Maintenance for the Tunnel & Pump Station during the D&C Term and defined as either a Force Majeure Event as defined in Schedule 1 (and further discussed in Report Section 5.2.6) or a Compensable Delay Event. PA Section 24.9 provides that MDOT will pay the compensation due to Developer under these sections based on Section 7.0 of Schedule 5 (Costs Schedule).

A Compensable Delay Event generally includes:

- a) Implementation of an MDOT Change (as discussed in this Report Section 9.5) (MCD);
- MDOT Fault which is defined as a breach by MDOT of a material obligation or representation include delay/failure to provide access to the Planned ROW Limits; MDOT's violation of Applicable law; or fraud, criminal conduct, willful misconduct or grossly negligent act or omission by MDOT (MCD);
- c) Hazardous Materials Relief Event (as discussed below and in this Report Section 5.2.5) (MCD);
- d) Relevant Change in Law or Change in Law during the D&C Term which interferes directly and adversely with the Long-Term Maintenance Work. Relevant Change in Law is defined as a discriminatory Change in Law which principally affects the design, construction and maintenance of the Project. Change in Law is further discussion in this Report Section 5.2.7;
- e) NEPA Event which covers any new or modified NEPA Approval required solely by a MDOT Change, Delay or Relief Event as well as any legal action or FHWA change to the NEPA Approval unless it is caused by the Developer (MCD);
- f) compliance with direction of an Emergency Service Provider in an Emergency;
- g) interference in possession or performance of substantial materials or services by a Governmental Entity in connection with an Emergency or a taking by eminent domain of any material portion of the ROW or D&C Work;
- h) failure of MDOT to provide timely, required responses to submittals where the response is required for Developer to proceed with work (MCD);
- i) discovery of unknown archeological, paleontological, cultural resources;
- j) discovery of unknown Threatened or Endangered Species;
- k) loss or damage to the Relevant Infrastructure directly caused by MDOT Fault (as described above) or Vehicle Damage (any damage to the Relevant Infrastructure directly caused by a vehicle accident involving a third party, MDOT Contractor, the Segment 2 design-build contractor or Freeway Lighting

LLC that was not caused by or could not have been avoided by the Developer or was not caused by snow and ice removal activities by MDOT or their contractors). Relevant Infrastructure during the D&C Term includes the Project ROW, D&C Work and the Interim Maintenance Work. During the Maintenance Term it includes the Project ROW, the I-75 (Segment 3) and the Long-Term Maintenance Work. (MCD);

- issuance of any form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of any material portion of the D&C Work, Interim Maintenance Work or Long-Term Maintenance Work;
- certain subsurface or latent physical conditions (as further discussed in this Report in Section 5.2.5) (MCD);
- n) any order of MDOT to suspend for convenience exceeding 24 hours for a single suspension or 144 cumulative hours across multiple suspensions (MCD);
- subject to restrictions as further stated in the definition, performance of work other than snow and ice removal in vicinity of Project ROW by MDOT Contractors or Freeway Lighting Partners, LLC (the P3 Lighting Contractor) at the direction of MDOT that materially disrupts and interferes with the D&C Work or Interim Maintenance Work (MCD);
- subject to restrictions as further stated in the definition, performance of work in the Project ROW by the Segment 2 design-build contractor that materially and directly disrupts and interferes with the D&C Work or Interim Maintenance Work (MCD);
- q) subject to restrictions as further stated in the definition, loss or damage to Relevant Infrastructure directly caused by Vehicle Damage (MCD);
- r) Utility Relief Event which is, subject to restrictions as further stated in the definition, any Utility which requires Relocation, Protection in Place or abandonment that was not previously identified but is within the Developer's Utility Conflict Matrix (submitted by the Developer 180 days from NTP reflecting all Utilities likely to be impacted) or an Unknown Unidentified Utility (underground Utility that requires Relocation, Protection in Place or abandonment and was not previously identified or could not have been by the Michigan MISS DIG 811 system). (MCD); and
- s) Utility Delay which is a failure by a Utility Owner to complete design, construction and/or materials procurement for a Relocation by the later of either the date determined using the durations specified in the Duration and Responsibility Matrix found in the Technical Requirements Article 5 or March 1, 2020; this is subject to Developer obligations as further detailed in the definition. (MCD).

Items (a), (b), (c), (e), (h), (k) (m), (n), (o), (p), (q), (r) and (s) are marked with (MCD) as an indicator that they fall within the definition of MDOT-Caused Delay. In this instance, the Developer would also be entitled to incurred delay costs in addition to compensation for extra works required.

For either the Punch List performance or plain Long-Term Maintenance Work after the Substantial Completion Date the available relief is termed a Relief Event which is either a Force Majeure Event (and further discussed in Report Section 5.2.5) or Compensable Relief Event. A Compensable Relief Event largely matches the information provided above for a Compensable Delay Event as it applies to Long-Term Maintenance Work. The main differences between the two definitions are the addition of one item for Long Term Maintenance - a change in standards materially impacting the Long-Term Maintenance Work directed by MDOT and the removal of three items: (1) the interference by a Governmental Entity in connection with an Emergency or eminent domain, (2) Utility Relief Event and (3) Utility Delay.

The PA clearly states in PA Section 24.7, that the Developer's sole right to claim an extension of time, compensation or relief from performance of its obligations or make any claim, in connection with Delay

Event or Relief Event is provided for in PA Sections 24 -26 and as summarized here. As in all contracts, the Developer must provide all necessary documentation and comply with all the requirements of these PA Sections including the timing of any notice. For any compensable event, this must include an itemized estimate.

The term Relevant Event encompasses Delay Event, Relief Event or any other event where the Developer considers it is entitled to claim an extension of time, compensation or relief from performance of its obligations under the Agreement.

Mitigation is a key requirement; if the required mitigation efforts are not taken by the Developer, this reduces the right to claim any form of relief. The Agreement also provides that compensation payable to the Developer will be reduced by applicable recoveries from insurance, any avoided or reduced costs by the Developer or any Developer Fault. A Developer Fault encompasses a breach by any Developer-Related Entity of any of its obligations or representations under the Project documents or Applicable Law or Governmental Approval as well as fraud, criminal conduct, gross negligence and similar acts. The details provided in Articles 25 and 26 address the level of relief that will be available to the Developer.

Relief During D&C Term (PA Section 25)

As is typical, a Delay Event entitles the Developer to an extension of the applicable Substantial Completion Deadline or Final Acceptance Deadline only equal to the directly caused delay in the Critical Path. As previously stated, the circumstances must fall within either the definition of a Force Majeure Event or Compensable Delay Event. As is standard, no additional time is allowed for concurrent delays. In addition to the time, the Developer is also relieved from failures to perform the Interim or Long-Term Maintenance Work to the extent directly arising out of the Delay Event.

If it is a Compensable Delay Event (as defined above), MDOT will reimburse for costs directly attributable to the event as follows: Extra Work Costs and Delay Costs (the latter only if an extension of time is granted for a MDOT-Caused Delay) according to the provisions of Schedule 5 (Costs Schedule) as well as Financing Delay Costs depending on Milestone completions as further detailed in PA Section Article 25.6. Per Schedule 5, all costs are to be on an open book basis. Extra Work Costs are the incremental increase in Developer's cost of labor, material, equipment and other direct/indirect costs directly attributable to Extra Work and calculated according to Schedule 5; they may be on contract unit prices, negotiated lump sum or unit prices; or force account as provided in Article 2.3 of Schedule 5. Delay Costs must relate to the activity on the Critical Path having the least amount of float, result solely and directly from a Delay Event and are limited to those costs identified in and calculated according to Schedule 5 (Cost Schedule). Further, they are not allowed during the period between November 15th and March 1st unless the work is on the approved schedule.

Furthermore, it is understood that if there are delay costs imposed on the Consortium due to the delay of Milestone 1 and/or 2 and the Substantial Completion date is not extended, the Developer will be appropriately insulated from risk via the DB Contract and the associated LD provisions.

The following additional conditions for specific relief events are also addressed in the PA:

- Hazardous Materials Relief Event compensation or time extension is limited to Extra Work
 performed under approved plans as specified in the Technical Requirements Articles 3 and 8 as well
 as per PA Section 8.
- If a Delay Event is also an uninsured Force Majeure Event, MDOT has agreed to reimburse any Developer Financing Delay Costs if required conditions are satisfied.



 Compensation will be provided for a Utility Relief Event (as defined above) for unidentified or misidentified Utilities only if the impacted Utility has been identified on the Utility Conflict Matrix (as defined above) along with several other restrictions listed in PA Section 25.9 unless it qualifies as an Unknown Unidentified Utility as defined above.

Relief During Maintenance Term (PA Section 26)

MDOT will reimburse the Developer for all Extra Work Costs that are incurred as a direct result of the Compensable Relief Event calculated per Schedule 5 (Costs Schedule).

Two specific relief events are addressed in this section:

- If a Force Majeure Event is not insured and it directly and adversely impacts the Long-Term Maintenance Work after Substantial Completion, MDOT may accrue Noncompliance Points and make Deductions or Unavailability Adjustments per Schedule 4 (Payment Mechanism as discussed in Section 5.2.2 of this Report), but they cannot reduce payments below the sum of the Senior Debt Service Amount and 75% of the Fixed Maintenance Costs.
- Hazardous Materials Relief Event compensation or time extension is limited to Project Work performed under approved plans and all other restrictions outlined in PA Section 26.5.

A failure to perform the Long-Term Maintenance during the Maintenance Term directly due to a Relief Event is not a breach or Developer Default and if it is a Compensable Relief Event it will not result in Unavailability Adjustments or accrual of Noncompliance Points or Deductions.

Based on our review of the above noted terms, WT note that a substantial portion of the terms related to Delay Event and Relief Events is consistent with similar P3 Agreements including the Extra Work Costs compensation.

Notwithstanding the Developer's general duty to mitigate the above circumstances, the PA provides mechanisms whereby the Developer may seek relief from its obligations, time extensions, compensation, or termination of the PA. Provisions differ depending on the type of Relief Event.

The costs of Relief Events are payable from the general funds available for the Project. Failure on the part of MDOT to pay funds owing would constitute an MDOT Default.

5.2.5 SITE CONDITIONS (PA SCHEDULE 1 DEFINITIONS OF COMPENSABLE DELAY EVENT AND COMPENSABLE RELIEF EVENT

The Developer is required to accept the Project Site on an "as is, where is" basis. In executing the PA, the Developer will be deemed to have undertaken sufficient due diligence to satisfy themselves as to the conditions of the site such as contamination and geotechnical issues.

The RFP includes a comprehensive list of Reference Documents made available to the proposers in connection with the Project by MDOT, and for clarity includes as-built documents (including utilities), engineering studies (traffic, hydraulics, etc.) and reference design guides for the alignment, and environmental/hazmat/geotechnical reports. Any use or reliance on the Reference Information Documents is solely at Developer's risk. However, in PA Section 1.5.2 specific exclusions are made for the purposes listed below:



- the Geotechnical Data Report for the specific and limited purposes of a Compensable Delay Event or Compensable Relief Event under <u>clause (m)</u> of the definition of Compensable Delay Event or Compensable Relief Event (as applicable); and
- information relevant to a Hazardous Materials Relief Event as further described below.

Our analysis of the Existing Site Conditions is further detailed in Section 7.0 of this report. The above referenced reports are considered to provide an appropriate basis for cost and design assumptions. The Consortium have confirmed that further geotechnical due diligence will be undertaken prior to works being undertaken in order to mitigate potential construction issues, specifically with regards to the tunneling aspects.

Despite the Developer's general assumption of risk for the Project Site, there are provisions within the PA which potentially afford relief in the event of unanticipated discoveries during construction. There is also the concept of a Reasonable Investigation meaning a reasonable investigation based on non-intrusive inspections of the Site and related activities to familiarize Developer with surface and subsurface conditions. The PA treats the subject of differing site conditions slightly differently than some agreements as there is not a defined section or specific definition. Instead, the definitions of Compensable Delay Event and Compensable Relief Event (as further described in this Report Section 5.2.4) allow for potential relief when there is a discovery of actual subsurface or latent physical conditions that differs materially from conditions known or disclosed to the Developer prior to the Setting Date (30 days prior to the proposal due date, currently July 20, 2018) or could have been reasonably anticipated as being present. A condensed list of the conditions that must be met to entitle Developer to relief includes:

- Developer must promptly notify MDOT in writing upon discovery and before the conditions are disturbed or affected work performed;
- The discovered conditions must exist within two feet of boring holes identified in the Geotechnical Data Reports; OR
- Be conditions within the ROW differing materially from those ordinarily encountered in the area or generally recognized as inherent in the type of work.

This wording is consistent with similar North American P3 procurements and places the burden of demonstrating that the subject conditions are eligible for relief on the Developer.

Hazardous Materials are further discussed in this Report in Section 6.1. Similar to differing site conditions, MDOT has defined a Hazardous Materials Relief Event as a compensable item under either Compensable Delay Event or Compensable Relief Event definitions. The Hazardous Materials Relief Event means Hazardous materials in, over or emanating from the Project ROW but <u>excludes</u> Hazardous Materials where:

- Hazardous Materials and Recognized Environmental Conditions are known or could have been reasonably suspected based on the Reference Information Documents or a Reasonable Investigation prior to the Setting Date (Known or Suspected Hazardous Materials);
- to the extent caused by any Developer-Related Entity or that Developer is required and failed to mitigate against the risk; or
- to the extent it could have been reasonably avoided by available construction techniques or minor design changes; or
- the Developer failed to take actions could have been taken that would have prevented or minimized the event.

Once again, this wording is consistent with past P3 precedents and incentivises appropriate initial due diligence on the part of the Developer. WT consider the provisions with regards to unforeseen site conditions to be reflective of market standard and afford the Project Company appropriate schedule and financial relief.

With regards to hazardous materials which are identified following the Setting Date, the PA Parties acknowledge that MDOT will be deemed the generator and assume generator responsibilities for hazardous materials other than those released by the Developer. The Developer still has the responsibility, among others, to not exacerbate any existing conditions as well as for any hazardous material management activities including remediation, removal and transport but only under plans approved by MDOT

Report Section 5.2.4 further describes the cost payable for Compensable Relief Events during either the D&C or Maintenance Terms covered in PA Sections 25 and 25. WT believe as this provides the Developer with a reimbursement for time, Extra Work and Delay costs, it is a reasonable level of protection from unforeseen hazardous materials during the term provided all of the Agreement provisions are carefully followed.

5.2.6 FORCE MAJEURE (PA SCHEDULE 1)

WT note there is no designated PA Section outlining Force Majeure events, but it is defined in Schedule 1 and the circumstances under which it is compensable are set out in Sections 24-25. Force Majeure Events have been delineated between Insurable Force Majeure Events and Uninsurable Force Majeure Events and are administered different dependent on which event they qualify as.

Force Majeure Events are defined as any of the following events which directly cause either Party to be unable to perform all or a material part of its obligation under the Agreement; these must directly impact the construction or maintenance activities

- war and similar activities;
- any act of terrorism or sabotage;
- national strikes not specific to Developer or unavailability of materials;
- nuclear, radioactive or biological contamination that causes direct physical damage, or radioactive contamination not caused by Developer-Related Entities;
- Flood Event (where flood waters at the Site reach two or more acres), fire, explosion, an EF2 tornado, sinkhole caused by natural events, or landslide caused by natural events;
- a seismic event, where such movements directly impact, and cause damage to, temporary or permanent works; and
- any governor-declared Emergency within the limits of the Project ROW, except one consisting of or arising out of traffic accidents or Vehicle Damage (as described in Report Section 5.2.4).

A Force Majeure Event is included as a specific named item in the definition of a Relief Event but PA Section 25 and 26 specifically detail that the only costs to be reimbursed for non-insured Force Majeure Events will be for Developer Financing Delay Costs.

As the Force Majeure language is spread across several sections, further details are provided in this Report Section 5.1.12 on Termination and Section 5.2.13 on Risk of Loss/Damage.

WT opine that the circumstances giving rise to a Force Majeure Event are consistent with those which would be traditionally identified for a Force Majeure Event on other P3 transactions.

If a Force Majeure Event is insured, the Developer bears the risk of loss, damage or destruction of the Project during the term. PA Section 37 further details that process as further described in this Report Section 5.2.13.

The overarching principle is that the proceeds from Developer's insurance policies will be leveraged to cover the cost of repair/replace/rebuild and the loss of the Availability Payments as well as additional interest costs due to delayed Milestone payments up to one full year.

In the case where a Force Majeure Event is not insured (and not required to be) and if MDOT requires the Developer to repair, replace, or rebuild the Project, PA Section 37.3 provides that the parties will use reasonable efforts to negotiate and agree on the work according to change order process as well as the Extra Work Costs according to Schedule 5 (Costs Schedule). Also, in an uninsured Force Majeure Event only, Developer Financing Delay Costs are paid equal to interest payments on the Senior Debt Service during the period of Critical Path delay.

MDOT is entitled to make Deductions or Unavailability Adjustments (as previously discussed in Report Section 5.2.4) during the Maintenance Term even if an event of Force Majeure is ongoing, provided it is an uninsurable Force Majeure and material impacts the Long-Term Maintenance Work. However, the deductions will not be permitted to reduce the Availability Payments below the sum of the Senior Debt Service and 75% of the Fixed Maintenance Costs.

As discussed in Report Section 5.2.12, PA Section 33.2 provides that if a Force Majeure event is continuing and prevents Developer from undertaking its obligations for a continuous period of 180 days, either Party has the right to terminate. The Developer cannot invoke a termination while they are able to recover from their insurance policy. Upon termination for an Extended Force Majeure Event, MDOT will pay the Developer the Extended Force Majeure and Unobtainable Coverage Event Termination Amount provided in Schedule 16 (Termination Compensation) and further details in Report Section 5.2.6.

While the approach to the Force Majeure within the agreement is somewhat atypical from recent U.S. P3 procurements by being embedded as a definition, WT considers the provisions for Force Majeure Events are suitably defined and afford the Developer with an appropriate level of schedule, performance and (if applicable) financial relief resulting from these circumstances.

5.2.7 CHANGES IN LAW AND STANDARDS (PA SECTION 27)

The Agreement requires that the Developer must perform the Project Work in accordance with the terms of the Agreement including compliance with Applicable Law following any Change in Law. The definition addresses both repeal, amendment, modification to any Applicable Law as well as any new Applicable Law. As described in this report Section 5.2.4 both a Compensable Delay Event and Compensable Relief Event encompass a Change in Law to the extent that it directly and adversely impacts the Relevant Work.

Unlike other Relevant Events, any cost savings or reductions resulting from a Relevant Change in Law will not be deducted from the Developer's payable compensation, except for the capital costs and operating costs which would otherwise be required to be incurred or payable by the Developer which are or are likely to be decreased from the relevant amounts assumed in the financial model.

The Agreement requires that the Developer must comply with Applicable Standards which apply to the Project Work. If one of those changes was not in place at the Setting Date (a "Change in Standard") the Developer provides notice to MDOT. Once MDOT reviews, if compliance with the new standard is required, then the Change Procedure per Schedule 9 (Change Procedure) is invoked as further described in this Report Section 9.5.

If a change is both a Change in Law and Change in Standard, it is treated as a Change in Law.



The provisions with regards to Changes in Law are considered standard and provide the Developer with an appropriate measure of relief from material changes to Applicable Law particularly when combined with the ability to request a changed for changes in Applicable Standards.

5.2.8 CHANGE ORDERS AND WORK ORDERS (PA SECTION 28, PA SCHEDULE 9 (CHANGE PROCEDURE)

Schedule 9 (Change Procedure) sets out the process with respect to (i) Work Orders unilaterally issued by MDOT; (ii) Change Orders issued by MDOT following a Request for Change Proposal by MDOT; and (iii) Change Orders issued by MDOT following a Change Request by Developer. Section 9.5 of the Report provides further details on Schedule 9 and changes.

5.2.9 DISPUTE RESOLUTION PROCEDURES (PA SECTION 29, PA SECTION 40, PA SCHEDULE 15)

Schedule 15 (Dispute Resolution Procedures) lays out the procedures for Dispute Resolution. With the exception of the first bullet item listed below, the Parties are allowed to seek resolution of Disputes that are not subject to resolution under Schedule 15 as allowed by applicable law.

PA Section 40 lists the following circumstances in which the Dispute Resolution Procedure does not apply:

- Any matter specifically stated as being final, binding, and/or not subject to Dispute Resolution Procedure;
- Any claim or dispute which does not arise under the PA;
- Dispute's regarding compliance with Rules and Regulations, termination of the PA, or indemnification;
- Any Claim for injunctive relief;
- Any Claim against an insurance company, including any Subcontractor Dispute that is covered by Insurance;
- Disputes regarding safety issues and/or matters under the jurisdiction of Michigan-OSHA;
- Issues regarding DBE/SBE participation;
- Any Claim or dispute which is the subject of litigation;
- Any Claim for, or dispute based on remedies expressly created by statute;
- Any Dispute that is actionable only against a surety;
- Any Dispute as to audits undertaken by the Michigan Auditor; and
- Any Claim in connection with the Project Work where a third party is a necessary party.

While WT have not seen many instances where non-disputable events are specifically called out in the PA, we opine that the above-referenced items are appropriately dealt with outside of the dispute resolution procedure given their respective circumstances.

Nonetheless, the Parties may seek resolution of Disputes that are not subject to resolution under Schedule 15 in accordance with Applicable Law.

The Dispute Resolution Procedures identified in Schedule 15 are summarized as follows:

The initial step will be a good faith attempt to resolve any Dispute within 10 days. If they are unable to resolve, then the Dispute can be referred by either party to the Designated Senior Person which is the representative of each party designated in Schedule 2 (Project Specific Information.). The Designated Senior Persons then negotiate in good faith to resolve the matter in an additional 10-day period. If that step is unsuccessful, either Party may then refer the matter to the Dispute Review Board.



The Dispute Review Board ("DRB") process is typical to what is seen in U.S. alternative delivery agreements. The DRB is established for the entire agreement period to "evaluate and provide recommendations as to the entitlement of claims arising out of the work on the Agreement." MDOT and the Developer each select one member that is approved by the other party. Those two members then choose the third member who is then the chairperson. Any conflict of interest issues either before selection or during the agreement term are referred to MDOT's DRB Conflict of Interest Appeal Committee. DRB panel members are required to attend a series of progress meetings that will be monthly during the D&C Term and quarterly thereafter.

The claim process follows the standard MDOT DRB Procedures. The final DRB recommendation will conclude the administrative process for claims unless either MDOT or the Developer appeals. After an appeal hearing, the DRB appeal recommendation will then conclude the DRB administrative process. The costs for DRB hearing and participation in progress meetings is established in Schedule 15. Hearing costs are shared equally but MDOT will reimburse for progress meeting costs.

As is standard, during the course of pursuing dispute resolution, the Developer is required to continue performing the work as directed by MDOT.

We understand that the Court of Common Pleas is available for the Consortium to go to if the DRB decision is disputed/rejected, pursuant to MDOT's defined DRB Procedures.

5.2.10 DEVELOPER DEFAULT (PA SECTION 30)

A Developer Default is defined as any of the following circumstances:

- Developer fails to begin the D&C Work within 30 days following MDOT's issuance of NTP (Cure period = 20 days, cure plan required);
- Developer fails to begin the Interim Maintenance Work within 120 days following MDOT's issuance of NTP;
- Developer fails to begin the Long-Term Maintenance Work associated with the Tunnel and Pump Station within 30 days following a Milestone Completion Certificate for Milestone 2;
- Developer fails to begin all Long-Term Maintenance Work for remainder of I-75 (Segment 3) excluding the Tunnel and Pump Station within 30 days following the Substantial Completion Certificate;
- Developer fails to make any payment to MDOT when due, deposit funds to any account as required or deliver the Acceptable Letter of Credit for Handback as required (Cure period = 30 days, cure plan required);
- Developer either ceases performing or has suspended a substantial portion of its business, that has
 or will have a material adverse effect on Developer's ability to perform its obligations under this
 Agreement (Cure period = 15 days, cure plan required);
- Developer abandons the Project or discontinues the performance of a substantial portion of the Project Work for a continuous period of 30 or more days, except if allowed in the approved Project Schedule (Cure Period = 30 days);
- Developer fails to obtain, provide and maintain the required Insurance Policies and such failure is not cured within 5 days of receiving notice from MDOT;
- Developer breaches PA Section 23.1 with respect to a Change in Control;
- Any representation or warranty made by Developer or any documents delivered to MDOT under this Agreement is false in any material respect or materially misleading or inaccurate in any material respect when made or omits material information when made;



- The occurrence of Bankruptcy Event (further described below) (Cure Period = 15 days);
- Any D&C Contract or Maintenance Contract is terminated early and Developer has not either entered into a replacement D&C Contract or Maintenance Contract (as relevant) within 60 days as required under the Agreement, except the Lead Tunnel Subcontractor will have 120 days; or demonstrated to the satisfaction of MDOT in its good faith discretion that Developer possesses the capacity to perform all remaining Maintenance Work per the Agreement;
- Developer fails to achieve Substantial Completion by the Longstop Date (12 months following the Substantial Completion Deadline);
- A Persistent Developer Default (discussed below) occurs, and after MDOT delivers to Developer a Default Notice, and Developer does not deliver within 30 days an acceptable cure plan for approval in PA Section 30.6 or Developer fails to fully comply with the schedule or specific actions required under an approved cure plan;
- Developer fails to comply with MDOT's suspension of Project Work issued per PA Section 20.6 within the time reasonably allowed in such order;
- There occurs any disqualification, suspension or debarment, or there goes into effect an agreement for voluntary exclusion, from bidding, proposing or contracting with any United States or State department or agency of (a) Developer, (b) any affiliate of Developer (as "affiliate" is defined in 29 CFR § 16.105 or successor regulation of similar import), (c) any Equity Member or (d) any Key Subcontractor whose work is not completed;
- Developer fails to replace and maintain the Maintenance Performance Security; and
- Developer fails to timely observe or perform any other covenant, agreement, obligation, term or condition as required under the Project Documents, to cure any such failure identified in such MDOT Notice (Cure period = 30 days, cure plan required).

All available cure periods run from delivery by MDOT to Developer of the Default Notice and are noted in the listing above; if none is specified, there is no Cure Period. The cure period of 30 days may be extended up to 60 days if the cure cannot be completed within 30 days and the Developer has promptly commenced meaningful steps to cure upon receipt of the notice. Cure plans are required for only five of the Defaults (as noted) plus a specific plan for a Persistent Developer Default as detailed in PA Schedule 10 (Submittal Requirements).

A Persistent Developer Default is defined as occurring when Developer incurs:

- With respect to Noncompliance Events (excluding Incident Management Noncompliance Events), 300 Noncompliance Points in any twelve consecutive months, or 750 Noncompliance Points in any 36 consecutive months; or
- With respect to Incident Management Noncompliance Events, 100 Noncompliance Points in any twelve consecutive months or 250 Noncompliance Points in any thirty-six (36) consecutive months.

Please refer to Section 14 for our analysis and conclusion pertaining to payment deductions and the NCP regime.

To provide further clarification regarding a bankruptcy giving rise to a Developer Default, a Bankruptcy Event includes any bankruptcy of the following entities:

- The Developer, except where such Bankruptcy Event is solely and directly because of a failure by MDOT to pay Developer as required under this Agreement; and/or
- Any DBLLC or Maintenance Contractor, unless Developer either:

- enters into a replacement D&C Contract, guarantee or Maintenance Contract (as relevant) with a reputable counterparty acceptable to MDOT, in its good faith discretion, within 60 days of the relevant Bankruptcy Event; or
- in the absence of entering into a replacement Maintenance Contract, Developer otherwise demonstrates to the satisfaction of MDOT, in its sole discretion, that Developer possesses the technical and financial capacity to perform all remaining Maintenance Work in accordance with this Agreement.

The Longstop Date of Substantial Completion Deadline plus 12 months days is consistent with market standard for DBFM/DBFOM P3 Projects.

Most of the provisions for Developer Default are consistent with other comparable agreements and do not pose any undue risk from a technical perspective. However, in most agreements the language related to the failure to perform covenants and other obligations includes materiality factors whereas the wording in this instance is relatively open-ended. Furthermore, the quantity of Developer Defaults without cure periods is this Agreement is considered greater than most comparable contracts. There is variability among agreements but the typical provisions without cure periods are for items such as voluntary failure to achieve the longstop, failure to comply with suspension, bankruptcy, etc. That notwithstanding, WT consider the likelihood of the "uncurable" Project Co Defaults to be low and note that most of the key default provisions possess an opportunity for a cure. In addition, several default provisions have built-in timeframes in which the Developer may avoid the default without the need for a remedial plan (such as the 30-day "buffer" to commence long term maintenance work following Substantial Completion).

Upon occurrence of a Developer Default that has not been cured within any applicable cure period, the MDOT Remedies for the above listed Developer Default items include:

- Exercise its Step-In Rights as discussed in PA Section 20;
- Terminate this Agreement as set out in PA Sections 32-24 and described in Report Section 5.2.12;
- Recover any Liability (debt, obligation, damage, etc.) because of the occurrence of a Developer Default;
- Make demand upon and enforce any payment or performance security available to MDOT under the Agreement;
- Suspend the Project Work in whole or part in accordance with PA Section 20.6 as discussed in Report Section 5.2.3; or
- Exercise any other remedies available under this Agreement or at law or in equity.

If either of the following Default Termination Events occur, subject to any terms of the Direct Agreements, MDOT has the right to terminate the Agreement immediately by notice to the Developer.

- The Developer Default occurs and has not been cured within any relevant cure period set out in the Default Notice or in accordance with any cure plan accepted by MDOT; or
- A Developer Default occurs for which there is no cure period.

Upon termination of the Agreement for Developer Default, MDOT will pay the Developer Default Termination Amount that is detailed in Schedule 16 (Termination Compensation) which naturally represents the most financially onerous termination for the Developer as further described in this Report Section 5.2.12.

Other than the items discussed above related to Step-In Rights and Suspensions, WT considers these provisions are consistent with comparable U.S. P3 agreements.



5.2.11 MDOT EVENTS OF DEFAULT (PA SECTION 31)

A MDOT Default is defined as any of the following circumstances:

- MDOT fails to make any payment due to Developer under this Agreement when due where such payment is not subject to a good faith Dispute;
- Any representation made by MDOT under PA Section 5.2 (MDOT Representations and Warranties) is false or materially misleading or inaccurate; or
- MDOT commits a material breach of its obligations under this Agreement (other than because of any Developer Fault), that materially adversely affects the ability of Developer to perform its obligations for a continuous period of not less than 60 days after Notice is received from Developer.

As described in PA Sections, 31.2 and 31.3, if the MDOT Default for failure to make a payment as described above persists for a period of 60 days following notification by Developer, the Developer may terminate the PA in its entirety on no less than 30 days notice to MDOT. For the other two MDOT Default items, if the Default cannot, with diligence, be cured in 60 days and MDOT has commenced meaningful steps to cure immediately after receiving the default Notice, MDOT is allowed up to a maximum cure period of 180 days prior to the Developer delivering the 30-day termination notice. Also, at the point where the Developer has the right to deliver the 30-day termination notice, Developer may suspend performance of the Project Work per PA Section 31.5.

If the Agreement is terminated for a MDOT Default, MDOT will pay to Developer the Termination for Convenience and MDOT Termination Amount in accordance with Schedule 16 (Termination Compensation) and as further described in this Report Section 5.2.12.

Except for the language that any MDOT breach must cause a continuous problem for sixty days, the provisions for MDOT Events of Default are consistent with U.S. P3 procurements and afford the Developer the option to either maintain or terminate the PA at their discretion.

5.2.12 TERMINATION EVENTS (PA SECTIONS 32, 33, 34, SCHEDULE 16)

The Agreement provides for three Termination sections. PA Section 32 circumstances are related to failure to achieve Financial Close, so they are only briefly highlighted here for reference purposes. PA Section 33 details the Non-Default Terminations and PA Section 34 provides the Effect of Termination.

Termination Prior to Financial Close (PA Section 32)

The following circumstances may give rise to a termination of the Agreement after the Effective Date and prior to Financial Close:

Due to Adverse Event. In PA Section 32.1, if Financial Close does not occur by the Financial Close Deadline due to the Permitted Excuses from Achieving Financial Close listed in PA Section 3.12, upon a minimum of 30 days of good faith negotiations, MDOT may terminate the Agreement without fault or penalty and the Termination will take effect at the end of the 30-day period unless otherwise agreed in writing. Further, if there is an Adverse Event or there is an extension of the Financial Close date by MDOT that extends beyond the proposal validity period, (as further described in PA Section 3.4.3), and Developer has negotiated for 30 days in good faith but there is failure to reach an agreement, the Developer may also terminate the Agreement. Upon termination, MDOT will return the Financial Close Security and pay the Adverse Event Termination Amount per Schedule 16 (Termination Compensation).

• In PA Section 32.2, if Financial Close does not occur by the Financial Close Deadline and the Adverse Event does not apply, MDOT may terminate the Agreement upon Notice to the Developer and upon termination may immediately draw on or retain the full amount of the Financial Close Security as their sole remedy.

Non-Default Termination (PA Section 33)

There are several scenarios of terminations provided for in the Agreement under PA Section 33, that are considered Non-Default:

- MDOT has the right to terminate the Agreement for their convenience at any time after the Financial Close Date on no less than 60 days' Notice to Developer. Upon termination, MDOT will then pay the Developer the Termination for Convenience and MDOT Termination Amount as outlined in Schedule 16 (Termination Compensation).
- If a Force Majeure event is continuing and prevents the Developer from undertaking all substantially all of its obligations for a continuous period exceeding 180 days, either Party may terminate this Agreement by giving notice of a Force Majeure Termination Event. When the Agreement is terminated on this basis, MDOT will pay to Developer the Extended Force Majeure and Unobtainable Coverage Event Termination Amount. However, the Developer is restricted from issuing such a notice if they can recover under a project Insurance Policy for any liability incurred as a consequence of the relevant Force Majeure Termination Event. Force Majeure is discussed further in the Report Section 5.2.6.
- An Unobtainable Coverage Event is a risk that is required to be insured in accordance with this Agreement and for which insurance coverage is available prior to the performance of any work but becomes obtainable in the recognized international insurance market by a Qualified Insurer (as defined in PA Section 36.2) or Commercially Reasonable Insurance Rates (up to 150% of the greater of rates a prudent risk manager would consider justified or the rates in the financial model) become unobtainable from a Qualified Insurer provided the event is not caused by the Developer-Related Entity.

As described in PA Section 36.19, if an Unobtainable Coverage Event occurs, Developer will notify MDOT and if they can demonstrate to MDOT's satisfaction the event is at no fault of the Developer, the Parties will meet and discuss. If they cannot agree, MDOT will make a final (not subject to Dispute Resolution) election from the following:

- Compensate Developer for the costs of any claim associated with the event up to an amount equal to the insurance proceeds and deduct from the relevant payment a calculation of insurance premiums as provided in PA Section 36.19;
- If the insurance is available but not at Commercially Reasonable Insurance Rates, provide notice that MDOT will be responsible for the excess premium;
- Provide MDOT notice approving one or more variances from the insurance requirements in PA Section 36, and will make a corresponding deduction of the avoided insurance payment; or
- Terminate this Agreement. Upon termination, MDOT will pay to the Developer the Extended Force Majeure and Unobtainable Coverage Event Termination Amount per Schedule 16 (Termination Compensation) as further described below.

WT note that the provisions for Non-Default termination under the PA are generally consistent with past P3 precedents in North America.

MT PARTNERSHIP

Compensation on Termination (PA Schedule 16)

As indicated above, each Termination will ultimately result in a specific Termination Compensation as further detailed in Schedule 16 (Termination Compensation) to the PA, with varying degrees of financial burden on the PA Parties dependent on which Party bears responsibility for said termination. The specific Termination Amounts addressed in Schedule 16 are as follows:

- If MDOT terminates for their convenience, they will pay the Termination for Convenience and MDOT Termination Amount;
- As further detailed under MDOT Event of Default (Report Section 5.2.11), if the Developer terminates for an MDOT Default, MDOT will pay to the Developer the Termination for Convenience and MDOT Termination Amount;
- In the situation of an Adverse Event preventing Financial Close as discussed in PA Section 32, the Adverse Termination Amount will include the Developer's documented costs for Project Work performed during the period between Commercial Close and Financial Close up to a maximum amount of \$1,000,000, per Schedule 5 (Costs Schedule), plus up to the maximum stipend amount;
- If the failure to reach Financial Close is not attributable to an Adverse Event, MDOT will draw on the required \$15,000,000 security provided at Commercial Close as liquidated damages;
- The Extended Force Majeure and Unobtainable Coverage Event Termination Amount covers the other two instances of Non-Default Termination as discussed in PA Section 33 and discussed above; and
- As further detailed under Developer Default (Report Section 5.2.10), upon Termination of the Agreement for Developer Default, MDOT will pay the Developer Default Termination Amount.

A summary of the payments described below include:

- If the PA is terminated due to a MDOT Default or Termination for Convenience, the Termination for Convenience and MDOT Termination Amount will generally enable the Project Company to recover principal, interest and costs due to lenders (Lender's Liabilities), certain amounts payable by the Developer to Equity Members, employee and contractor breakage costs minus Cash Account Balances, certain Insurance Proceeds and any outstanding Deductions;
- Compared to the Termination for Convenience and MDOT Termination Amount, the only
 differences in payment for the Extended Force Majeure and Unobtainable Coverage Event
 Termination Amount are that the Equity payment equals investments less previous distributions
 and Unavailability Adjustments are also deducted; and
- The Developer Default situation provides for the most onerous compensation situation for the Developer. Schedule 16 provides for the following: If the default occurs prior to the Substantial Completion Deadline, the Developer Default Termination Amount is calculated at the lesser of the D&C Work Value OR the amount equal to 100% of the Lender's Liabilities minus the following: Cash Account Balances (all Developer-held bank account balances), certain Insurance Proceeds and any D&C Deductions and Unavailability Adjustments still due. After the Substantial Completion Deadline, the calculation at the Expiration Date is like the 2nd option above except that only 80% of Lender's Liabilities of Lender's Liabilities are included in the calculation (not 100%) and there are additional deductions for Maintenance Rectification Costs and Deferred Equity Amounts.



Effect of Termination (PA Section 34)

PA Section 34 provides the specifics of what actions occur upon any Termination discussed in PA Sections 30-33. PA Section 34.4 lists the Developer requirements at Termination; among other things including handover of Relevant Infrastructure, licenses, records; provision of training; procurement of requested contract or other assignments, and contract terminations.

The Termination for Convenience and MDOT Termination Amounts are payable 60 days after the amount is finally determined while any other Termination Amount is due and payable 120 days after final determination. In the case where a Developer Default Termination Amount is owed, it is payable within 30 days of final determination. The applicable Termination Amount paid by MDOT is considered the full and final settlement of any Developer's rights and Claims. Complying with a series of requirements found in PA Section 34.4 is a condition precedent to payment of any Termination Amount.

WT consider the overall contractual provisions for Compensation on Termination to be consistent with similar P3 procurements in the U.S. and we have no material concerns from a technical perspective.

5.2.13 RISK OF LOSS AND DAMAGE (PA SECTION 37)

In general, subject to the provisions of PA Sections 24-26 where relief is provided and any other provisions of PA Section 37, the Developer bears the risk of loss, damage or destruction of Relevant Infrastructure during the term of the Agreement, unless MDOT or a Third Party has accepted elements of the Non-Maintained Work. Relevant Infrastructure during the D&C Term includes the Project ROW, D&C Work and the Interim Maintenance Work while during the Maintenance Term it includes the Project ROW, the I-75 (Segment 3) and the Long-Term Maintenance Work. The provisions of this Section do no apply to minor damage that can be remedied without significant cost or delay and materially affect the Developer's ability to perform the Project Work.

Any occurrence of a non-minor loss or damage to the Relevant Infrastructure must be reported to MDOT within 3 days. Within 45-60 days, MDOT will notify the Developer which of the following three options it requires the Developer to undertake:

- To repair, replace or rebuild the Relevant Infrastructure in accordance with Schedule 17 (Technical Requirements);
- To repair, replace or rebuild the Relevant Infrastructure based on different specifications than those in Schedule 17 (Technical Requirements); or
- Not to repair, replace or rebuild the Relevant Infrastructure.

In the event where the Relevant Infrastructure is repaired/replaced/rebuilt in accordance with the original Technical Requirements, the Developer will be obligated to do so in an expeditious manner at their own cost and expense whilst leveraging any available insurance proceeds.



In instances where MDOT directs the Developer to implement alternative specifications as part of the repair/replacement/rebuild, the first options for payment will again be from the proceeds of Developer insurance covering the physical loss, destruction or damage. Otherwise, the MDOT direction to repair/replace/rebuild is considered an MDOT Change and will be processed as a change under PA Schedule 9 (Change Procedure) with the costs based on PA Schedule 5 (Costs Schedule). The Developer is entitled to the Extra Work Cost directly related to any change in specifications that exceed the total cost of repairing/replacing/rebuilding to the level of the PA Schedule 17 (Technical Requirements) specifics or MDOT will be entitled to the benefit of any decreased costs associated with a change in specifications.

Additional provisions apply to the following specific circumstances related to loss or damage:

- Force Majeure Event If the Relevant Infrastructure if wholly or substantially destroyed or damaged by an uninsured Force Majeure Event which is either not required to be insured against or is an Unobtainable Coverage Event and MDOT requires the Developer to repair/replace/rebuild, the Agreement provides that the Parties will use reasonable efforts to negotiate and agree in accordance with the change procedures in PA Schedule 9 (Change Procedure) and Extra Work Costs of doing so provided in Schedule 5 (Costs Schedule).
- Compensable Delay Event or Compensable Relief Event as described in Report Section 5.2.4, where MDOT requires the Developer to repair/replace/rebuild, a claim for Extra Work Costs may be submitted as described in PA Section 25 or 26, as applicable.

If MDOT notifies the Developer not to repair/replace/rebuild the Relevant Infrastructure or where the Parties are not able to agree on how to repair/replace/rebuild, MDOT has the option to omit the Relevant Infrastructure from the Project via Request for Change Proposal. Further, depending on the cause of the loss or damage, MDOT possess the following additional options:

- If a Developer Default is the cause, MDOT can terminate the Agreement in whole or in part as provided in PA Section 30.7 or pursue any other available remedies;
- If it is a MDOT Fault (as defined in Report Section 5.2.4) and the Relevant Infrastructure is wholly or substantially destroyed, MDOT may terminate this Agreement for convenience in accordance with PA Section 33;
- If it results from a Delay Event or a Relief Event (excluding a Force Majeure Event) and the Relevant Infrastructure is wholly or substantially destroyed, MDOT may terminate this Agreement by Notice to Developer as if such event were an Extended Force Majeure Event under PA Section 33.2 and discussed in Report Section 5.2.6; or
- If it results from a Force Majeure Event or Unobtainable Coverage Event as described in PA Section 37, MDOT may terminate the Agreement by Notice to Developer as if such event were an Extended Force Majeure Event under either PA Section 33.2 or 33.3.

Regarding loss and damage of Developer property, except to the extent that there are available insurance proceeds, the Developer is responsible for all costs to repair or replace and is not entitled to any compensation for delay for loss, damage or destruction caused by any event except for MDOT's gross negligence, recklessness or will misconduct.

WT considers the overall structure and terms for loss and damage is consistent with similar P3 Agreements.



5.2.14 INDEMNITIES (PA SECTION 38)

- As is standard in U.S. public sector contracts, the Developer is required to provide indemnity to MDOT. The Agreement language is typical in requiring the Developer to defend, indemnify, protect and hold harmless the MDOT Indemnified Parties from and against any claim or liability arising out of the following circumstances:
 - Any alleged or actual Developer Default;
 - Damage to public or private property owned by Third Parties and injuries;
 - Intellectual Property infringement;
 - Claims for taxes by governmental or taxing authorities;
 - Failure to pay sums due to Subcontractors, laborers or Suppliers;
 - Actual or threatened Developer Release of Hazardous Materials;
 - Claims from failure to cooperate reasonably or interfered with an Interface Party (MDOT Contractors, Utility Owners, Segment 2 Contractor, P3 Lighting Contractor and Oakland County Water Resources Commissioner) that caused interference, disruption, delay or loss;
 - Failure to perform an obligation that MDOT owes to a third person;
 - \circ Inverse condemnation, trespass, nuisance or similar taking of or harm to real property;
 - Error, inconsistencies or other Defects in the design, supply, construction, operation or maintenance of the Project or Utility Relocations, excluding Interim Maintenance Work; or
 - Error, inconsistencies or other Defects in the Interim Maintenance Work resulting from a Developer breach of obligations or negligence of any Developer-Related Entity.

The MDOT Indemnified Parties includes MDOT and all of their agents, consultants, subconsultants, contractors and subcontractors.

Subject to certain releases and disclaimers, the indemnity obligation does not extend to any liability caused by a breach of the Agreement by MDOT, the sole negligent acts, sole negligent omissions, recklessness or willful misconduct, bad faith or fraud of the MDOT Indemnified Party or MDOT's violation of any Applicable Law. The indemnity specifically stated as intended to operate as an agreement Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9607(e), to insure, protect, hold harmless and indemnify the MDOT Indemnified Parties.

WT consider the indemnities in this Agreement to be consistent with similar U.S. P3 agreements with U.S. state departments of transportation and do not place any unusual requirements on the Developer.

5.2.15 LIMITATION ON SPECIAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES (PA SECTION 39)

The agreement provides that neither Party will be liable to the other for any Claim or Liability from the other Party for any of the following: Special, incidental, punitive or similar losses or damages;

- Consequential or indirect losses or damages including loss of bonding capacity, loss of bidding
 opportunities, insolvency, and the effects of force account work on other projects, or business
 interruption on other projects;
- Loss of anticipated profit, loss of use or loss of revenue (including loss of toll revenue); or;
- Unabsorbed or extended field or home office overhead or any damages using an Eichleay or similar equation, except as otherwise provided in PA Schedule 5 (Costs Schedule).



However, this section does clarify that this PA Section does not limit MDOT's recovery of losses or damages from the following:

- Insurance;
- Through the indemnification provisions for Claims by third parties in PA Section 38;
- In connection with fraud, criminal conduct, intentional misconduct, recklessness, bad faith or gross negligence on the part of any Developer-Related Entity; and
- In connection with any Developer Release of Hazardous Materials.

For both parties, it clarifies that this PA Section 39 does not limit recovery of amounts owed to either Party as specifically provided in the Agreement.

WT considers the language in this section to be generally consistent with similar U.S. P3 Agreements.

5.3 DESIGN-BUILD CONTRACT REVIEW

The Developer has prepared and provided a draft of the Design-Build Contract ("DB Contract") to be executed between the I-75 Contractors, LLC (the "DB LLC" or "Contractor") and the Developer. The DB Contract terminates when there are no longer any obligations between the parties including the Latent Defect Warranty period (as further described below). The DB Contract references the PA which is the Public-Private Partnership Design-Build-Finance-Maintain Agreement between the Developer and MDOT.

The DB Contract is provided in two parts: Part 1 is the DB Contract with Attachment 1 (Definitions) and Part II is the Conditions of Contract with all relevant portions of the DBFM Agreement and certain clarifying modifications as further discussed below. Attachment 1 provides that, except as expressly defined in the DB Contract, the definitions are the same as the DBFM Agreement.

Based on our review of the current draft provided, WT confirm that (in our opinion), the allocation of responsibilities in Part I meet or exceed market standard for P3 procurements in the United States and generally comprise a full pass down of the Developer's responsibilities under the DBFM Agreement on a back to back basis to the DB LLC. Our review has not identified any material "stranded risks" which have not been appropriately mitigated.

Due to the Term of this contract extending through 25 years subsequent to Substantial Completion, the DB Contract cover the period through Substantial Completion with a full transfer of design, construction and maintenance responsibilities during that period along with warranty responsibility through the Latent Defect Warranty period. The most exposure will exist during the Latent Defect period should something occur where the DB LLC members are not responsibility for the Maintenance Term, the only areas not explicitly addressed relate to detailed transition/handoff plans from D&C to Maintenance which should be addressed related to the Maintenance Plan responsibilities.

WT has conducted a by exception review of the key terms of the DB Contract and note the following salient commentary.

5.3.1 OBLIGATIONS OF THE PARTIES

Article 2 provides for the following general provisions:

The Contractor Obligations belong to DB LLC. They are a pass through of the DBFM Agreement obligations for performance of the D&C Work, Interim Maintenance Work, Long Term Maintenance Work for the Tunnel and Pump Station prior to the Substantial Completion Date, all other obligations of the DB Contract including the warranty. Further detail of the flow through provisions is provided below.

The only exclusions are those specifically stated at Excluded Obligations retained by Developer which are further described below. Therefore, the Developer provides they will not amend the DBFM Agreement or associated documents in a way that will adversely affect Contractor Obligations without prior approval of the DBLLC.

The Excluded Obligations are defined in Attachment 1 and, in general, cover the financing, Maintenance Work not specifically allocated to the DBLLC, Developer costs not addressed in the DB Contract, their dispute resolution costs and any other obligation expressed stated to belong to the Developer.

This is standard allocation of responsibilities between the parties in this type of P3 agreement.



Flow Through Obligations

The flow through obligations provisions in Article 4 require the DB LLC to perform all of the Developer's obligations under the DBFM Agreement as they apply to the Contractor Obligations and in a manner that will not cause any Default or other remedy. The Developer has reserved the right to exercise the same level of discretion related to approvals and other determinations allowed by MDOT and other parties under the DBFM Agreement and Financing Agreement.

This is typical language for a design-build contract under a P3 agreement.

5.3.2 DEVELOPER ACTS

Article 5 details that a Developer Act is a breach of the DB Contract by the Developer that is not remedied within the timeframes specified or a negligent act or omission of the Developer not caused by MDOT or the DBLLC. The Developer will indemnify the DBLLC for uninsured Contractor Obligations included in the DB Contract price arising from a Developer Act provided they meet the requirements of Article 5.

If an event would have been a Delay Event or other rights and remedies would have applied under the DBFM Agreement and the Developer receives timely direction from the DBLLC and fails to act such that those remedies are available, then the Developer will indemnify the DBLLC to the extent that relief would have been otherwise provided by MDOT. Except in the case where the remedy would have been additional time, in which case it becomes a Developer Delay Event and, subject to the specific requirements of Article 5.1, the Developer will either pay acceleration costs or indemnify for Liquidated Damages payable.

Due to the other requirements of this DB Contract which place the responsibility for delay, claims and deductions upon the DBLLC, it is standard for the Developer to take responsibility for any actions which they have caused.

5.3.3 EQUIVALENT PROJECT RELIEF, CLAIMS, DEDUCTIONS & UNAVAILABILITY ADJUSTMENTS

Equivalent Project Relief

To the extent that any right to relief of the Developer under the DBFM Agreement relates to Contractor Obligations or rights of the DBLLC under the DB Contract, following direction from the DBLLC and subject to the specifics of Articles 6 and 7, the Developer is committed to diligently pursuing the relief and providing such relief to the DBLLC. The relief may be positive or negative. This constitutes Equivalent Project Relief. Other than related to a Developer Act, the DBLLC will not be entitled to relief from performance of its obligations other than to the extent that the Developer receives the Equivalent Project Relief.

Equivalent Project Relief is standard provision and suitably limits the Developer's liability to the DBLLC to amounts or other remedies they can claim under the DBFM Agreement unless it is a fault of the Developer.

<u>Claims</u>

Provisions are outlined in Article 8 to describe the DBLLC's responsibilities to pay the Developer for MDOT claims. Provided the Developer is in compliance with the DB Contract, any determination made under the DBFM Agreement will be binding on the DBLLC. If an allocation must be made the Developer will determine a fair and reasonable proportion due from the DBLLC.



Deductions and Unavailability Adjustments

Article 9 provides that any imposition of any Deduction or Unavailability Adjustment by MDOT will be the responsibility of the DBLLC unless the result of an act of the Developer or omission on an Excluded Obligation.

Both provisions are standard and provide protection to the Developer by allocating responsibility to the DBLLC for any claims or deductions related to their obligations.

5.3.4 DELAY

Article 10 requires that, provided there is no Developer fault, the DBLLC is responsible for Delay Liquidated Damages if they fail to meet the Original Substantial Completion Deadline. The amount is approximately \$118,000/day and is intended to cover debt service, unavoidable costs of the Developer, and equity IRR and to be calculated at a daily rate. This is subject to a cap amount as provided in Article 12.1 which will be 6.9% of the DB Contract Price and equates to 12 months worth of Delay Liquidated Damages to provide coverage to the Longstop Date. For clarity, this cap is solely related to Delay Liquidated Damages for a failure to achieve Substantial Completion and all other applicable LD's will count towards the overall liability cap (as discussed in Section 5.3.6).

If an event is determined to be a Delay Event under the DBFM Agreement, the DBLLC is still responsible for Delay Event Liquidated Damages which cover debt service and the Developer's unavoidable costs. This amount is approximately \$109,000/day and is subject to reimbursement when MDOT compensation is received. These as well as the Delay Liquidated Damages run until the actual Substantial Completion Date.

If the Contractor fails to meet the obligations in order to achieve a Milestone (other than Substantial Completion) by the Milestone Due Date specified in the Financial Model, then the Contractor will be responsible for Milestone Liquidated Damages covering the following components:

- SPV Costs to the extent of any shortfall in funding;
- Debt service to the extent of any shortfall in funding;
- Forgone interest on project accounts; and
- Equity LC fees.

Milestone Liquidated Damages are atypical from Delay Liquidated Damages in that they do not contemplate a daily LD value, merely a requirement on the part of the DBLLC to cover incurred costs. The DBLLC will be under obligation to cover the above costs until the date the Milestone payment is actually received. Following receipt of the associated milestone payment, amounts received from the DBLLC will be refunded with the exception of forgone interest on project accounts.

These provisions provide protection to the Developer to pass the responsibility for delays onto the DBLLC and provide additional motivation to complete the work as originally provided in the financial model.



5.3.5 DEFECTS

In Article 11, the Contractor is responsible for the correction of all Defects after Substantial Completion for two years – the Completion Warranty Period. In the case where a Defect correction is required during the Completion Warranty Period, the warranty for that particular item will be extended for an additional 12-month period. A Latent Defect Inspection is required to take place no less than ten days prior to the end of the Completion Warranty Period.

The Contractor is similarly responsible for Latent Defects starting at the expiration of the original two-year warranty period and running until the tenth anniversary of the Substantial Completion.

Subject to the Maximum Liability Cap of 40% as detailed in Article 12.2, the Contractor is responsible for all Defect Losses and other liabilities related to a Defect of Latent Defect which includes temporary measures, repairs, and MDOT deductions. As part of this the Developer has the right to have corrective and repair work completed if the Contractor is not responsive and Defect Losses may accrue.

The Developer has recourse to the DB Performance Support/D&C Performance Security if Defect Losses are not paid within 5 days. Further, if a Defect or Latent Defect is not repaired within two years, the Developer may commence a proceeding or suit to enforce.

These provisions for a Completion Warranty and Latent Defects protection under the DB Contract are considered standard and reflect North America market precedent. They provide protection to the Developer that the DBLLC is responsible for any Defects in the work for two years and then any undiscovered items for an additional eight years. Provided the DBLLC is responsive to their warranty obligations, these provisions combined with a sufficient quality assurance inspection program during construction period, should reduce the amount of unexpected Long-Term Maintenance and Renewal Work which might occur.

The DBLLC consists of local contractors but they are required to provide parent guarantees to support the obligations of the DBLLC through the Latent Defect period. After the D&C Term, the logistics of dealing with an LLC of smaller contractors could be more complicated than a larger lead contractor. The most exposure will exist during the Latent Defect period should a situation occur where the DBLLC members are not responsive, and the costs are at a level greater than the performance security.

5.3.6 LIMITATIONS ON LIABILITY

The maximum liability for Delay Liquidated Damages is set in Article 12 at 6.9% of the DB Contract price. This cap does include for Delay Event Liquidated Damages or Milestone Damages, which are subject to the overall liability cap.

Article 12.2 provides for a Maximum Liability Cap which covers indemnity claims, set-offs, all Liquidated Damages, exercise of rights under the DB Performance Security/Performance Support and compensation upon termination will be set at 40% of total DB Contract price. This is considered reflective of market standard for DB Contract's in the North American P3 market.

In certain respects, the Contractor's liability is unlimited. Specifically, the following items are not subject to the cap:

- Any amounts that are paid and then recovered;
- Liability from third party claims;



- Liability from abandonment, fraud, criminal conduct, intentional misconduct, gross negligence, recklessness, or bad faith by the Contractor/Contractor-Related Entity;
- Liability from Contractor Release of Hazardous Materials;
- Liability related to fines or penalties incurred by the Developer in complying with statutory obligations that arise from a breach by the Contractor of Applicable Law;
- Interest, late charges, other fees and penalties that are specifically due from Contractor to Developer; and
- Liability from any encumbrances caused by Contractor/Contractor-Related Entity and preserved in respect of or attaching to the Site or any Project-related assets.

Developer's only recourse for a failure by the DBLLC to fulfill its obligations under the DB Contract is termination or an action for specific performance as provided in Part II, Section 30.

5.3.7 DESIGN-BUILD CONTRACT PRICE AND PAYMENTS

Article 13 states that the Contractor Obligations are being provided on a fixed price, lump sum basis (the Design-Build Contract Price) which will be the total compensation for all costs and risks associated with the DB Contract except for adjustments made as provided in the agreement.

The DBLLC will make a monthly payment application providing the value earned of D&C Work completed and the amount of payment being submitted as well as all other information required in Article 13.4 (d). The maximum amount of any payment cannot be greater than the amount provided in the Drawdown Schedule. These applications require specific information to be submitted. Within 10 days after the payment amount is jointly certified by the Developer and Technical Advisor, the payment will be made to the DBLLC. Any additional amounts due for acceleration, Delay Events or contractor changes will be in addition to the scheduled payment and will not alter the Drawdown Schedule.

No disagreement by the DBLLC with respect to the Contractor Payment Certificate will permit them to delay, suspend or terminate their obligations under the agreement. The Contractor will not be due a payment if a Contractor Default is continuing. The default provisions are discussed in Part II.

If the Developer has not received a Milestone Payment when due, the relevant payment will not be made that month or any month following until the Milestone Payment is received. The withholding of payment under this circumstance does not allow the DBLLC to suspend performance. Milestone Payments are not due until thirty days after the Developer receives payment.

The Developer has the right to offset any Deductions and Unavailability Adjustments that are applicable to the DBLLC. If the offsets should exceed the amount due for payment, the Developer can make a demand for payment within 3 days and if that payment is not made the Developer has immediate resource to the DB Performance Support or D&C Performance Security.

These provisions are similar to industry standards and provide protection to the Developer that the payments fall within the anticipated spenddown included in the financial model.



5.3.8 PERFORMANCE SUPPORT

In addition to the Performance and Payment Bonding required under the PA, the DBLLC will be responsible for providing a "Liquidity Bond" in an aggregate amount of 7.77% of the DB Contract Price, sized to cover 12 months of Substantial Completion LD's up to the Longstop Date. The Developer and the Collateral Agent will be the beneficiaries and able to draw on the liquid security independently.

At the Substantial Completion Date the DBLLC will be required to provide liquid security in the amount of 2% of the DB Contract price (either via a reduced DB Liquidity Bond, Letter of Credit, or alternative cash support) plus 125% of the Developer's estimated cost to rectify Developer Punch List Items and 200% of the amount the Technical Advisor certifies may be required to rectify any Defect in the punch list related to Substantial Completion. It will be further reduced on the expiration of the Completion Warranty Period to 125% of the amount the Technical Advisor certifies may be required to rectify any remaining obligations for Defects. The remaining value will be released once all matters certified by the Technical Advisor related to the Completion Warranty Period are resolved. The language also provides for terms of replacement the security upon a rating downgrade of the issuer or extension.

The provisions for the liquid security amount are considered well structured with an appropriate step-down in value relative to the close-out of Substantial Completion items.

Article 14.2 indicates that parent guarantees will be provided by <u>each</u> of the designated entities of the Contractor members. Each DBLLC team members obligations will be on a joint and several basis. The Consortium have also advised that additional parent guarantees will be provided by CDM Leasing (Dan's Excavating Inc.'s sister company) and JAJ Holdings (Ajax Paving Industries Inc.'s parent company). Each of these guarantees are required to cover the full and timely performance of all the Contractor's obligations through the Completion Warranty and Latent Defect Warranty periods.

The DB Performance support is typical of similar contracts due to the LLC nature of the Contractor. Further, the parent guarantees of each of the Contractor members provides an important element of protection, particularly in dealing with an LLC of small contractors for issues after the Performance Security has been released.

5.3.9 ADDITIONAL PROVISIONS

Article 15 requires commercially reasonable efforts to assure that all subcontracts of the Contractor allow the Developer to step into the DBLLC's obligations upon termination for a Contractor Default. This is mandatory for "Key DB Subcontracts" (specified in Attachment 12) as well as 30 days prior notice before termination.

Article 18 specifies that the Developer will be set out in an attachment to the DB Contract specific materials and equipment that have the same weight as the MDOT Technical Provisions. The Developer also must consent that Substantial Completion has been reached.

Article 19 provided that the DBLLC is responsible for all costs the Developer incurs for taking actions related to Enforcement of Rights (Article 6), Equivalent Project Relief (Article 7) and MDOT Claims.



5.3.10 PART II PROVISIONS

Part II is a copy of the PA with certain subsections removed (primarily related to the financing, equity obligations, Long Term Maintenance, Renewal and Handback) as well as changes to replace Developer with Contractor along with added language primarily to clarify additional steps required between the Developer and the DBLLC. The Attachments for the most part mirror the PA Schedules. The overall impact is to clearly transfer the DBFM requirements (including deductions) related to the Contractor Obligations directly to the Developer while providing either the same or additional rights as MDOT.

Below are highlighted a few items that provide additional clarity on how Part II translates to the DB Contract.

- Section 3.14 provides that if there is a failure to reach Financial Close by the specified deadline and it is the result of the DBLLC's act or omission, they will be required to pay the Developer an amount allocated from that drawn by MDOT on the financial close security that is a "fair assessment" of the DBLLC's contribution to the failure.
- As provided in Sections 6 and 7, the DBLLC is made responsible for preparation of the Project Management Plan and they are required to provide the following Key Personnel: Contractor's Construction Manager, Environmental Compliance Manager and Maintenance Manager prior to the Substantial Completion Date; and are responsible for any Key DB Personnel Deductions.
- Schedule and reporting responsibilities are transferred to the Contractor during the D&C Term. Where the original provisions of the DBFM Agreement are for submission to MDOT within a specific timeframe, Part II specifies when they must be submitted to Developer by the DBLLC in order to meet the MDOT deadline; such as Section 12.1.2 related to the Final Interim Schedule. In Section 12 related to Defects, the language was modified to add references to Latent Defects plus there is additional language in the definition to refer back to the period prior to Substantial Completion. In 12.8 on Uncover Finished Work, the language wraps in Latent Defects and is treated the same as Construction Defects.
- The D&C Performance Security requirements are taken directly from the DBFM Section 13.2 and 13.4. In Sections 14-16, the DBLLC is responsible for all D&C Work related to the Contractor Obligations.
- Part II also provides for Developer inspections prior to MDOT inspections; such as in Section 14.7.2 related to Milestone 2 and Section 15 on the determination of Milestone completions as well as agreement on the estimated Punch List costs. The Notice of Completion Milestone dates in Section 15.1 are also increased to allow for the Developer to review and submit to MDOT.
- The revised language also requires the DBLLC to pay for additional costs incurred by the Developer, in addition to MDOT, for items such as correcting a Defect as seen in Section 14.10.3.
- The payments to the DBLLC are governed by the language in Part 1 while passing on the responsibility for Noncompliance Events and Availability Adjustments.
- Related to the Prompt Payment provisions, the DBLLC is obligated to pay their DB Subcontractors within 10 days of meeting the requirements as specified in Section 19.9.
- In Section 20, the Developer has added the right for Step-In that parallels the provisions for MDOT. They also clarify that in either Step-In scenario, regardless of whether a Contractor Default exists, if it is due to an act or omission of the DBLLC, all liabilities incurred by the Developer as well as MDOT will be the DBLLC's responsibility. In Section 20.6, the right is provided for the Developer to suspend the Project Work for the same reasons allowed to MDOT. They have also added failure to deliver or maintain the DB Performance Support as a suspension cause. The protections against claims to MDOT in Section 20.7 are also extended to the Developer.

- In Section 23, for the duration of the DB Contract, there cannot be a change in control that results in
 a change the ownership percentages of the Contractor Members unless approved by the Developer
 in their sole discretion. The Developer retains the rights to assign the DB Contract and to a Changein-Control as allowed by the DBFM Agreement without any consent of the DBLLC.
- In Section 30 the Developer Default provisions from the DBFM Agreement are transferred to the DBLLC as they relate to the Contractor Obligations with a reduction in the period of abandonment and cure plan for Persistent Contractor Default to 24 days. The current version of the DB Contract sets the DB Longstop Date to six months prior to the DBFM Agreement Longstop Date, which is consistent with past precedent for DB Contracts in the North American Market. There are additional default provisions added for failure to provide requires securities as required, pay Liquidated Damages, meet or exceed Maximum Liability Cap, default of any Contractor Guarantor under the Parent Guaranty and failure to implement and comply with an agreed cure plan. In this Section items such as notice times and period for cure plans are reduced to give the Developer sufficient lead times to respond to MDOT. The parent guarantors for Dan's and Ajax have both been specified as a "Required Non-Defaulter." If the DBLLC is terminated for Default and there is no concurrent termination of the DBFM Agreement, the DBLLC is required to pay to the Developer the DB Termination Section set out in Attachment 16.
- Section 31 becomes Developer Default, but it excludes a breach of MDOT or the DBLLC of their obligations. The current draft gives them 60 days to cure a payment default.
- In Section 32, if there is a failure to reach Financial Close then the DBFM Agreement terminates with the DBFM Agreement with compensation varying depending on the cause. In Section 33 the right to terminate for convenience remains solely with MDOT. In an extended Force Majeure or Unobtainable Coverage situation, the termination of the DBFM Agreement concurrently terminates the DB Contract and the Developer will pay the No Fault Termination Amount as outlined in Attachment 16. After 240 days of a continuous Force Majeure, the DBLLC is entitled to terminate the DB Contract which will terminate the DBFM Agreement and receive the same compensation. Any termination of the DBFM Agreement will automatically terminate the DBFM Agreement and if for a Developer Default then the Contractor will be paid the DBC Developer Default Termination Amount in accordance with Attachment 16. If the DBFM Agreement terminates for a Developer Default caused by the Contractor, then they must pay the Developer the DBFM Contractor Default Termination Amount set by Attachment 16.
- Section 37 specifically states that the Contractor bears the risk of loss, damage or destruction of the Relevant Infrastructure prior to the Substantial Completion Date and the remaining provisions apply to the Contractor. The Indemnities in Section 38 run from Contractor to Developer. Section 39 acknowledges the Carve-Outs from Special, Consequential or Punitive Damages for MDOT and Developer.

The detailed modifications of Part II of the DB Contract provide clear direction on the responsibilities of the Contractor as well as providing the Developer additional rights and review times. Our review has not identified any areas of technical risk which have not been appropriately passed down to the DBLLC.

6.0 EXISTING SITE CONDITIONS

6.1 ENVIRONMENTAL REVIEW

WT have reviewed the following Reports and documentation pertaining to the environmental conditions of the Project.

Table 6 - Site Condition Source Reports			
REFERENCE	PREPARED BY	SUBJECT AREA	DATE
Geotechnical Investigation and Hazardous Materials Survey Data Report	Somat Engineering Inc.	Geotechnical Investigation/ HazMat Survey Data Report	March 26, 2018
Segment 3 PACS Report 11302017	WSP	Project Area Contamination Survey	November 30, 2017
Segment 3 PSI 03142018	WSP	Preliminary Site Investigation Report	March 14, 2018
Concurrence of Administrative Re- Evaluations for the Environmental Impact	US Department of Transportation / MDOT	NEPA Approval and the inclusion of MDOTs Validity Application for Segment 3	February 9, 2018 / January 16, 2018

As referenced in Section 5.2.5, the above reports have been provided by MDOT on a no-reliance basis with the exception of the provisions relating to Relief Events.

6.1.1 ENVIRONMENTAL MANAGEMENT (PA SCHEDULE 17)

Schedule 17 of the PA outlines MDOT and the Developers commitments and requirements for managing environmental compliance, protocols and issues throughout the Project Term. Generally, the obligations to comply with environmental governmental laws/regulations including maintaining the National Environmental Policy Act (NEPA referred to in the following section) and pre-construction reports fall to the consortium in undertaking the design and construction of the Works.

In detail, the PA reviews the environmental compliance requirements and outlines the Consortiums obligations to follow the PMP and its Sub-Plans, which is inclusive of Environmental Management. WT has reviewed the Developer's specific deliverables and have summarized key items below:

- Arrange an *Environmental Protection Pre-Construction Meeting* which will provide training to the Consortiums non-administrative staff on environmental Project commitments that pertain to operation and maintenance, practices and procedures, and environmentally sensitive features
- Develop an *Environmental and Hazardous Material Response Plan* which outlines minimum requirements in identifying potential environmental accidents associated with site specific construction activities, response procedures and preventative and mitigation measures, as well as annual reviews of those measures;
- Assign an *Environmental Compliance Manager* who is responsible for the implementation of all the environmental design and construction commitments and conditions of Environmental Approvals required throughout the Project Term. This manager will oversee the ECP plan and NEPA requirements outlined in their approved application of validity;



- Prepare, implement, manage and update an *Environmental Compliance Plan* that will ultimately
 establish controls in its management, design, construction/installation and documents procedures to
 ensure that all Environmental Approvals, Laws, NEPA and I-75s commitments are met;
- Assign an CSW/SESC Individual(s) who ultimately withholds soil erosion and maintaining sedimentation control responsibilities and who will report directly to MDOT. Their minimum certification requirements are outlined in the PA;
- Develop an Erosion and Sedimentation Control Plan;
- Abide by all applicable Governmental Laws and Regulations; and
- If the Developer encounters contaminated materials it must be handled and disposed of appropriately in accordance with Federal and State regulations, *MDOT Frequently Used Special Provision for Non-Hazardous Contaminated Material Handling* and *MDOT Special Provision for Dewatering System for Contaminated Groundwater*

The Consortium has engaged AECOM as their environmental consultant and PSI as their geotechnical consultant, who will jointly operate as part of an integrated design team. This is, in our opinion, a reasonable approach to the environmental management requirements outlined in the PA and has been successfully implemented on previous projects.

The Consortium have advised that the Environmental Compliance Manager be a nominated AECOM staff member who will remain engaged throughout the design and construction and into the maintenance term.

6.1.2 ENVIRONMENTAL IMPACT

As per federal regulations, the National Environmental Policy Act ("NEPA") was required to review the Project's impact to the environment and quality of the human environment. As the Project pertains to Segment 3, there was already an Environmental Impact Statement ("EIS") conducted as well as a received Record of Decision ("ROD") by the agency NEPA. A re-evaluation was required by federal regulations for subsequent phase/segments and so this Project was re-assessed, evaluated and again given approval by appropriate parties.

Applying for and maintaining the validity of NEPA approval does not fall under the responsibility of the Consortium, though they are to abide by the requirements and/or recommendations outlined in the approved application. The approved application includes an analysis of the proposed improvements, environmental conclusions and definitive recommendations. These items have been summarized below:

- Design:
 - The turnaround structure south of John R Road was moved approximately 100ft south to keep its footprint closer to the existing location for environmental cautionary reasoning;
- Wetland:
 - Three wetland resources were identified though they are not considered regulated under the Environmental Protection Act therefore is not a risk to this Segment of the Project;
- Tree Removal:
 - Mature trees will be preserved;
- Noise:
 - "Statement of Likelihood" pertaining to Noise Analysis. Highway traffic noise abatements in the form of barriers spanning at least 4.5 miles in order to adhere to noise reduction requirements have been implemented into the final design;

- Habitat
 - Preservation: Restrictions have been recommended by the United States Fish and Wildlife Service to ensure species within the area of the Project are not negatively and adversely affected. MDOT has agreed that not more than 10% of the suitable habitat will be cut within a half-mile buffer surrounding the project and cutting not more than 10 acres. Also, the trees will only be cut between October 1 and March 31 of the year the project is under construction; and

Air Quality:

• Project is noted to be not of local air quality concern.

In addition to the PACS and PSI activities, the NEPA approved application denotes 2 additional areas that are known of petroleum soil contamination that were identified as part of the Project. Environmental testing is noted to not have been done to evaluate locations. WT note that there is sufficient lead time between Financial Close and construction to enable appropriate investigations if required. Furthermore, pricing risk for hazardous materials is covered by MDOT which is considered to be the most impactful as we would anticipate most contaminated soils encountered during the works could be readily absorbed as part of the excavation program.

The Consortium, in the opinion of WT, has adequately implemented resolutions to the above environmental impact requirements and recommendations set out in the NEPA approved application.

6.1.3 HAZMAT REVIEW: PACS/ PSI

The approved NEPA application by MDOT references the performed Project Area Contamination Survey ("PACS") and the Preliminary Site Investigation Report ("PSI"). Simply, the PACS identifies where contaminants are present and what sites could be impactful on a scale from low-high and the PSI evaluates the presence or absence of contamination of the sites outlined in the PACS report. Both reports were conducted by WSP and the entirety of their findings concluded January 25, 2018.

The PACS' purpose, in detail, was to investigate parcels of property for known or potential environmental contamination that could affect the Projects design, cost or schedule. The report ultimately identified 100 facilities that could potentially impact this Segment; 89 being low potential risk, 9 that were assigned a medium risk and 2 high risk. In conclusion, the Report recommended that a PSI be conducted to evaluate the medium/high risk locations in addition to the implementation of provisions to handle, manage and dispose of contaminated waste.

The supplementary investigation, the PSI Report, consisted of their fieldwork being performed on 10 separate occasions ranging from November 15, 2016 through to January 25, 2018 and consisted of drilling and testing soil and groundwater samples of those sites outlined in the PACS investigation. They confirmed the presence of contamination in both soil and groundwater samples which includes and varies in severity of the following constituents: volcanic organic compound ("VOC"), polynuclear aromatic hydrocarbon ("PAH") and heavy metals including cadmium, chromium, lead and zinc. Out of the 71 soil samples tested, 10 contained at least one constituent exceeding the most restrictive residential cleanup criteria and 9 contained at least one VOC and PAH constituent exceeding the most restrictive residential cleanup criteria. The other samples found contamination but did not exceed the concentration limits. Out of the 14 groundwater samples tested, all included VOC's, 8 containing at least 1.



WT understand that, until final design is complete and relative impacts to the design within the specified areas are quantified, the total impact remains unknown. However, the Consortium are required under the PA to appoint an Environmental Compliance Manager, hold an Environmental Protection Preconstruction Meeting, submit a Contaminated Soil Contingency Plan, and follow MDOT's Frequently Used Special Provision. If and/or when hazardous materials are encountered, the party discovering the hazardous materials are required to notify the other within 5 days after the discovery. Following this, the PA contains provisions which enables the Consortium to recover costs associated with the remediation of hazardous materials.

Further, the Consortium have allocated time in the Draft Interim Schedule associated with developing appropriate Demolition and Remediation Plans, which, in the event of encountering hazardous materials during implementation of the works, would ensure the parties are aware of the procedure for remediation. Again, the Consortium is able to recover any costs associated with delay as a result of this, further insulating them from cost or schedule exposure.

6.1.4 HAZMAT REVIEW: HMS BRIDGE SURVEY REPORTS

Somat Engineering, Inc. performed, contracted and approved by WSP and MDOT, Hazardous Materials Surveys (HMS) of both vehicular and pedestrian bridges designated for demolition as per the Project Works. HMS purpose is to provide an evaluation of potential contaminant presence and/or hazardous materials that may pose an exposure hazard to workers within the existing vehicular and pedestrian bridge sites.

The HMS and the testing of existing bridge sites was segregated into two phases. The first, Phase I being performed in 2016/2017 from 12 Mile Road to I-696 and included the investigation of (5) existing vehicular bridges that designated to be demolished and (1) pedestrian bridge that is to be replaced. The second, Phase 2 was performed in 2017/2018 from north of 13 Mile Road to north of 8 Mile Road and included the investigations of (13) vehicular bridges that are designated for demolition as well as (5) pedestrian bridges that are deemed to be replaced. The HMS of the sites noted above consisted of an Asbestos-containing materials (ACM) survey and a Lead paint survey.

Objectively, we have reviewed the observations, findings and recommendations by Somat Engineering, Inc. in reference to the bridge investigations and have summarized them in the following two sub-sections, Asbestos and Lead Paint, as they relate and are pertinent to bridge demolition and replacement components both included in the Project.

Asbestos

The ACM survey evaluated potential asbestos containing materials, specifically under decks of the bridge structures and the exterior of existing utility/electrical conduits attached to the bridge overpasses. The samples extracted to evaluate the above were of surfacing materials only, therefore materials that were accessible without dismantling or penetrating the structure were not tested.

124 suspected ACM bulk samples were extracted from the (17) vehicular bridges and (5) pedestrian bridges known to the Project for demolition. Two bridges did not require sample extractions as there was no visual observance of asbestos materials. It was noted that wood decking was observed on the Dallas bridge and could possibly contain asbestos materials but could not be tested within their Report due to site specific limitations.



All 124 samples that were extracted because they were suspected of containing ATM materials reported no detection of asbestos, except for one. The East 11 Mile Road Bridge located in the north of I-696 to south of Mile Road segment was found to withhold asbestos is two main areas. The first, was identified on the conduits running the length of the under-substructure and is recommended to be removed and disposed of as per state and federal regulations. The second, asbestos was identified running the length of the under-substructure along utility gas lines. A recommendation was not provided in the report, though the DBLLC has confirmed precautionary measures will be executed pertaining to all asbestos prior to removal and demolition.

In addition, the Consortium has provided confirmation that further asbestos investigations will be undertaken on the Dallas Bridge. This direction has been implemented as Somat Engineering, Inc. stated they were unable to complete their asbestos investigation of the sub-surface wood decking due to site limitations (noted in 6.1.4 above). Therefore, the DBLLC will inspect and report, to ensure a safe demolition.

Lead in Paint

The Lead in Paint survey consisted of collecting (34) paint chip samples from the vehicular and pedestrian bridges known to the project to be demolished. The samples extracted were tested and were found to not contain lead contents that exceeded the criterion to be categorized as a Lead Based Paint (LBP) or Lead Containing Paint (LCP). This therefore, in WT's opinion, does not pose a substantive risk to the Project within its demolition stage.

6.2 GEOTECHNICAL REVIEW

6.2.1 GEOTECHNICAL INVESTIGATION

The Geotechnical Investigation and Hazardous Materials Survey Data Report was prepared in relation to key areas of the I-75 Modernization Segment 3 Project in Oakland County, Michigan which encompasses the design and reconstruction north of 13 Mile Road to north of 8 Mile road.

Subsurface Investigation

Somat Engineering, Inc. performed field investigations including soil borings, hand augers, footing probes and pavement cores throughout the project limits, approved by WSP and MDOT, that took into consideration the locations of major project utilities (both underground and overhead). The consortium has indicated, based on MDOT's geotechnical data, unusual or unexpected ground conditions were not indicated, there were no detectable gases or materials atypical to soil materials found within the designated Detroit area.

Consortium Due Diligence

In receiving the reports from Somat Engineering, Inc. the Consortium have proposed to implement additional boring programs post Financial Close, particularly at the shaft locations. These tests, as WT understands, ultimately will provide additional due-diligence to properly address any other potential unforeseen geotechnical impacts and define or confirm the severity of already noted impactful geotechnical risks.



6.2.2 STORAGE/TUNNEL GEOTECHNICAL INVESTIGATION

The Storage and Drainage Tunnel, Geotechnical Data Report was prepared in relation to the proposed drainage/storage tunnel within Segment 3 of the 1-75 Modernization Project, from north of 8 Mile Road to north of 12 Mile Road.

Somat Engineering, Inc. conducted field investigations, which included one-hundred and nineteen (119) soil borings throughout the project limits in order to determine the existing soils feasibility to the proposed tunnel alignment. The investigations were segregated into three (3) separate phases and extended from October 6, 2015 through to December 18, 2017. At (24) of the soil boring locations, open-standpipe observation wells were installed, in which the purpose was to extract groundwater level readings. It is noted that due to the findings, Somat Engineering Inc. will continue to conduct readings of these locations until the end of 2018.

Explosive gas readings of methane were detected at the top of the wells in fourteen (14) of the twenty-four (24) installed observation wells. The gas was detected after completion of the well installation and/or after the wells were developed and continued to be detected at a radial distance of about 3 feet. A total of six (6), as of March 26, 2018 continue to read explosive gas but seem, as per the Consortiums confirmation, to be dissipating over time. In addition to methane, detectable levels of hydrogen sulfide and carbon monoxide were detected.

The soil borings also found cobbles, boulders and unknown obstructions at a variety of depths, which approximately 50% of those obstructions found, as per the Consortium's review, were outside of the base configuration tunneling zone. As well, the investigation found the existing clay soil encountered was determined to generally be insensitive.

The Geotechnical data collected, in its entirety, has formed construction revisions by the Consortium that, in WT's opinion, adequately reduce the geotechnical project risks, specifically the methane gas that was encountered during the development of the groundwater observation wells for the tunnel investigation. The Consortium have noted they will be implementing the following revisions:

- Revisions to drop shaft construction methods
- Raising of the tunnel profile to be out of the sand layers in the south end of the Project;
- Use of type TBM and concrete segments (grouted in place) to adequately seal the tunnel; and Set up for dewatering and degassing wells at the I-696, Drop shaft and Myers Shaft locations.
- Raise tunnel profile to minimize excavation and avoid gas and water bearing layers

6.3 CONCLUSION

It is of WT's opinion that the Consortium have made adequate adjustments to their Project execution plan based on the Environmental and Geotechnical risks found during the above noted field investigations. Their plan is founded on the engagement of Jay Dee Contractors. They are a Michigan-based tunnel contractor and is noted to have constructed and rehabilitated over 224 miles of water, sewer, drainage and transit tunnels across North America. Jay Dee in addition to Dan's Excavating, who are included in the Consortium's team have expertise in working with similar site conditions, inclusive soil conditions, levels of gas and geotechnical risks.

As the Consortium were prohibited from undertaking further geotechnical investigation at this stage in the procurement, it's our view that the design team have exercised appropriate diligence in evaluating the identified subsurface conditions in the development of their design approach. This has resulted in the Consortium developing proactive mitigations to potential downside geotechnical risk as identified in Section 6.2 above. These assumptions will be further reinforced through subsequent geotechnical analysis in advance of construction activities commencing.

Based on information reviewed, the scope of construction for the Project, and the DBLLC's expertise, WT considers the overall geotechnical risk to be moderate. The proposed drainage tunnel and shafts can be designed and constructed using previously executed and successful construction methods (elevating excavation profile to avoid gases) while the roadways and bridges can be designed and constructed using conventional methods. Given the experience and expertise of the team, along with the direct supply chain relationship, the DBLLC is in a very good position to mitigate the lowest cost of any unforeseen conditions work that does arise which will make also contingency sizing more accurate.

7.0 PLANNING AND APPROVAL ISSUES

7.1 DESIGN DEVELOPMENT AND REVIEW PROCEDURE

The procedures for development and review of design documentation for the Project is described in Schedule 17 (Technical Requirements) to the PA, specifically Articles 3 (Design Management Plan) and 9 (Submittals) therein. Because of the nature of a design-build process, at each level of submittal the packages can be submitted by element, collection of elements or area of the Project. The PA identified the following key design submittals which will need to be submitted for review:

- Preliminary Design Submittals;
- Pre-Final Design Submittals;
- Final Design Submittals; and
- Released for Construction Submittals.

As a condition to Notice-To-Proceed ("NTP"), a Design Management Plan (sub-plan to the Project Management Plan) must be submitted by the Developer that defines the approach to achieving final design; this must be approved by MDOT and will include the packaging scheme for the design documents. No more than thirty (30) days after Financial Close, an initial submittal list is to be submitted to MDOT including the submittal schedule. This must be approved no later than sixty (60) days after Financial Close. This is to be updated monthly.

All design documents are to be prepared under the direct supervision of the lead engineering firm and signed and sealed by a licensed professional engineer. The Developer is required to carry out independent design checks of structural components of the tunnel and all complex structures as further detailed in Schedule 17, Article 3.4.11. All non-complex structures must follow the QA/QC requirements of the MDOT Bridge Design Manual. Schedule 17, Article 3.4.12_also describes the over-the-shoulder review process with MDOT during the design phase. The required elements for all design documents are specified in the Technical Requirements. If all of the design submittal requirements are not met, a submittal will be returned without review.

The overall submittal types and time periods are designated in the Agreement.

- Submittal for information do not include a deadline or requirement for MDOT to respond;
- Submittals for review and comment MDOT has 14 days to respond. Except for the Preliminary
 Design Submittal, all other formal design submittals fall into this category. MDOT has the option to
 respond with one of three options: reviewed with no comment; reviewed with comments,
 resubmittal no required or reviewed with comments, resubmittal required; and
- Submittals for approval MDOT has 21 days to respond. The Preliminary Design Submittal falls into this category. MDOT response options are as follows: approved; approved as noted, resubmittal not required; approved as noted, resubmittal required; revise and resubmit and rejected.

The Released for Construction Submittals are submitted after all comments from the Final Design Submittal have been addressed and a minimum of 10 days prior to planned date for start of construction for the corresponding elements.



There are specific guidelines provided in PA Section 14.8 for the Freeway Lighting Work including coordination with the P3 Lighting Contractor:

- Design the I-75 mainline lighting by Schedule 17 Article 16.3.5.1, MDOT Standards and the P3 Lighting Contractor Design Criteria included in the Reference Information Documents;
- Submit separate I-75 mainline lighting submittals for review by MDOT or its designee; and
- Allow 70 days for review of submittals that contain freeway lighting content.

WT considers that, with the exception of the special requirements associated with the Freeway Lighting Work, the processes described related to design packages and reviews is consistent with overall U.S. P3 agreements. The approval of the Preliminary Design Approval package is not always seen, that is often a review and comment leaving the responsibility for meeting all design requirements on the Developer. The additional requirements associated with the Freeway Lighting Work will need to be appropriately managed as part of the submittal approach, however we understand that the design requirements are well understood by the Consortium (particularly AECOM with their past design experience) and that conflicts are not anticipated.

Based on our review of the project schedule, we note that all design submissions appear to appropriately reflect the PA-mandated review timelines afforded to MDOT. We would also note that the design schedule accounts for revisions and resubmittals of design packages to reflect comments from MDOT. We consider this to be a reasoned approach to enable appropriate progression of the design and to mitigate any risks associated with rejection of a design package.

7.2 PERMITTING AND APPROVALS APPROACH

Scheduling, obtaining and managing permits is a large and important undertaking for the success of the I-75 Modernization Project, Segment 3. WT have consolidated the PA mandated items within the below following sections, MDOT approvals and Permits and Non-MDOT approvals.

7.2.1 MDOT APPROVALS

As mandated by the PA, the DBLLC is to develop a Submittal List that simply is a list of anticipated Project submittals to MDOT, Third Parties and Utility Owners. The submittals include both required responses by MDOT, which consist of either a "review and comment" action or an actual "approval." Even if given an "approval" action MDOT under the PA, is entitled to later object or disapprove if non-conformant. Therefore, the D&C Contractor absorbs all risk and responsibilities pertaining to these submittals and whether or not they meet Industry Standards and are conformant to the Agreement.

This Submittal list will be provided in conjunction with a Submittal Schedule, and a preliminary Submittal Schedule of Design Documents that are to be coordinated with dates shown on the Project Schedule. The noted are to be provided for MDOT approval no later than thirty (30) days after Financial Close. If such revisions are necessary, DBLLC are to complete and provide an approved Submittal List and Schedule no later than sixty (60) days after Financial Close. Both are to be updated and included in the D&C Contractors monthly progress reports thereafter. MDOT is required to return their actions within specific timeframes. For those that require a "review and comment" MDOT has fourteen (14) days to respond and could result in a request for re-submittal. Those that require an approval must be returned within twenty-one (21) days and too could result in a request for re-submittal. Therefore, both actions are schedule sensitive.



The Submittal List is inclusive of Plans and are further outlined in Section 8.11 of Article 8 of the PA. Where a prior written approval is required for a Plan, MDOT will approve or disapprove within thirty (30) days.

WT have summarized and required plans that are to commence both within the D&C and Maintenance Term. In WT's opinion, those summarized below are pertinent to the successful progression of the Project and are major conforming entities. Those that require a "review and comment" action is denoted "(R&C)"

- Project Management Plan "PMP" inclusive of updated plans thereafter;
- Schedules: Baseline Schedule, Project Schedule Monthly Updates, Revised Project Schedule, Project Recovery Schedule, Final Updated Schedule (further detail of these are outlined in this Report Section 8.4.1);
- All Design Submittals noted above;
- Transportation Management Plans "TMP," updated TMPs thereafter and Plans included therein (further detail outlined in this Report Section 8.3.2);
- Construction Management Plan;
- Maintenance Plan, and a Final Interim Maintenance Plan inclusive of updated plans thereafter;
- Occupational and Public Safety Plan (Safety Plan);
- Environmental Compliance Plan "ECP";
- Quality Management Plan "QMP" including on-going updated plans;
- ITS Preliminary Plans;
- Geotechnical Instrumentation and Monitoring Plan and a Subsurface Investigation Plan (R&C);
- Third Party Coordination Work Plan (R&C);
- Demolition and Removal Plan (R&C);
- Final Project Handback Work Plan;
- I-75 Mainline Lighting (Given a seventy (70) day review period; and
- Final Right of Way "ROW" Plans (further discussed in the following sub-section of this 7.2 section).

Based on our review of the provided project schedule, WT note that the above-referenced submittals have been accounted for. With the exception of Design Submittals and plans relative to the Maintenance term, the majority of plans (such as the PMP) will be developed at the outset of the Project with most initial submissions occurring prior to Financial Close.

The schedule accounts for several resubmissions prior to acceptance by MDOT, which we consider to be a highly reasoned approach given that these plans normally require significant development between the PA Parties to ensure expectations are satisfied.

7.2.2 PERMITS AND NON-MDOT APPROVALS

As per the PA, specifically Schedule 17, the Consortium (and by extension DBLLC) is to develop and maintain the Project consistent with current FHWA and AASHTO practices, guidelines, policies and standards, over and above the MDOT above approvals. This includes ROW and Governmental Approvals. The PA mandates that the Consortium, therefore in turn DBLLC, is to bear all responsibility and cost pertaining to these permits, which by definition includes all licenses, permits etc. which are required in order to perform the work, excluding FHWA approval (PA Section 8.1 and 8.2).

The non-MDOT permits and approvals may include the following categories: third party and utility owner approvals and permits; utilities; environmental (non-NEPA); hazardous materials including contaminated soils; noise; migratory birds; ROW construction permits of all types; permits and variances from Authorities Having Jurisdiction governmental entities having regulatory authority over the Project) including road, ramp and lane closures and detours; permits/permissions from property owners; permits/approvals associated with Waters (storm water, sanitary sewer system, wetlands, floodplains, lakes, streams and any surface water body governed by NPDES) including any discharge; ADA compliance; tunnel excavation, disposal of muck and other items associated with tunnel; building and electrical; and traffic control devices (FHWA).

WT have further broken down what we believe the most pertinent non-MDOT approvals and standards within the PA.

FHWA APPROVAL

The PA mandates that the Consortium is to bear all responsibility and cost pertaining to these permits excluding FHWA approval. A Final Environmental Impact Statement ("FEIS") for I-75 from M-102 to M-59, Oakland County, Michigan which includes Segment 3 was approved by FHWA in April 2005 with a Record of Decision ("ROD") issued in January 2006. Per the Code of Federal Regulations ("CFR") 771.129, a re-evaluation of the NEPA document is required prior to FHWA taking an action on each segment of I-75 (as referred to in Section 6.0 Site Conditions above). On February 9, 2018 FHWA concurred with the environmental re-evaluation for Segment 3 which was applied by MDOT.

AASHTO STANDARDS

The American Association of State Highway and Transportation Officials ("AASHTO") is defined as a standard setting body which publishes specifications, test protocols and guidelines which are used throughout the United States in highway design and construction projects. This is also defined as a requirement of attaining the various ROW permits which is outlined in the following sub-section.

ROW ACTIVITY

As defined within the PA, the Consortium is to obtain and maintain encroachments permits, other permits and rights of entry to gain access to areas of Project ROW within the jurisdictions of Local Agencies.

ROW is defined as the "Right-Of-Way" activity which allows complete jurisdiction of the designated site to the Board of County Road Commissioners of the County of Oakland, therefore in turn allowing (if approved) jurisdiction to MDOT and further the Consortium. ROW pertains to lane closures, medians, gas mains, water mains, construction signage, detours of pedestrian and vehicular movement etc.

The Road Commission for Oakland County includes a *Permit Rules, Specifications and Guidelines* Document dated March 14, 2013 (Section 1.1.2, General Provisions) on their website, which outlines ROW and its specifications of conformity. They are followed:

Construction permitted within the Right-of-Way shall conform to the following specifications:

- (A) The current edition of the M.D.O.T. "Standard Specifications for Construction."
- (B) The current edition of the "Michigan Manual of Uniform Traffic Control Devices."
 (C) Road Commission for Oakland County: "Permit Rules, Specifications, and Guidelines."
- (D) Road Commission for Oakland County: "Supplemental Specifications & Special Provisions."



- (E) The current edition of the AASHTO: "Policy for Geometric Design of Highways and Streets."
- (F) Road Commission for Oakland County: "Rules and Regulations for Plat Development." 7
- (G) The American with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, and their implementing regulations, guidelines and standards.
- (H) Michigan Public Act 53 of 1974 (MISS-DIG), and all applicable OSHA and MIOSHA laws and regulations, including any ANSI standards adopted by MIOSHA.

GOVERNMENTAL APPROVALS

The Project will be subject to the normal suite of statutory requirements enforced by Local Agencies or Authorities Having Jurisdiction including codes, standards, and manuals for commercial infrastructure.

Cities within Oakland County require designated permits, such as Royal Oaks, Madison Heights and Hazel Park. These entities have regulatory jurisdiction over the Project pertaining to road, ramp and lane closures and detours. The Developer is also stated to be responsible for obtaining and complying with Third Party and Utility Owner approvals and permit, which includes permissions from local property owners.

The Project must be developed minimizing impacts to the environment and human environment as possible. Due to this, adhering to Environmental regulations (excluding NEPA mentioned above) is essential.

One such regulation is the Oakland County Water Resources Commissioner ("OCWRC") which pertains to the local enforcement of the Soil Erosion and Sedimentation Control Program. This is defined by Oakland County as a requirement for any earth change, which involves a disturbance of an area of one acre or more, and/or if the earth change is within 500 feet of a lake, stream, pond, open drain, river or wetland. This permit is distributed by the county and purpose is to minimize erosion and control sedimentation to protect the water resources of the State.

Further, non NEPA or MDOT regulations inclusive of the PA provisions include that of noise, migratory birds, permits/approvals associated with Waters (storm water, sanitary sewer system, wetlands, floodplains, lakes, streams and any surface water body governed by NPDES) including any discharge. The PA lists these additional Environmental governing regulations which have potential to directly impact the design and construction of the Project:

- The National Environmental Policy Act, Title VI of the Civil Rights Act of 1964, Section 4(f) of the U.S Department of Transportation Act of 1996, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, The Comprehensive Environmental Response;
- Compensation and Liability Act, The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, The Emergency Planning and Community Right to Know Act of 1986, The Clean Air Act, The Federal Water Pollution Control Act, as amended by the Clean Water Act;
- The Resource Conservation and Recovery Act, The Toxic Substances Control Act, The Hazardous Materials Transportation Act, The Oil Pollution Act, The Federal Insecticide;
- Fungicide and Rodenticide Act, The Federal Safe Drinking Water Act, The Federal Radon and Indoor Air Quality Research Act, The Occupational Safety and Health Act, The Endangered Species act; and
- The Fish and Wildlife Coordination Act, The National Historic Preservation Act, and the Coastal Zone Management Act.

Based on the foregoing defined requirements (and potential requirements), the Consortium have undertaken an initial assessment of the required Governmental Approvals to undertake the Works, and have identified the following:

- The NEPA permit will be obtained by MDOT on or before Commercial Close in accordance with the PA While the consortium is obligated to provide assistance in case of any changes to the application, they do not currently anticipate any changes that would be necessary to the NEPA permit based on the current design.
- A Michigan Department of Environmental Quality ("MDEQ") permit will be obtained to cover the NPDES (Soil Erosion) requirements on the project. The Consortium will have to proceed through the approval process with its soil erosion design and MDOT approval process, which the Consortium have noted will take approximately 180 days maximum from notice to proceed. The Consortium have stated an intent to progress this process prior to the achievement of Financial Close and to submit as soon as MDOT is ready. Once the plans are submitted to the DEQ it typically only takes 1-2 weeks to have the permit issued. As physical work in 2019 is not scheduled to start until August of 2019, the DBLLC does not anticipate any schedule issues with the MDEQ permits.
- An OCWRC permit will be required for the ability to review plans and conduct inspections while we are working within the confines of the OCWRC property in which the pump station is being built, and the discharge going into the OCWRC facilities. We understand this will entail inspections during shaft construction and tunneling until work shifts to the I-696 shaft, and then the construction of the pump station which OCWRC will operate at the conclusion of the project. The Consortium have noted that the permit from this agency will be issued within 1 week, which we consider to be manageable.
- Municipal permits for Royal Oaks, Madison Heights and Hazel Park. The remaining Municipality Permits are required from the various Cities located along the corridor. These cities own the service drives and adjacent roads connecting into the service drives along with the municipal controlled utilities located within the associated ROWs. The permits from the municipalities will be for the ability to review plans and conduct inspections while the DBLLC are working within the confines of the ROWs controlled by the Cities. The Consortium have advised that typically the permits from these agencies will be issued within 1 week, which we again consider quite manageable.

As part of the procurement process, we understand that MDOT have facilitated "one-on-one" meetings between the proponents and the affected municipalities and utilities in order to identify expectations. The Consortium have advised that each of the above municipalities were in attendance, explained their expectations, and are fully aware of the upcoming Project.

Based on the foregoing information, it is WT's opinion the permitting requirements have been appropriately considered by the Consortium and reflected in the schedule approach. The members of the DBLLC have considerable experience in working with the relevant agencies, given their local presence, and we would expect that this level of familiarity will reduce permitting related risks.

8.0 DESIGN AND CONSTRUCTION REVIEW

8.1 DESIGN AND CONSTRUCTION MANAGEMENT

As mandated by Schedule 2, Section 13, 7.3 of the PA, the Consortium is to engage selective Key Personnel to fulfill specific roles and responsibilities pertaining to the Works of the Project. The required Key Personnel are delineated into three Categories as follows:

CATEGORY 1			CATEGORY 2		CATEGORY 3		
•	Developer's Project Manager; DBLLCs Construction	• •	Design Manager; Quality Manager; Environmental Compliance	•	Construction Quality Manager; Design Quality Manager;		
-	Manager; DBLLCs Project Manager;		Manager; Developer's Safety Manager;	•	Public Information Manager; and		
•	Tunnel Construction Manager; and		and Tunnel Safety Manager.	•	Lead Tunnel Design Engineer.		
-	Maintenance Manager.						

The following graphic provides an initial outline of the Consortium's management structure during the Design-Build period. The Consortium have adequately followed the requirements outlined above, excluding the Tunnel Safety Manager which still needs to be designated. The Consortium have noted this is a preliminary outline and WT note the organization will most likely include minor adjustments following Financial Close as the DBLLC team is brought online for delivery of the Project.

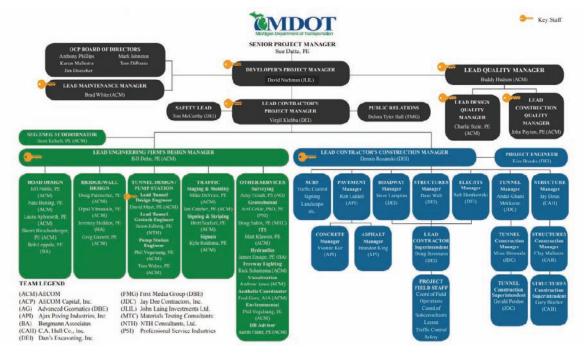


Figure 6 - Draft Consortium Team Structure

Generally, the D&C Contracting Managers, both Lead Design Manager (designated in green) and Lead Construction Manager (blue) will be led by their Lead D&C Project Manager. This person will in turn report directly to the Developers Project Manager. They will function as a fully integrated design and construction unit which is a structure considered consistent with approaches adopted by similar procured DBFM P3 Projects.

Dan's Excavating, Inc. will, as expected, bear the responsibility for the delivery of the design-build works, by leading and executing the construction works as well as lead project managing the design team led by AECOM and the designated subconsultants and subcontractors. Dan's Excavating, Inc. is prime within this project management structure as they have extensive notable experience with similar infrastructure projects including successfully completed MDOT projects. As noted, AECOM has been engaged as the Lead Design Management personnel and overall generally consumes the Design Team (designated in green); rightfully so, as they are noted to be the leading Michigan Transportation Design Firm and too have extensive experience with Projects with the same use and working with MDOT.

All key personnel engaged at the design and construction level have extensive experience working together, vast experience and familiarity in working with MDOT, significant control over local material and equipment, as well as significant experience in working with similar environmental and geotechnical conditions. The DBLLC team also possesses demonstrated experience in delivering MDOT projects on or ahead of schedule.

WT note that we have reviewed the preliminary D&C management structure for the Design-Build period of I-75 Segment 3, which notes key personnel and their respective roles. As per their preliminary structure, bearing in mind the requirements outlined in the PA, presently it is our opinion that appropriate consideration has been given at this stage in the procurement process and adequate resourcing was done when deciding on engaged parties.

8.2 DESIGN REQUIREMENTS

In accordance with our remit, WT have undertaken a detailed review of the Design Requirements prescribed in the Technical Requirements included in the Project Agreement. Through this we have developed a summary of major components of the Project and specific design aspects which we feel are of key importance with respect to the Consortium's Design and Construction approach.

8.2.1 ALTERNATIVE TECHNICAL CONCEPTS

We note the Consortium had previously proposed a number of variations to the Technical Requirements included in the PA as part of their technical submission, which were subsequently approved by MDOT. These Alternative Technical Concepts ("ATC's") were proposed on the basis of their inherent cost or schedule savings, or potential mitigation of risks associated with the Project. In all cases, ATC's are deemed to be of benefit to both the Consortium and MDOT.

Following selection of preferred proponent, we understand the Consortium and MDOT undertook negotiations regarding the inclusion of two ATC's proposed by unsuccessful bidders. These have since been priced and formalized with appropriate adjustments to the DB Contract price as required.

We have provided a summary of ATC's which have been accepted by MDOT (and incorporated into the PA) below for reference.

able 8 - Accepted ATC's ALTERNATIVE	PRE/POST BID	AREA OF OPTIMIZATION
TECHNICAL CONCEPT	SUBMISSION?	
John R Crossover Bridge Removal	Pre Bid- Submission	Elimination of the crossover bridges on each side of the John R bridge coupled with widening the proposed John R bridge to create a 6-lane structure over I-75.
Stephenson Highway Bridge Elimination	Pre Bid- Submission	Elimination of the northbound Stephenson Highway bridge over I-75.
Delete GWK RTF Shaft	Pre Bid- Submission	Eliminates an unnecessary shaft and allows for reducing the size of the finished access shaft at I-696.
Remove Woodward Heights Boulevard Turnaround	Pre Bid- Submission	Eliminates the U-turn slot and maintains the existing 4-lane cross- section on the Woodward Heights Boulevard bridge.
Revise Horizontal Alignment of Tunnel (flatten curves)	Pre Bid- Submission	Revising the horizontal alignment will improve construction, allow use of existing TBM machinery, reduce the risk of long-term tunnel integrity issues, and improve the hydraulic flows at the Pump Station location.
Revise Tunnel Vertical Profile	Pre Bid- Submission	Revising the tunnel vertical profile to a shallower depth will reduce risks associated with mining in wet, granular and gas-containing soils, improve flow velocities and reduce drop shaft heights to improve performance.
Relocate Meyers shaft 1100 feet north of current location	Pre Bid- Submission	Revise the location of the Meyers Drop Shaft, the tunnel length and diameter, and the tunnel horizontal alignment.
Beam Concrete Strength	Pre Bid- Submission	Proposed prestressed concrete bridge beams to allow an Increase in the prestressed concrete release strength (up to 7,500 psi) and the final 28-day strength (up to 10,000 psi).
Temporary Pavement Design	Pre Bid- Submission	Revised temporary pavement designs, reducing the layer thicknesses of Hot Mix Asphalt (HMA) on the Service Drives.
Pipe Abandonment	Post Bid Submission	Proposed alternative to permit the abandonment of unused existing sewers through use of bulkheads and slurry fill rather than full removal. Reduces overall construction impact from both a cost and schedule perspective.
Light-weight fill materials	Post Bid Submission	Proposes use of lightweight fill material (lightweight cellular concrete mixes, polystyrene blocks, etc.) in lieu of conventional soil fill. Reduces loading on existing infrastructure, new bridge abutments, and retaining structures.

Pursuant to information provided by the Consortium we understand the net Cost Savings associated with the Pipe Abandonment ATC are valued at a total credit of \$30,639.29 while the Light-weight fill material ATC is noted as being cost neutral with no cost increase/decrease. WT note the credit has been reflected in the DB Contract Price of \$629,245,356 noted in this report



8.2.2 NEGOTIATION ITEMS – POST BID-SUBMISSION

In addition to the above referenced ATC's, we understand the PA Parties have also agreed to the following post-bid submission scope changes as part of the negotiation process:

ITEM	NET COST IMPACT	DESCRIPTION
Pedestrian Bridge at Orchard Avenue	Cost Increase of \$247,894.00	The pedestrian bridge (P06) access ramp on the east side, adjacent to the NB service drive will need to be revised due to necessary MDOT property acquisition changes that were identified after the Proposal Due Date. The pedestrian bridge structure will stay in the same location but the ADA pedestrian ramp on the northbound service drive will be shifted to the south to avoid the affected land parcel.
Pump Station Preferred Location from Proposal	Cost Savings of \$(153,661.62)	 The Consortium's Technical Proposal identified an alternative location for the pump station. This location is approximately 400-feet south of the original location as shown in the Basic Configuration Segment 3 Tunnel Plans. The noted benefits of this location include: Negates the need for MDOT to obtain a permanent easement from Madison Heights at the northern part of the site; No requirement for tunnel excavation below the GWK retention basin; Reduces potential conflicts with the I-75 NB 12 Mile ramp.

Table 9 – Negotiated Scope Change

Through our review of the above items and our discussions with the Consortium, it is WT's opinion these changes do not materially alter the risk profile of the Project and are considered a benefit to the overall delivery. The relocation of the pump station location is in keeping with the DBLLC's preferred approach to these works and helps to limit the overall tunneling requirements while the Pedestrian bridge changes reflect a relatively straightforward reconfiguration of the east access ramp that is not anticipated to materially affect schedule.

WT confirm the above cost adjustments have been incorporated into the reported DB Contract Price of \$629,245,356.

Design Star	ndards	NATIONAL HIGHWAY SYSTEM		
Jurisdictional System		National Highway		
Functional Class		Interstate		
Access Control		Limited Access		
Roadway Type		Urban Freeway		
Design Vehicle		WB-67		
Terrain		Level		
Lane Width		12 Feet		
Shoulder Width		10.67 Feet Paved Inside, 13 Feet (12 Feet Paved) Outside 10' Min. Paved inside in Variable Height Barrier Sections		
Traffic Volumes	ADT	83,900 - 90,700		
(2017)	% Comm.	6%		
Traffic Volumes	ADT	94,000 - 101,600		
(Projected 2040)	% Comm.	12%		
Sidewalk Width		N/A		
Posted Speed		70 mph		
Proposed Design Spe	ed	75 mph		
1. Match existing crown point location and cross slopes at the tie in points of the POB an				
2. Maintain an underclearance of at least 18' under overhead utilities.				

8.2.3 PROJECT DESIGN REQUIREMENTS

Figure 7 - Location Specific Design Standard Sample

Roadway and Grading

In general, the Consortium are obligated to design roadways and grading in accordance with MDOT Standards and to comply with the Basic Roadway Configuration included under the Technical Requirements. Roadway classifications include mainline lanes, HOV lanes, acceleration lanes, deceleration lanes, auxiliary lanes, ramps, loops, country roads, city streets, township roads and private entrances.

The Technical Requirements include a number of Location Specific Design Standards which prescribe the general requirements relative to the various roadways identified above. In addition to the roadway works, specific requirements surrounding items such as traffic barriers, fencing and slope construction have been included. The various types of pavement required in the roadway construction have been indicated, with a detailed composition included for both asphalt and concrete paving works.

WT are not aware of any Consortium-proposed amendments to the design requirements associated with Roadway and Grading works. Furthermore, the specification does not appear to include any anomalous or atypical construction means and methods which would cause any concern regarding the DBLLC's ability to successfully deliver the works.

WT understand that the Consortium have implemented a number of design solutions relative to the Roadway and Grading works.

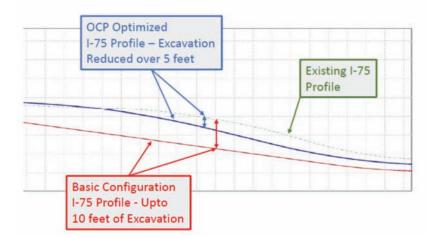


Figure 8 – Optimized Roadway Profile

The Consortium have proposed an optimized roadway profile which will serve to minimize excavation works significantly, with a variance of up to 10' in some instances. In addition to this, retaining wall geometry will be reduced, staging requirements will be simplified by reducing the height variance to adjacent works, and utility impacts will be reduced.

In addition to this, the Consortium have also developed an approach to slope construction which will enable them to reduce the size of the retaining walls required. Specifically, by constructing slopes at a 1:2 incline they are able minimize wall heights and lengths and eliminate excavation of deep wall foundations.

Finally, by introducing the use of soldier pile walls in lieu of spread footing or MSE wall construction for tall retaining walls, the Consortium are able to eliminate deep excavations for the footing construction.

Upon reflection of the above, WT are of the opinion that both the requirements prescribed in the PA, as well as the Consortium's approach to the Project are reflective of standard design means and methods associated with roadway and drainage construction.

Furthermore, we note the Consortium and specifically the key members of the DBLLC have a proven track record of delivering this type of Roadway and Grading constructions in accordance with MDOT standards. As such, we would not expect any material risks associated with the Roadway and Grading design requirements.

<u>Drainage</u>

In general, the Consortium will be obligated to design storm drain collection systems which are capable of accommodating the site's stormwater drainage and area runoff tributary to the Stormwater and Drainage Tunnel. The drainage design must also accommodate the various MDOT Standards which may be associated with it.

The Technical Requirements contain guidelines surrounding all aspects of the drainage system, including pavement drainage, bridge deck drainage, storm water systems, county drain, drop structures for the Storage and Drainage Tunnel, and requirements for adit construction.



WT are not currently aware of any proposed ATC's or design solutions by the Consortium relative to the drainage system on the Project, aside from those mentioned in other sections of our report.

Upon reflection of the above, WT believe both the requirements prescribed in the PA, as well as the Consortium's approach to the Project are reflective of standard design means and methods associated with drainage system construction. As such, we would not expect any material risks associated with the Drainage design requirements.

Storage and Drainage Tunnel

In general, the Consortium will be obligated to design a stormwater Storage and Drainage Tunnel ("the Tunnel"), launch shaft, retrieval shaft, construction shaft, drop shafts, adits and other associated work such as the Tunnel Boring Machine ("TBM"), tunnel lining, dewatering and the like.

Further, the Tunnel shall be constructed under the assumption that gassy conditions are present throughout the entire length of the tunnel alignment.

The scope of the Storage and Drainage Tunnel is generally inclusive of the following:

- I-75 Storage and Drainage Tunnel in accordance with the plans outlining the horizontal and vertical alignment for the tunnel;
- Four Tunnel shafts including the GWK RTF Pump Station Shaft, I-696 Shaft and Meyers Ave Shaft; and
- Six Drop Shafts including Gardenia Drop, 11 Mile Drop, Lincoln Drop, two (2) Shelvin Drops, Woodward Heights Drop and John R Drop.

The Technical Requirements contain various Performance Requirements pertaining to Shaft Design, Tunnel and TBM Design, Shaft Lining, Adit and Cast-In-Place Concrete Finishes.

WT note that the Consortium have proposed various Design Optimizations associated with the Tunnel as follows:

- Combined Pump Station and TBM Launch Shaft
- Reduce Total Number of Shafts
- Move TBM Support Operation to I-696 to allow early start of Pump Station Build-out
- Shorten Tunnel at South End by using Open Cut Drainage Pipes
- Shallow Tunnel Alignment in South 1/2 to Avoid Water-Bearing / Gas-Bearing Soil Layers
- Use of Precast Concrete Segments with NPF TBM
- Use Drilled Shaft methods for Small Drops
- Move Tunnel Drops to Reduce Adit Connection Tunnels

By optimizing their approach, the Consortium will be able to eliminate work from both a design and construction perspective.

Furthermore, upon review, WT are of the opinion that the various design optimizations being proposed by the Consortium are well-based. We would expect these to prove beneficial from a construction perspective and as such would not anticipate risks associated with these.

Bearing this in mind, while there are variations expected to the base design requirements, the Consortium and specifically the key members of the DBLLC have a proven track record of delivering this type of Drainage and Storage Tunnel design.



Further, given the level of amendments proposed to the base design contemplated in the PA, we are comfortable that the team are not only competent, but well versed in this given their proactive approach to the design. As such, we would not anticipate any material risks associated with the Tunnel design requirements.

Structures

The Consortium will be responsible for the Design of various structures, including Retaining Walls and Bridges in addition to the demolition of various existing Bridges. In addition, the Consortium's design solution shall adhere to the MDOT Bridge Design requirements.

The Design Requirements prescribed in the PA pertaining to Structures include various design parameters to be adhered to. Specifically, these include guidelines surrounding structural elements, materials as well as individual components such as footings and walls.

In response to the design contemplated in the PA, WT confirmed the Consortium have proposed a number of ATC's, as described above, pertaining to Bridge Structures. Through this, we understand there has been a reduction in the quantum of structures required in the base design and that reflected in the Consortium's design approach.

Upon reflection of the above, WT are of the opinion that both the requirements prescribed in the PA, as well as the Consortium's design optimizations and ATC's are reflective of standard design means and methods associated with the Structures on the Project.

Again, we note the DBLLC have a proven track record of delivering this type of Bridge design in accordance with MDOT standards. As such, we would not expect any material risks associated with the Structure Design Requirements.

Intelligent Transportation Systems

The Consortium will be required to design ITS Devices and Technology Systems, Traffic Management Systems, Telecommunications and Networking, Power and Grounding as well as Infrastructure Integration.

In addition to New ITS Sites to be constructed, there are a number of existing ITS Sites. With these, there will be a number which are decommissioned, with the balance to be modernized.

The Technical Requirements also contain various performance requirements, including commentary associated with Microwave Vehicle Detection System (MVDS), Video Surveillance, Dynamic Message Signs, Permanent Roadside Units, Temporary Roadside Units, Environment Sensor Stations and the like.

WT are not currently aware of any proposed ATC's or design solutions by the Consortium relative to the ITS on the Project.

Upon reflection of the above, WT are of the opinion that both the requirements prescribed in the PA are reflective of standard design means and methods associated with ITS construction. As such, we would not expect any material risks associated with the Drainage design requirements.

Pump Station

The Consortium's design must incorporate a Pump Station for the purpose of dewatering the Storm Water Drainage Tunnel, which will subsequently discharge to the George W Kuhn Retention Treatment Facility ("GWK RTF").



The PA mandates that the Pump Station be a shaft structure with pumps and possibly an above ground pump building for housing electrical control equipment, instrumentation and a back-up power generator, and must also comply with MDOT Standards.

The Technical Requirements also include specific surrounding the Pumping System, Mechanical Equipment, Electrical Equipment Structural Loading and Instrumentation and Controls.

As previously discussed, WT understand that the Consortium intend to combine the Pump Station Shaft with the Launch Shaft for the TBM, again providing efficiencies from both a design and construction perspective.

While we would expect there to be an element of coordination associated with tying into existing systems, again this work does not present any unduly challenging or complex works. Further, given the Consortium's level of experience with the design of this type of work, we would not expect any material concerns associated with the design and subsequent construction of the Pump Station.

8.3 CONSTRUCTION METHODOLOGY

8.3.1 TUNNEL METHODOLOGY

Scope and Requirements

WT have undertaken a comprehensive review of the scope and requirements associated with the tunnel construction required for the Project. Pursuant to Article 12 – Drainage and Article 21 – Storage and Drainage Tunnel of the PA, the Consortium will generally be obligated to construct the following:

- I-75 Storage and Drainage Tunnel in accordance with the plans outlining the horizontal and vertical alignment for the tunnel;
- Four Tunnel shafts including the GWK RTF Pump Station Shaft, GWK RTF Shaft, I-696 Shaft and Meyers Ave Shaft; and
- Six Drop Shafts including Gardenia Drop, 11 Mile Drop, Lincoln Drop, Shelvin Drop, Woodward Heights Drop and John R Drop.

The Consortium have indicated their intention to utilize a Non-Pressurized Faced TBM during the implementation of this works. This is combined with the installation of precast concrete segments which are grouted in place. WT understand this methodology provides the ability to easily remove any large debris encountered during excavation, while simultaneously providing a seal against the tunnel walls to protect against intrusions.

JayDee Relevant Experience

To further enable our opinion on the capabilities of the Consortium, WT have reviewed a range of comparable projects previously undertaken by Jay Dee.



Table 10 - JayDee	Reference Projects							
PROJECT	CAPEX	PROJECT LENGTH	COST/MILE (MILLIONS)	TUNNEL DIAMETER	MACHINE	SOIL CONDITIONS	SCHEDULE (DAYS)	FEET/DAY
Project 1	\$496,700,000	6.99	\$ 71.06	18'-10"	Earth Pressure Balance (EPB) Tunnel Boring Maching (TBM)	Glacial Tills	1,642	22
Project 2	\$157,300,000	1.48	\$ 106.28	18'-10"	EPB TBM	Glacial Tills	1,267	6
Project 3	\$172,960,000	8.00	\$ 21.62	16'	Main Beam (MB) TBM	Limestone	1,502	28
Project 4	\$96,100,000	3.84	\$ 25.03	14'	ЕРВ ТВМ	Glacial Tills	2,282	9
Project 5	\$202,820,000	5.85	\$ 34.67	13'	ЕРВ ТВМ	Glacial Tills	2,329	13
Project 6	\$50,196,000	4.85	\$ 10.35	13'	Sewer rehabilitation including cleaning, grouting, crack sealing and slip-lining of the existing sewer	N/A	1,020	25
Project 7	\$154,700,000	0.51	\$ 303.33	20'	ЕРВ ТВМ	Clay, sand & silt	1,162	2
Project 8	\$327,390,000	4.54	\$ 72.11	23'	ЕРВ ТВМ	Clay, sand & silt	1,735	14
I-75 Seg. 3 Tunnel	\$145,500,000.00	3.98	\$ 36.52	14'	NPF TBM	Glacial Tills	658	32

Through this, we have been able to derive from these reference projects that JayDee not only has experience dealing with the conditions present in the Project, specifically those associated with challenging geotechnical conditions such as poor soils and the presence of gases but have undertaken works through a broad range of other conditions.

Furthermore, upon reflection of comparable project deliveries, we have been able to confirm that JayDee's proposed production has not only been achieved but surpassed on comparable project deliveries. This presents the opportunity for the currently proposed schedule to be bested.

Upon reflection of the above, we are provided with further confidence that JayDee will be capable of delivering the Tunnel construction not only within the anticipated conditions, but also be able to react to any unforeseen conditions which may be encountered. Furthermore, the scheduled duration for the delivery of the works has been previously surpassed, and thus is not unduly ambitious or unachievable.

Procurement and Replacements

WT understand that the Consortium have engaged a number of Manufacturers capable of producing the required TBM Equipment for the delivery of the Project. In this, the Consortium have been able to refine a broad list of manufacturers into three potential options, being Lovsuns (China), Hitachi (Japan) and Herrenknecht (Germany). JayDee have used each potential manufacturer previously and noted they had successful projects with each one.

Given the level of research conducted by the Consortium to date, we have a level of confidence that, subject to the absence of any major intervening events, procurement of the TBM Equipment will be completed through an appropriate manufacturer capable of delivering such custom equipment, as the TBM's are not off the shelf items they are to be specifically built for the tunnel methodology and requirements.

While this may present challenges given the proprietary nature of the equipment, we understand that security for TBM procurement will be in place for both the purchaser and the manufacturer. The manufacturer will normally require a large down payment at order initiation; typically, 25 to 40%. There will be additional progress payments during the manufacturing process, with 75 to 90% payment at the conclusion of Factory Acceptance testing at the place of manufacture. The manufacturer typically requires a letter of credit for the amount of the order less the amount of progress payments.

We understand costs included are in the range of \$12 million dollars for the TBM procurement. This amount includes the TBM order, a contingency allowance for design modifications that can occur during the TBM design and manufacturing process, critical spare parts, some optional equipment that can be supplied by either the TBM manufacturer or other suppliers, shipping costs, duties and applicable tariffs, as well as financial security costs.

As the purchaser, the Consortium will require a letter of credit for the amount of funding that has been provided to the manufacturer until TBM delivery. This security is limited to the amount which the Consortium have paid and does not include any security for delays in delivery. However, we understand the Consortium will include liquidated damages to be charged against the manufacturer for delivery delays that will affect the project schedule. Bearing this in mind, we note that the project has substantial schedule float for TBM delivery, so this exposure is low on this project.

As a further contingency, we understand that JayDee presently have several TBMs of similar size and design that could be retro-fitted for this project, and have extensive experience in TBM refurbishment, with five of the nine benchmark projects utilizing refurbished TBMs.

We understand TBM procurement for manufacturing a new TBM typically requires approximately 14 months from order to arrival at the project site, whereas a refurbished TBM can arrive at the project site in approximately 8 months. This does not eliminate exposure to project delays, but we would expect this to serve the Consortium with some ability to manage such delays.

Further, as indicated above WT understand that the Consortium intend to procure additional key parts of the TBM which they view as having the most potential for failure to be held at-hand, providing the ability for rapid replacement in the event of the breakdown of the equipment. In addition to this, it is understood that the Consortium also have an in-house repair crew capable of servicing the equipment in the event of a failure, rather than outsourcing or subcontracting this work to a third-party firm.

This approach allows the Consortium to respond, nearly immediately, to any failures encountered during the course of construction and provides further mitigation of significant impact to the Project Schedule that may be otherwise encountered when not directly responsible for the repairs. As such, WT can opine that this proactive approach to repairs will afford the Consortium sufficient relief in the event of an equipment failure and significantly reduces the exposure to resulting schedule delays.

Alternative Technical Concepts

As discussed above in Section 8.2, the Consortium's detailed assessment of the requirements of the Project has enabled them to capitalize on a number of design optimizations which provide a number of significant advantages to the Project. These may be associated with time savings, cost savings, or mitigation of potential risks to the Project.

ATC's of particular importance to the Tunneling scope are those which reduce the risks associated with the completion of the works. In this instance, the ATC's identified above pertaining to the Revision of the Horizontal and Vertical Alignment of the Tunnel, while dramatically changing the design, result in significant risk mitigation.

In the instance of the Revised Tunnel Horizontal Profile, we confirmed that this will reduce the profile of some of the more significant curvatures in the Indicative "Segment 3 Tunnel Plans" included as part of the Technical Requirements. This increases efficiency of the TBM Machine, reduces the risk of long-term tunnel longevity issues by reducing the potential for structural defects and improves the hydraulic flow at the mining shaft locations.

Through the Revised Tunnel Vertical Profile proposed, we understand that the Consortium have been able to mitigate some of the more prominent risks of the Project associated with the construction of the tunnel in wet, granular and gas-containing soils, as previously discussed above in Section 6 of our report. In addition, this serves to improve flow velocities and reduce the depth of the various drop shafts, saving time and money during construction and maximizing the shaft efficiency.

In addition to those specifically identified above, WT understand that the Consortium, and specifically JayDee intend to implement several other concepts which will assist in the delivery of the Project.

These include combining the Pump Station and TBM Launch Shaft, reducing the total number of shafts, moving the TBM support operation to I-696 to allow for early start of the Pump Station Build-Out, shortening the tunnel at the south end by using open cut drainage pipe, using drilled shaft methods for small drops and moving the tunnel to drops to reduce adit connection tunnels. All of which will present the Consortium with potential cost, schedule or risk savings on the Project, or any combination of the three.

Summary

Through conducting a detailed interrogation of the Tunneling scope, Jay Dee's credentials, the Consortium's approach to equipment procurement and maintenance, as well as various proposed Alternative Technical Concepts which have been approved by MDOT, WT are able to surmise that JayDee and the DBLLC have developed a reasoned, fact-based approach to the delivery of the Project.

Furthermore, they have undertaken significant research to ensure that their proposed methodology not only meets the requirements of the PA but have introduced amendments where they view opportunity for efficiencies to be gained.

On this basis, it is WT's opinion Jay Dee, the DBLLC and the Consortium's approach to tunneling is sound and reasoned, and we would not anticipate any major risks with the delivery of this work provided best industry practices continue to be followed and this proactive approach is maintained.

8.3.2 MAINTENANCE OF TRAFFIC AND CONSTRUCTION STAGING

The DB LLC is to conduct all Project Work necessary to meet the outlined Maintenance of Traffic ("MOT") and construction staging requirements of Schedule 17, Article 18. The Consortium is noted to follow these provisions in order to provide a safe and efficient movement of people, goods and services around the Project and to minimize negative impacts to local residents, commuters and businesses.

The requirements outlined in the PA can be segregated into two phases. The first pertains to documents and plans required before the execution of Construction and the second is inclusive of guidelines/protocols and requirements that pertain to works during the D&C Term.



Requirements Prior to Construction

The Project has been identified as significant in relation to mobility congestion alleviation, and as such the PA requires the development, implementation, maintenance and submittal of a Project-specific Transportation Management Plan ("TMP"). This plan is to be submitted within forty-five (45) days following receival of Notice to Proceed ("NTP") and prior to construction of any D&C Works. Changes of this initial TMP are to be conducted until final MDOT approval is achieved and following approval subsequent changes can be submitted any time, though at a minimum of annually. This plan is designated to showcase how the DB LLC will manage public traffic and traffic generated by Project activities.

The TMP contents are guided to follow the *MDOT Work Zone Safety and Mobility Policy, MDOT Work Zone Safety and Mobility Manual*, and keeping consistent with the Michigan Manual on Uniform Traffic Control Devices (MMUTCD). The PA also outlined contents and general parts that must be inclusive within the TMP. They are summarized as followed:

- Temporary Traffic Control Plans (TTCP), including Internal Traffic Control Plan (ITCP). A written
 notice must be submitted to MDOT ten (10) days prior to traffic changes and five (5) days prior to a
 requested Lane closure.
- Transportation Operations Plan (TOP), including Incident Management Plan (IMP)
- TMP Public Information Plan (TMP PIP)

The above required submittal plans by DB LLC include providing information on:

- The implementation of long-term stationary traffic control of where lane closure durations exceed 3 consecutive days;
- Minimizing conflict between construction vehicles and motorists by implementing an alternate enter and exit of construction traffic to the work zone;
- Developing methods for incident detection inclusive of equipment malfunctions and crashes;
- Allocating an employee indicative of the required response time allocated to site incidents;
- Procedures for communicating and notifying the public of the works and changing conditions;
- Identification of parties responsible for implementing the TMP provisions and for monitoring the safety and mobility aspects of the Project;
- In addition to the previous bullet, assigning a MOT manager who will be designated throughout the duration of the D&C term, who will have a 24/7 availability; and
- Frequency of traffic control device inspections and methods of maintenance.

Requirements during D&C Works

The PA clearly states that the Developer, therefore DB LLC, is ultimately responsible for MOT and designing and implementing a MOT scheme for each Project D&C Work that affects traffic. The PA outlines details of mandatory MOT items during D&C Works, including necessary equipment and how often maintenance of the equipment is to occur, equipment dimensions, equipment locations etc. To re-iterate, by following these provisions, safe and efficient movement of people, goods and services around the Project can occur, which in turn will ultimately minimize the negative impacts to residents, commuters and businesses. The D&C Work conformances include and pertain to the following:

 Traffic Control Devices (inclusive of temporary signs, concrete barriers, guardrails, mobile attenuators, channelizing devices, barricades, lighted arrows, arrow boards, stopped traffic advisory systems, temporary pavement markings and signalization, and PCM's. A FHWA approval letter is required to be submitted by DB LLC to MDOT which states that all materials and devices noted meet the approval requirements);



- Temporary Freeway Lighting (noted to be required during each stage of construction, therefore pertains to the proposed quadrant phases);
- Clear Zones and Construction Influence Areas (maintaining clear zones as designated by MDOT's Road Design Manual and providing in advance, construction signs in the planned Project ROW);
- Speed Limit During Construction (maximum mph speed limit and requirements for speed limit signage pertaining to a lane closure or traffic shift);
- Lane Widths, Sky Distances, and Lateral Buffer (minimum distances from temporary concrete barriers, uncurbed areas, and plastic drums as well as reduced lengths of travel lane requirements);
- Ramp Acceleration and Deceleration Lanes (acceleration, deceleration and taper lengths pertaining to freeway ramps, exit ramps, and entrance ramps based on the allowable speed outlined in the above "Speed Limit During Construction" requirements);
- Temporary Pavement Widening (Max rollover rates between existing and proposed pavement and the temporary pavement);
- Temporary Freeway and Ramp Crossover Design Requirements
- Traffic Shifts (required field measures prior to shifting traffic, implementation of under clearance signs if structure is less than 16 ft and particular dimensions in reference to those signs, required debris removal, installation of temporary delineators for medians or paved shoulders including required locations, installation of guardrails prior to shifting traffic, replacement of existing shoulders including replacement of existing drainage structure covers where traffic is now to drive over, as well as a prohibitory note that traffic switches are not to take place during night hours);
- Maintaining Traffic on Shoulders and Gores (removal or replacement of shoulder corrugations and MDOT required approvals including the implementation of Safety Edges);
- Temporary Under Clearance (maintaining vertical clearances at vehicular and pedestrian bridges);
- Drop Offs (regulations pertaining to drop-offs parallel to the edge of pavement on any roadway);
- Incident Management (minimum requirements for emergency pullout loons, design requirements for emergency vehicle access points and temporary barrier gates in order for local emergency responders to safely enter and exit the site);
- Global Signing Plan (minimum temporary signing for freeways and arterials outside of the D&C limits which inform and alert motorists of the Project Work);
- Construction Traffic and Developer Access (pertains to Haul Roads, Staging Areas where equipment will need to be stored in order to obtain incident clearances, and developer ingress and egress points); and
- Implementation of the TMP inclusive of a Work Zone Management Plan and a Performance Assessment Plan (in addition to the previous, pertains to collecting date within the first week of any new stage or sub-stage change in order to implement measures to reduce and minimize delays).

Restrictions During D&C Works

Within the requirements of the D&C Work, DB LLC is to abide by traffic restrictions including outlined provisions for seasonal suspensions noted within the PA.

Overall, the PA mandates that Project Work is prohibited during holiday periods unless otherwise approved by MDOT, DB LLC must coordinate with other projects therefore before closing any laneways or ramps the D&C Contractor must perform due-diligence in coordinating with other works within the vicinity and rectify any potential conflicts or impacts, is to submit lane closure notifications to MDOT prior to any traffic being affected, and lastly, work is to be performed within the working hours as outlined per specific city guidelines (pertains to Hazel Park, Madison Heights, and Royal Oak).

The most impactful restriction, in WT's opinion, is that of the annual Seasonal Suspensions. It is specified that D&C work started in any calendar year shall be completed by that November 15 and shall allow full service of roadways, ramps, bridge, sidewalks, and traffic is returned to their own bound of traffic with the same number of lanes and with the same shoulder widths. This is noted to be true, through to March 1st of the following year. DB LLC have delineated the Project by quadrant and such quadrants have been allocated annual completions, therefore the seasonal suspension commencement dates are a defining milestone of quadrant completion. The Seasonal Suspensions directly impact the Mainline, but the PA permits the continuation of storage and drainage tunnel work, along with work commencing under single lane closures. DB LLC are proposing to maximize this available work in the off-season to set up works for the coming construction season.

WT notes that the Draft Interim Schedule, pertaining to the Seasonal Suspensions, conform to the PA requirements and DB LLC have adequately outlined their plan to maintain the schedule. Further detail can be found in Section 8.4.3 of this WT LTA Pre-Bid Report.

Closure Allowances During D&C Term

WT have reviewed the mandated closure allowances and timeframes during the D&C Term and cross referenced them to the D&C Contractor's Draft Interim Schedule. This has been done in order to substantiate that the schedule adequately meets the PA requirements and is in conformance to closure allowances.

WT expect as the schedule continues to develop that detail pertaining to specific Traffic Management procedures and protocols will be implemented, including specific road closures and issuances of notices. In WT's opinion, the overall schedule framework for closures is consistent with the proposed phasing strategy and conforms with the PA mandated closure allowances.

The closure requirements pertain to Bridges, Public Access including pedestrian, SMART bus and residential and business access, Freeway and Roadways, Ramps and Laneways.

Bridges

Schedule 17, Article 18, Section 18.5.10 and 18.5.11 outlines the Bridge Work closure allowances and timeframes over and under the mainline, I-75 during the D&C Term. Over I-75 bridge work is noted to maintain one (1) lane whether it pertains to actual bridge work or concrete surface coating. Under I-75 bridge work is noted to maintain either one (1) lane or two (two) lanes dependent on the Road and Bridge. These closures and maintaining of lanes will be outlined in the TMP submitted by DB LLC forty-five (45) days after receival of MDOT's NTP. The total working days specified for bridge works within the Draft Interim Schedule are inclusive of these individual lane and traffic switches noted above. Therefore, in WT's opinion, adequate designated timeframes to complete these works can be executed within the specified days.

In review of the Draft Interim Schedule, DB LLC has allocated adequate calendar days as per the PA outlined existing Bridge Structure closure allowances, which range from 30 days to 180 days dependent on the Bridge. Pedestrian detours due to bridge work will be included in the TMP submittals, and the finalization of the schedule post Commercial Close as so the current total days allocated thus far, in WT's opinion, is reasonable to complete total Bridge work inclusive of detours.



As referenced in Section 8.2.1 of this LTA Report, the demolition of S02 Stephenson Highway bridge has conditionally been approved to be eliminated from the Consortium's Scope of Work. Currently the S02 bridge is not included in the Draft Interim Schedule, as expected, though in speaking with the Consortium they noted if requested to re-build the bridge, the construction and works entailed would be coordinated with S01 Gardenia Bridge works and would abide by the PA closure allowance of 150 days.

Public Access

DBLLC is to provide a minimum of seven (7) days notice to local businesses and residents if their access will be compromised due to construction works. Maintaining access for mail delivery, trash collection and other typical accesses are to be upheld, and temporary signage is to be provided as outlined in the PA. DB LLC is to provide MDOT ten (10) days notice prior to any pedestrian access closure and advance signing at the location notifying of the closure at least five (5) days in advance. The provisions of maintaining pedestrian facilities is referenced to be in accordance with the *Temporary Pedestrian Type II Channelizer, Temporary Pedestrian Barrier with Fence, Temporary Pedestrian Path*, and/or *Temporary Pedestrian Ramp*.

Further, a fourteen (14) day prior notice is to be provided to SMART bus notifying them of any closures that will impact their bus route or bus stop. DB LLC will be responsible for relocating the impacted bus stops and will do so according to SMART bus standards. The above will be required during the actual D&C Work term and is associated with the TMP submittal and so if selected the DBLLC will have adequate time to implement these notice requirements.

Ramps and Roadways

Tables are outlined within the PA that include the designated required ramp closures when particular work is being done and where it intersects with Mile Roads, and so DBLLC will need to coordinate their works according to these outlines. As well, these tables provide the amount of allowable weekend closures and designated detour routes which also will need to be coordinated during the D&C Term.

Freeway-to-freeway interchange ramps must be maintained at all times, excluding four (4) ramps that pertain to 12 Mile Rd as allocated in the PA, and unless prior written approval is granted by MDOT. The installation of detour signing prior to closing of a local road or ramp must be in place forty-eight (48) hours in advance and must receive MDOT approval.

These closure requirements as well pertain to the TMP post Commercial Close submittal, and so DBLLC will have adequate time to execute these works during the D&C Term. It is of WT's opinion that the current allocated working days as a whole, pertaining to roadway and ramp works are adequate.



I-75 Freeway and Laneways

The PA notes shoulder closures are allowed at any time and lane closures are allowed upon approval by MDOT. When lane closures are approved, a minimum of two (2) NB and SB lanes are to be maintained in each direction of I-75. The DBLLC's proposal conforms to these requirements.

They propose to close laneway shoulders in order to temporarily widen the mainline for expected quadrant work. They have allocated (2) of the (4) one directional lanes to remain open. Further, DB LLC proposes to deplete the existing four (4) laneways (per direction) to two (2) laneways by switching over from NB to SB and vice versa, until the designated quadrant works (SE, SW, NW, NE) are complete. This is a re-occurring strategy for all quadrants that pertain to freeway and laneway construction done on the mainline I-75, both south and north of I-696. Additional thru lanes are allowed (dependent on MDOT approval) during off-peak hours, therefore this leaves potential for float within the schedule if required when the TMP is being prepared as well as the schedule is being finalized after Commercial Close.

Full closure of NB and SB 1-75 laneways south of I-696 is allowed during off-peak hours for bridge demolition work and beam setting work of 13 structures (contingent on MDOT approval) and full closure of NB and SB I-75 laneways north of I-696 is allowed during off-peak hours for bridge demolition work and beam setting work of six (6) structures (contingent on MDOT approval). The determined necessity will be done so at the time of TMP preparation by DBLLC, and finalizing the Schedule post Commercial Close, and so it is of WT's opinion that the working days for laneways as allocated in the Draft Interim Schedule overall have been allocated adequately.

8.4 DESIGN AND CONSTRUCTION SCHEDULE REVIEW

8.4.1 PA SCHEDULE REQUIREMENTS (SCHEDULE 17, ARTICLE 3)

As per the Technical Requirements of the Consortium's Proposal, outlined in Schedule 17, Article 3, Section 3.3.2, a Draft Interim Schedule is to be submitted that will ultimately include detailed design, permitting, procurement, and Demolition Work schedules in addition to summary construction, Commissioning and closeout activities.

Following establishment of a successful Proposer, within 10 days after the Commercial Close Date and as a condition precedent to Financial Close, the Draft Interim Schedule is then updated and proposed to MDOT for review and approval. If approved, MDOT will issue a Notice to Proceed (NTP) which will deem the submitted schedule the Final Interim Schedule.

Following the receival of the NTP, the Consortium is to further develop the Final Interim Schedule and submit a draft Baseline Schedule within 30 days, where MDOT in turn will need to review within 14 days. This Baseline Schedule as by definition in the PA, means the schedule, consistent with the Completion Deadlines, setting forth the schedule of D&C Work against which any subsequent schedule amendments are tracked. The implementation of a Baseline Schedule, done in a Critical Path Method format allows for definitive observations on whether or not the Project is on time and/or has deviated from the Project works initial targeted milestones.

Upon MDOT 's approval of the Baseline Schedule, it is deemed the Project Schedule. The Project Schedule is inclusive of all previously submitted schedules, commentary from MDOT and ultimately breaks down the Project Work packages/deliverables, Completion Milestones, Recovery or Revised Schedules (as required), Maintenance Work and Schedules and for which progress can readily be measured, reported and verified.



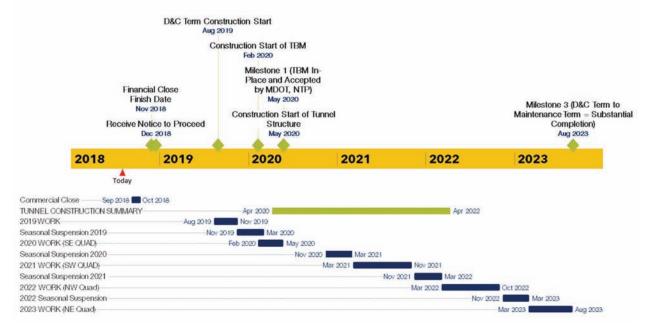
Commencement of Construction

During construction, the Developer (and by extension the DB LLC) will be responsible for preparing at a minimum, monthly schedule updates of the Project Schedule on or before the (10th) day of each month that incorporates the following:

- Changes resulting from Relief Events and Design and Construction Requirement Changes either initiated by the Developer or MDOT
- Any deviations to projected dates of Milestones as defined in the PA
- Anticipated delays or Work that has become Critical
- A list of activities with original durations that have been changed since the previous Project Schedule Monthly Update Submittal along with mitigation measures

Ultimately the Developer is required to undertake the Design-Construction (Design-Build) Works in compliance with the Project Schedule and each Updated Project Schedule thereafter. The Project Schedule requirements outlined above are consistent with past P3 precedents in North America.

In addition, the PA contemplates scheduled milestone dates for Milestone 1 (Tunnel Boring Machine In-Place and Accepted by MDOT), Milestone 2 (Completion of Pump Station), Milestone 3 (transition from the D&C Term to the Maintenance Term), and Milestone 4 (Final Acceptance) which are to be reflected in the Consortium's Draft Interim Schedule and is discussed in the following.



8.4.2 PROJECT SCHEDULE

Figure 9 - Schedule Timeline

In accordance with our remit, WT have received and reviewed the Consortium's proposed Draft Interim Schedule, *I-75 Segment 3 LTA Aug Sub Comp*, dated July 27, 2018.

The Consortiums overall project duration from Financial Close to Substantial Completion is approximately 57 months. The Consortium's schedule has been conservatively revised due to confidence in their ability to hit their outlined key project milestones. The designated time frame is noted to be also due to their experience in delivering in Michigan's climate, their ability to maximize work in the service drives and off the ROW, familiarity with local permitting requirements, key personnel whom they have engaged as they possess extensive experience constructing tunnels in similar geotechnical risky conditions, and the Consortium's previous experience in working on the I-75 Segment 1 Project.

This Project includes yearly seasonal suspensions which jointly, totals approximately 16.5 months (100 days per season) of the Project term. The months between Financial Close and Laneway on site construction start will progress design development and arrange for the associated Governmental Approvals and Permits required to perform the D&C Works as well as the completion of Milestone 1 which pertains to the Pump Station and Tunnel readiness and mining. Physical construction of Ramps, Approaches and temporary widening of I-75 is scheduled to start August 28, 2019 while physical construction of the mainline quadrants (SE, SW, NW and NE) are scheduled to commence March 4, 2020 through to August 25, 2023. Substantial Completion is scheduled for August 31, 2023. This equates to a physical construction period of approximately 48 months inclusive of demolition activities and the above-referenced seasonal shutdowns.

The DBLLC have structured their Schedule around 5 and 6 day works and have been separated by years. 2019 through to 2022 have allowed for a 5 day work week, 10-hour days therefore 50 hour work weeks.

The DBLLC have allocated 10-hour days, 5-day work weeks for the years 2019 through to 2022. The final year of the D&C term, the work week has been accelerated from 5 to 6 days, which reflects as a commonly used and adequate strategy to increase productivity, in order to complete the NE quadrant in the respectable six (6) months. The Consortium notes Saturday and Sundays are to be used as make-up days if required for schedule recovery within the 2019-2022 work term, Sundays in 2023 as well as extended hours if need be. DB LLC are aware of specific approvals over and above traditional allowances pertaining to extended working hours.

Weather conditions have been accounted for within the structured work weeks, as per the two days off during the 5 day work week for 2019-2022 and one day off during the 2023 construction period. On this basis, it is understood that the Consortium will use weekends to make up lost time during adverse weather events.

These working schedules have, by WT's review, been allocated on a consistent working structure. WT can assume these may have minor fluctuations based on the actual date of subcontractor execution, actual weather conditions etc.



8.4.3 KEY PROJECT DATES

WT have extracted the following key Project milestones from the Consortium's Draft Interim Schedule Dated July 27, 2018:

Table 11 - Milestone Dates and Payments

able 11 - Milestone Dates and Payments		
ACTIVITY	SCHEDULED DATE	PA MILESTONE PAYMENTS
Commercial Close	Sept 8, 2018 - Oct 12, 2018	
Receive all Government Approvals / Permits	Nov 9, 2018	
Financial Close Finish Date	Nov 26, 2018	
Receive Notice to Proceed	Dec 16, 2018	
2019 WORK		
DB LLC Geotechnical Investigation Instrumentation Completion Date	Aug 14, 2019	
Receive Final RFC's for 2019 and 2020 Work	Aug 27, 2019	
D&C Term Construction Start	Aug 28, 2019	
Seasonal Suspension 2019 Duration	Nov 16, 2019 – Mar 3, 2020	
2020 WORK (SE QUAD)		-
Construction Start of TBM	Feb 10, 2020	
Construction Start: NB Laneways of East Quadrant, South of I-696	Mar 4, 2020	
Receive Balance of RFC's (incl Balance of Shaft Design) for 2021 Work	Mar 6, 2020	
2 Lane Traffic Switch NB to SB Side	Mar 26, 2020	
Milestone 1 (TBM In-Place and Accepted by MDOT, NTP)	May 23, 2020	\$20,000,000
Construction Start of Tunnel Structure	May 26, 2020	
2 Lane Traffic Switch Back, NB to NB Side	Oct 19, 2020	
Completion of East Quad Mainline, South of I-696 (SE)	Oct 30, 2020	
Seasonal Suspension 2020 Duration	Nov 17, 2020 – Mar 7, 2021	
2021 WORK (SW QUAD)		
Construction Start: Mainline SB Laneways of West Quad, South of I-696 (SW)	Mar 8, 2021	
Receive Balance of RFC's for 2022, 2023 Work	Mar 19, 2021	
2 Lane Traffic Switch SB to NB Side	March 22, 2021	
Construction Start of Pump Station Structure	July 23, 2021	
2 Lane Traffic Switch Back, SB to SB Side	Oct 15, 2021	
All RFC's Received	Sept 26, 2021	
Completion of West Quad Mainline , South of I- 696 (SW)	Nov 1, 2021	
Seasonal Suspension 2021 Duration	Nov 16, 2021 – Mar 7, 2022	
2022 WORK (NW Quad)		
Construction Start: Mainline SB Laneways of West Quad, North of I- 696 (NW)	Mar 8, 2022	
2 Lane Traffic Switch SB to NB Side	April 5, 2022	
Milestone 2 (Completion and turnover of Tunnel and Pump Station)	Oct 4, 2022	\$40,000,000
Completion of West Quad Mainline, North of I-696 (NW)	Oct 31, 2022	
2022 Seasonal Suspension	Nov 15, 2022 – Mar 1, 2023	
Demo Completion of Existing Pump Stations 1-7	Dec 01, 2022	
2023 WORK (NE Quad)		
Construction Start: Mainline NB Laneways of East Quad, North of I-696 (NE)	Mar 1, 2023	
Completion of East Quad Mainline, North of I-696 (NE)	Aug 25, 2023	
Milestone 3 (D&C Term to Maintenance Term = Substantial Completion)	Aug 31, 2023	\$40,000,000



Milestone 4 (Final Acceptance)	No later than 6 months	\$1,000,000
	post SC (as per PA)	



8.4.4 PHASING/ LOGISTICS

The Consortium's currently proposed schedule reflects the project being constructed in 4.75 years, inclusive of four (4) main quadrants, SE and SW which refers to the NB and SB laneways of the Mainline south of I-696 and NE and NW which refer to the NB and SB laneways of the Mainline north of I-696. These designated quadrants consecutively span a fifty (50) month period, within the fifty-seven (57) month Project Term.

WT have provided project work summaries that have been broken down by year as per the Draft Interim Schedule logistics. There are specific works that have not been outlined in the below summaries as they are not quadrant specific; instead, they are repetitive works that are performed throughout the D&C term. Such works include demolition; the procurement fabrication, installation and painting of Sound Walls; Landscaping which has been allocated to commence October 6, 2020 through to August 18, 2023; Seasonal Suspensions; installation of final mainline signs; as well as temporary barriers, and shoring. The PA references Interim Maintenance Works, Long Term Maintenance Works and Non-Maintenance Facilities Work that are also included throughout the term.

2018 - 2019 Work

The later part of 2018 has been designated to acquire required licenses and registrations, as well as submit PA documentation and plans which continue through to 2019. The DBLLC have also included their timelines to conduct independent additional Geotechnical investigations, as noted to be done in Section 6.0 of this Report. Contingent on their findings, the designated 90 days allocated in 2019, in WT's opinion, should be adequate as they have in detail allocated specific locations of the investigations and what the investigations will entail.

(S27) 9 Mile approach works, (S06) Dallas bridge removal and Governmental Approvals and Permits inclusive of NEPA and ROW are included within the 2019 year. The allocated days include assembly, review, resubmit and acceptance timeframes. Completion of the Design Development and Documentation is primarily designated within this year as well, though the remaining RFC acceptances are projected to be received in early 2020 (refer to key project milestone dates in previous section).

The design finalization of the Tunnel and Pump Station is inclusive of the submittals and RFC approvals noted above. The procurement completion of the Tunnel and Pump Station in associated with Milestone occurs in the following year.

Therefore overall, 2019 is mainly dedicated to PA plan and documentation submittals, attaining permits both Municipal and Governmental, finalizing the I-75 Project Design and receiving approved RFC's, as well as starting site construction with widening of the mainline and ramp/approach works.

2020 Work

The completion of procurement activities associated with the TBM is to occur within 2020 and mining to commence thereafter in the opposite direction of the roadway and ramp construction (pump station from north to south, roadway and ramp construction from south to north). Note that Milestone 1 is defined as the procurement and readiness of the TBM.



2020 has been designated to the start and completion of the Projects first quadrant, the South East ("SE") quadrant, which refers to the northbound ("NB") laneways, south of Interstate 696 and north of 8 Mile Road. The traffic dedicated to the NB lanes will subsequently be included in the southbound lanes, depleting from the existing four (4) laneways per direction to two (2) until SE completion. The general remaining construction works include retaining walls, (2) pedestrian bridge reconstructions, new S22, S24, S28 and S31 bridges, NB ramps including both entrance and exit, and SB ramps both entrance and exit.

Therefore overall, 2020 has been dedicated to the first quadrant, completion of Milestone 1, structure construction start of the Tunnel which progresses from north to south and continued bridge and ramp work.

2021 Work

2021 has been designated to the completion of the South West ("SW") Quadrant, which refers to the southbound ("SB") laneways, south of Interstate 696 and north of 8 Mile Road. The traffic dedicated to the SB lanes will subsequently be included in the NB lanes, depleting from the existing four (4) laneways per direction to two (2) per direction until the duration of the SW quadrant.

General construction works that have been noted in the Draft Interim Schedule include temporary roads, (3) pedestrian bridges, retaining walls, SB ITS work from 8 Mile to I-696, the construction continuation of the ramps noted in 2020's work and continuing the tunnel construction from north to south, inclusive of starting Adit connections.

2022 Work

Adit connections continue until Milestone 2 is reached in the later part of 2022, which is defined as the completion and handover of the Tunnel and Pump Station along the alignment of the Mainline.

The North West ("NW") Quadrant works, which refer to the southbound ("SB") laneways north of Interstate 696 and south of 13 Mile Road run throughout the duration of 2022 with completion being reached prior to Seasonal Closures. The traffic will be managed in the same fashion as the other completed two quadrants, SB lanes into NB lanes, with two (2) in either direction remaining open as per the PA requirements.

Most of the bridge works are completed within this year, inclusive of S01, S03, S04, S30 and S33 bridges as well as construction start of S04 13 Mile, which runs through until mid 2023. Retaining walls and general works are continued, along with SB ITS from I-696 to 13 Mile.

2023 Work

The final year will primarily be used to complete the NE quadrant, which refers to the NB laneways north of Interstate 696 and south of 13 Mile Road. The traffic will be managed in the same fashion as the quadrants before. S04 13 Mile NB and SO3 12 Mile NB are completed within this year, along with their designated ramps. The installation of the mainline lighting commences and is completed within the final year, in addition to demolition of the existing seven (7) pump stations. As well final pavement markings are completed, the balance of restoration and retaining wall works.

Therefore, the five (5) month construction season of 2023 is primarily dedicated to quadrant completion, finalizing the Agreement works, submitting required documentation, and reaching Substantial Completion (Milestone 3).



Final Acceptance has not yet been assigned a date, though the PA mandates it be no more than six (6) months following Substantial Completion. Therefore, Final Acceptance (Milestone 4) will need to be reached by March 1, 2024 which provides 2.5 months of physical construction time to the mainline if need be due to Seasonal Suspensions, unless MDOT approves otherwise. We understand the DB LLC have scheduled final acceptance for February 2024 in accordance with the PA-mandated timeline.

8.4.5 TUNNEL AND PUMP STATION SCHEDULE OVERVIEW

As discussed above in Section 8.3, the Consortium, and specifically JayDee will be required to undertake the construction of the I-75 Storage and Drainage Tunnel as part of the base scope of the Project. While this work presents challenges, we understand JayDee have undertaken significant due diligence in determining their approach to scheduling and phasing of the tunneling works.

Commencing in December 2018, the current schedule contemplates a 13-month timeframe for the procurement of the TBM. As discussed above, we understand this timeframe has been determined and confirmed with input from select equipment manufacturers, thus resulting confidence in the adequacy of this timeframe. As noted in previously, the DBLLC will have an element of recovery for any procurement delays on the part of the TBM manufacturer.

Concurrent to the procurement of the TBM, JayDee intend to commence procurement of major shaft materials and subsequently begin construction of the Pump Station Shaft. As discussed above, by incorporating the TBM Launch Shaft into the Pump Station Shaft, JayDee have been able to expedite this work and eliminate the need for two different shaft constructions.

Following this, the TBM is expected to be delivered in January 2020 and will allow for commencement of mining activities. As indicated in our review of JayDee's credentials above, it has been observed that they will generally expect a production of roughly 32 lineal feet per day. Through our assessment, we have been able to determine that this is generally in alignment with past performance by JayDee in similar working conditions and as such do not see this as being unduly ambitious.

Further, we have assessed two similar mandates delivered internationally to further enhance the basis of our opinion. Through this, we have observed production in the range of 30-35 feet per day, again, providing confidence in the timing proposed for the works.

Construction of the various shafts, drops and adits will continue concurrently as mining activities progress, ending with the final adit tunnel connection on April 8, 2022. Following this, mobilization of the Tunnel Structure crew will commence and will continue work through to tunnel completion on September 30, 2022.

Bearing this in mind, we do note that there remains a significant element of float in the project schedule, as tunneling works are complete September 2022 and the Consortium will not be required to achieve Substantial Completion until August 31, 2023. This results in 337 calendar days of float time which the Consortium could theoretically use to complete any delayed tunneling works.

As such, WT do not foresee any schedule issues associated with the tunneling aspect of the project materially impacting the completion of the project by the mandated Substantial Completion date.



8.4.6 CRITICAL PATH

The critical path is the longest sequence of activities in a project plan which must be completed on time for the project to complete on the due date; typically, critical activities have a total finish float of zero. An activity on the critical path cannot be started until its predecessor activity is complete, if it is delayed for a day, the entire project will be delayed for a day or more if there are competing critical paths, unless successor critical path activities are accelerated or completed earlier than forecast.

The reviewed Draft Interim Schedule includes several critical path activities which drive the progression of the project schedule from commencement through to completion.

WT have reviewed the critical path presented for the Project and note the following:

- The critical path is initially contingent on receiving NTP by MDOT, which is dependent on the Consortium's final PMP submittals scheduled for December 01, 2018. The schedule has assumed receipt of NTP between December 02, 2018 and December 16, 2018 in order to proceed with the design development phase, submittals, acceptances etc.
- Once NTP is received and initial design development has progressed, construction is set to commence with temporary widening of the mainline SB laneways on August 28, 2019 and be completed prior to the 2019 seasonal suspension. These works are crucial due to the construction start of the first quadrant being contingent on the mainline widening. This is consistent with the widening that is scheduled of the NB lanes in 2021; 2022 quadrant works are contingent on the widening completion the year prior.
- Once the project schedule transitions into quadrant works, the initial switching of traffic, demolition
 of existing structures, temporary pavement, markings, signage and barriers are critical due to the
 time specified in which they need to be completed. The schedule includes 18 working days to
 complete the switch in order to allow quadrant works to proceed and be able to complete them on
 time with no float, thus representing a critical activity that occurs each year of the D&C Project term
 post seasonal suspension.
- Being that the Project Works are defined by annual completions, achieving completion of all required works leading into the PA mandated Seasonal Suspensions are the most critical as it's the foundation of the schedule and success in completing the Project on-time. There are four (4) Seasonal Suspensions throughout the term, the last being the most critical as to allow full work force to be designated for the NE quadrant in 2023.

The Tunnel and Pump activities are completely independent from the critical path and can happen concurrently given their physical isolation from one another on the site, which has been scheduled accordingly. Tunnel and Pump construction will progress from North to South and while the mainline I-75 works will progress from South to North, ultimately passing each other at the I-696 interchange.

8.4.7 DESIGN DEVELOPMENT

As discussed in Section 7.1, the Consortium (and by extension the DB LLC) is required to submit design and construction documents at varying stages of completion. In development of their technical submission, the Consortium's design will be developed at a late-stage schematic design level in addition to an initial Site Development Plan already having been submitted for County's review and approval.



The DBLLC have denoted initial activities such as Project Work Initiation (kick-off) Meeting, Design Initial Meetings and Concept Meetings. Project activities, including the Drainage and Pump Station Construction Documents have then been scheduled around the following mandatory design submission requirements:

- Preliminary Design Submittals (30%);
- Pre-Final Design Submittals (70%);
- Final Design Submittals (100%) and
- Released for Construction ("RFC") Submittals.

As mandated by Schedule 17, Article 8, Section 8.7.2 of the PA (referenced in Section 7.1), Submittals provided by the Developer to MDOT consist of the following types and required review dates:

 Submittals for review and comment – MDOT has 14 days to respond (includes response of review with no comments, review with comments, resubmittal not required, reviewed with comments, resubmittal required)

Submittals for approval – MDOT has 21 days to respond (includes approve, approved as noted with resubmittal not required, approved as noted and resubmittal required, revise and resubmit or rejected)

Sixty-six (66) calendar days have been allocated to the complete design and acceptance of the 30% submittals, sixty-two (62) calendar days for the 70% submissions and fifty-four (54) calendar days for design and acceptance of the RFC plans. In review, the Consortium has allocated one (1) additional 21-day resubmission allowance for each design submittals following their initial submission which, in our opinion, is appropriately conservative and has been allocated sufficiently.

The allocated days for design gradually decrease after each design submittal, which is considered reasonable since the design development is substantially progressing in each phase and given commentary will direct the design more and more. Therefore, scheduling wise, the allocated time provided is appropriate in WT's opinion.

8.4.8 PERMITS AND APPROVALS

Scheduling of, obtaining and managing permits is a large and important undertaking for the success of the I-75 Modernization Project, Segment 3 as noted in the above Report Section 7.2. Obtaining these permits prior to construction (as noted in Section 8.4.3) have been designated within the proposed 2018-2019 work, though continued validity is required until completion.

The Draft Interim Schedule designates sixty-two (62) calendar days for Governmental Approvals and Permits, this is understood to be inclusive of Municipality Permits, MDEQ and the OCWRC permit.

The Municipality permits pertain to Royal Oaks, Madison Heights and Hazel Park within the Oakland County vicinities. They have regulatory authority over the Project pertaining to road, ramp and lane closures and detours. The Developer understood to be responsible for obtaining and complying with Third Party and Utility Owner approvals and permit, which includes permissions from local property owners. DBLLC has experience in working with these Municipalities and are familiar with the permit turn around time, which they project to receive approval within one (1) week upon submittal.

The Draft Interim Schedule's allocated dates is inclusive of this program which is noted to obtain both a MDEQ permit and the OCWRC permit. DBLLC projects it will take approximately 180 days maximum from NTP to proceed through the approval process of their soil erosion design with MDOT, which inevitably will

allow them to submit their plans for MDEQ permit. They propose to complete this process within the Financial Close phase and so will be included in the designated 2018-2019 works, therefore is proposed to have little impact to the Schedule. The OCWRC permit is for the ability to review plans and conduct inspections while the DBLLC is working within soil erosion conditions, which directly correlates to the pump station, shaft and tunneling works. Again, within the experience of working within Michigan and obtaining these permits previously, they project to receive issuance within one (1) week.

8.5 PROJECT MILESTONES REVIEW

8.5.1 NOTICE TO PROCEED (NTP)

Prior to NTP, the Developer is required to perform all work required to achieve Financial Close and NTP. Except for these activities, Developer is not to start any Project Work before the NTP. If the Developer does any work if will be at their sole risk and expense but in no case are they allowed to commence any Construction Work. MDOT has a maximum of 15 days to issue NTP upon satisfaction of the following conditions:

- All conditions of Financial Close have been met. Items that must be provided before Financial Close that are not strictly financing related include:
 - Key Subcontracts provided required by PA <u>Section 3.5;</u>
 - Submittals of drafts of the sub-plans of the Project Management Plan (PMP) that are required to be approved by NTP, as detailed below;
 - MDOT approved Final Interim Schedule, which is the final version of the schedule submitted with the proposal;
 - Certification from a Qualified Insurer that all required Insurance Policies are in place;
 - Documentation of each required D&C Performance Security (performance and/or payment bonds); and
 - MDOT approved DBE Performance Plan (sub-plan of the PMP).
- Provision to MDOT of evidence that all pre-construction requirements in the NEPA Approval or any other Government Approval have been met;
- MDOT has approved the following Sub-Plans to the PMP: Project Administration, Design Management, Interim Maintenance, Design Quality Management and Safety;
- MDOT has approved the Developer's Video Inspection Report;
- Developer has provided all Governmental Approvals immediately necessary for the D&C Work and Interim Maintenance Work; and
- Developer has no uncured notice of Default from MDOT or any Lender and no Lender has indicated it is unwilling or unable to fund the Developer's costs for executing the Project Work.

Depending on the Developer's Schedule, other than Financial Close which must be achieved no more than 45 days after Commercial Close, the critical items to meeting the NTP requirements appear to be achieving the pre-construction requirements and Governmental Approvals as well as the PMP approvals. Given that MDOT has a 21-day initial review of the PMP Sub-Plans and that the above listed Sub-Plans must be approved prior to NTP (and the DBE prior to Financial Close), it is important that an effective plan for successful approval of these submissions be prioritized and effectively implemented.



8.5.2 COMPLETION MILESTONES

There are four Completion Milestones provided within the Agreement which generally follow a similar process for certification by MDOT. As noted previously, these milestones are tied to monetary payments from MDOT.

The Developer is required to notify MDOT in 120 days in advance and then again 30 days prior to the date it expects to achieve each Completion Milestone. As detailed in PA Section 15.2, when the Developer considers it has achieved a Completion Milestone it will provide a notice, request the applicable completion certificate and provide Punch List items and their cost. MDOT then has a maximum of 21 days to inspect and respond; the response must be no more than 10 days after the actual inspection. The response options are to either issue a completion certificate along with remaining Punch List items and other requirements for Final Acceptance OR list remaining work to achieve the milestone or state too much work remains to list. If the milestone is not complete, the Developer will give notice to MDOT when the remaining work to achieve the Completion Milestone is finished and the previous process starting with the 21 day is in effect, which is understood to apply in both instances when MDOT has listed remaining work and have indicated the work was too extensive to be listed. MDOT is entitled to raise any items not in compliance with the Agreement for a particular Completion Milestone as the basis for determining it has not been achieved. If a disagreement arises between the parties on whether a Completion Milestone has been achieved and any related specifics, the Agreement provides that the parties will first meet to resolve and if not successful will apply the Dispute Resolution Procedures of Schedule 15.

While it has been common to see the services of an independent engineer engaged for the certification of the works and milestones on social infrastructure projects, WT understand that it is common practice for MDOT, and DOT's in general to undertake this work in house. Should a dispute arise during certification, we would expect there to be recourse via DRB to escalate the matter for independent resolution.

The four specific Completion Milestones and their criteria for completion are detailed below. The Milestone Payments to be received upon completion are provided in Report Section 5.2.2.

Milestone 1 Completion

Milestone 1 Completion: requires the Tunnel Boring Machine ("TBM") to be in place ready to mine and MDOT has approved the following for the Storage and Drainage Tunnel ("SDT"): final geotechnical report, final design, a preliminary arrangement plan for all SDT appurtenances as well as shop drawings for the TBM, a subsurface methods plan for the tunneling activities and the Final Construction Impact Assessment and associated report. Further, the Advance Notice of Tunnel Excavation has been submitted, TBM has been shown operational and facilities necessary for liner installation and soil modification are operational.

Milestone 2 Completion

Milestone 2 Completion entails completion and turnover of the tunnel and pump station. The general requirements of this milestone comprise completion of the STD and all appurtenances along with satisfaction of the following conditions:

- the SDT meets performance criteria;
- all Submittals have been approved by MDOT;
- surface drainage and pump station are complete and accepted; and
- all other conditions precedent has been met.



In addition to the standard Completion Milestone requirements listed above, this milestone also requires compliance with additional specifics listed in PA <u>Section 14.7</u> (Completion and turnover of Tunnel and Pump Station). A summary of these requirements includes:

- compliance with the third-party agreement with MDOT and Oakland County Water Resources Commissioner ("OCWRC");
- notice to MDOT and OCWRC not less than 10 days before the expected date to achieve Milestone 2; and
- Milestone 2 Completion Inspection with OCWRC and MDOT allowed access to the Project ROW for inspection up to 10 days after completion.

If Milestone 2 has not been achieved, the re-inspection will follow the same process as the original. As soon as the Milestone 2 Completion notice if received, the Develop will turn over the Tunnel and Pump Station operations to OCWRC.

Milestone 3 Substantial Completion

Substantial Completion represents the most critical milestone on the Project and constitutes the transition from the D&C Term to the Maintenance Term. The key requirements are listed as follows:

- the D&C Work is complete and meets performance requirements except for Punch List items;
- Punch List items from Milestones 1 and 2 have been completed;
- All required Submittals required by the Project Management Plan or Project Documents have been submitted and approved by MDOT;
- All required insurance policies for the Maintenance Term are in place;
- The Maintenance Performance Security (Maintenance Payment Bond and/or Security equaling 25% of the Maintenance Contract Price and subject to further conditions as outlined in PA Section 13.3) has been delivered to MDOT;
- Developer has received (and paid for) all required Governmental Approvals and third-party arrangements required for the Maintenance Work;
- There are no uncured Developer Defaults;
- Any certificates required by Governmental Entities relating to design, engineering or construction have been issued by the relevant architects/engineers of record (if required); and
- All manufacturer warranties required under PA Schedule 17 have been delivered to MDOT.

The above requirements are considered consistent with P3 market precedent for Substantial Completion in North America and do not pose any undue risk or obligations on the Developer. As previously indicated, the deadline for Substantial Completion will be set by the Proposal Schedule but in no case will be more than 1,826 days after Financial Close (Substantial Completion Deadline). Should there be delays, the Long Stop Date is twelve months after the Substantial Completion Deadline. PA Section 14 provides for detailed turnover instructions upon Substantial Completion for the following specific circumstances. All other provisions required for achieving Completion Milestones still apply.

• Freeway Lighting Work - As part of the Substantial Completion process, there is a specific requirement in PA Section 14.8 for the Completion and Turnover of the Freeway Lighting Work. This is somewhat of a "sub-milestone" as all Substantial Completion requirements apply but these elements must be separately addressed. As discussed in the Project Overview, the P3 Lighting Contractor has the obligation maintain the mainline lighting on I-75. At the time they are reaching completion of the Freeway Lighting System (all lighting elements on I-75 Segment 3), the Developer



is required to provide MDOT and the PLC not less than 10 days prior Notice of the expected Substantial Completion date. Developer will then allow the PLC and MDOT access to the Freeway Lighting Work during that period. Upon reaching completion, a second notice will be provided and for up to an additional 10 days, MDOT and the PLC will inspect the work. At the end of that period, MDOT will provide notice of completion or a listing of the remaining work in order to achieve the Freeway Lighting Work Completion. If additional work remains, the same inspection provisions listed above will apply to any re-inspection.

After Substantial Completion, the maintenance of the mainline Freeway Lighting Work (which excludes some elements of the Freeway Lighting System) will be the responsibility of the P3 Lighting Contractor. Therefore, given that a third party has contractual obligations for maintenance, it is possible that their inspections of the Freeway Lighting System will be exceptionally thorough. The Draft Interim Schedule notes the Lighting to be completed in two phases, the last ending August 17, 2023 which provides a fourteen (14) calendar day buffer until Substantial Completion on August 31, 2023. Providing an earlier completion date of the Lighting is to provide sufficient time for required inspections and enough time for rectification if need be. Of course, this is dependent on the inspection findings.

• Non-Maintained Facilities - Completion of Non-Maintained Facilities is one of the conditions precedent to Substantial Completion. Those are described in Schedule 17, Article 2.4 and listed in the Project Scope Report Section 3.4. The Facility Owners must be allowed access to inspect these facilities and they will be handed over upon Substantial Completion.

Milestone 4 Final Acceptance

Milestone 4 Final Acceptance requires that the balance of the D&C Work not completed as part of Substantial Completion has been completed including the Punch List, required inventory and equipment for maintenance have been obtained, As-Built Drawings provided and all other conditions precedent to Final Acceptance completed. The maximum deadline for Final Acceptance is six months after Substantial Completion. PA Section 16 provides that the same Completion Milestone provisions listed above apply except that MDOT has 15 days after inspection to certify Final Acceptance or provide a listing of the remaining work.

8.5.3 CONCLUSIONS

Each P3 project is unique in their milestones. WT considers the milestones reviewed here to be generally consistent with similar U.S. P3 agreements that involve handover of facilities to other parties other than the project owner.

9.0 CONSTRUCTION COST REVIEW

9.1 PROJECT COST ANALYSIS

As has been discussed, the delivery of horizontal infrastructure projects under a P3 model has been repeatedly utilized. Through this historical propensity for P3 delivery of this type of asset, WT have been able to utilize past project information for the purpose of undertaking a comprehensive benchmark analysis of the Consortium's proposed D&C Costs for the Project.

In addition, we have elected to interrogate individual unit rates for the various scopes of work presented by the Project Team Members in contrast with MDOT Historical Average Unit Rates to round out our review and enable a more holistic analysis.

As can be seen subsequently through this Section 9, comparative costs of individual project elements such as Highway Structures, Roadworks and Earthworks, Utilities, ITS/Electrical, etc. have been presented. WT comparative benchmarks will represent a significant portion of works associated with the various project elements, whereas individual unit rate interrogation will provide a more granular level of detail and analysis. We feel this two-pronged approach will provide further confidence in budget and market coverage adequacy than may be possible through an otherwise singular review.

For greater clarity, WT have elected to omit certain elements or costs from our benchmarking exercise, and any such items have been highlighted and discussed subsequently. One example of this with particular importance is those costs associated with the Tunneling works. WT have opted to review these costs on their own, separate from influence of other cost components to ensure we are able to satisfy ourselves of the adequacy of these costs proposed by the Consortium.

Through undertaking our cost analysis through the steps identified above, we will enable ourselves to define a reasoned cost position for the delivery of the Project.

I75 - SEGMENT 3 Cost Summary				
MI75C - Management	\$78,794,425			
MI75C – Maintenance During Construction	\$12,018,916			
Civil Works - Mainline	\$71,562,969			
Civil Works - Service Drives	\$11,373,612			
Civil Works Paving - Temporaries	\$9,736,812			
Drainage	\$21,763,940			
Pavements	\$47,349,367			
Bridges and Retaining Walls	\$172,162,091			
Tunnel	\$138,850,000			
Pump Station	\$11,331,328			
ITS-Freeway Lighting	\$11,207,784			
Sound Walls	\$23,793,467			
Pavement Markings	\$4,331,863			
Permanent Signage	\$2,015,017			
Other Works	\$12,953,764			
TOTAL	\$629,245,356			

Table 12 - Cost Summary



9.2 BENCHMARK ANALYSIS

WT have compiled a schedule of benchmarked rates for individual project elements. These benchmark costs are from previous highway construction projects delivered in North America. Costs from these projects have been escalated to reflect current day costs which will enable calculation of weighted aggregated rates for benchmarking purposes. Furthermore, analysis of the Consortiums costs has been provided, including comments on the relationship of the Consortium's current cost estimate and how it correlates to the benchmark exercise.

The WT recommended rates are, however, a useful guide to assess whether the Consortium's rates for both direct and indirect costs are within market-related norms in a competitive tendering environment.

Project ID	Highway Structures (Cost/SF)	Earthworks and Roadworks (Cost/Lane Mile)	Utilities (Cost/Lane Mile)	ITS/Electrical (Cost/Lane Mile)	Demolition (Cost/Lane Mile)
Project 1	\$102	\$2,113,927	\$174,165	\$513,483	\$1,101,923
Project 2	\$475	\$1,165,391	\$442,852	\$75,698	\$10,229
Project 3	Unknown	\$4,047,346	\$275,955	\$2,196,145	\$109,232
Project 4	\$254	\$3,674,965	\$31,144	\$487,117	\$373,725
Project 5	\$320	\$2,452,440	\$0	\$0	\$0
Project 6	\$692	\$1,110,205	\$11,549	\$140,215	\$29,126
Project 7	\$16	\$974,357	\$299,175	\$0	\$0
Project 8	\$247	\$10,472,249	\$1,627,928	\$0	\$0
High	\$692	\$10,472,249	\$1,627,928	\$2,196,145	\$1,101,923
Low	\$102	\$974,357	\$11,549	\$75,698	\$10,229
Average	\$349	\$3,251,360	\$408,967	\$682,531	\$324,847
I-75	\$480	\$3,093,875	\$601,732	\$203,778	\$366,076

Table 13 - Benchmark Summary

As with any benchmarking process, there are elements of the sample data which may skew the results, however we believe the information above provides confidence in our assessment of costs associated with the various elements. A review of the various components identified above in our benchmarking analysis has been included below to further understand the driving factors behind key variances.

9.2.1 HIGHWAY STRUCTURES

Costs presented by the Consortium associated with Highway Structures fall well above the benchmark sample projects, however we note that Sample Project 7 represents a significant outlier in contrast with the other samples. As such, we have opted to exclude this from the determination of our cost opinion pertaining to Highway Structures.

As can be seen from the historical benchmarks, there exists a significant range associated with the construction of highway structures. There are a number of factors which may impact the cost of this construction, including the type, aesthetics, materials used and material availability, building conditions, schedule constraints, and so on.



Nonetheless, we note that the costs included in the Project Budget fall within the range of benchmark data, and specifically at the higher end of these samples. This provides an element of confidence in the sufficiency of the budget for this work in contrast to comparable projects.

9.2.2 EARTHWORKS AND ROADWORKS

While factors such as existing grade, alignment, substructure and the like may have an impact on the overall cost buildup of the Earthworks and Roadworks scopes, the construction itself as well as the corresponding methodology are relatively typical in this type of construction, and we believe has been represented through our benchmarking exercise.

With the Consortium's proposed Earthworks and Roadworks budget falling comfortably within the range of comparable sample benchmarks, we are provided confidence that the allocated funds are not just indicative of market standard but are sufficient for the delivery of this work.

9.2.3 UTILITIES

We commonly expect the cost of utilities associated with highway development to be largely influenced by the circumstances in which the work is being undertaken. For example, a highway which runs through a rural setting, generally constructed at grade will require little to no utility infrastructure, as drainage is generally achieved through bioswales and grading rather than designated utility construction.

Contrary to this, when we see this type of development in an urban setting with depressed alignments, there is significantly more stormwater management. In this instance, you will also commonly see pump stations to bring the collected water up and to be discharged into the municipal system.

As is expected, these varying conditions will have a drastic impact on the cost associated with utility infrastructure, as can be seen in the table above. However, we note that the budget associated with utilities specific to this project are consistent with the range of benchmark samples, being slightly above the noted average. This is considered appropriate as we have incorporated the noted drainage budget along with the pump station costs into the "Utilities" line item for the Project. If we were to strictly compare the drainage budget noted in the DB Contract Price against the benchmark sample, the costs would be within less than 5% of the average. Given the Utilities scope on the Project, and the fact that a material portion of the drainage will be conveyed via the storage and drainage tunnel (carried under as separate budget), we feel this to be reasonable cost allocation for the delivery of this work.

ITS/Electrical

Similarly, to Utilities discussed above, ITS and Electrical infrastructure costs will be driven by the condition in which the development is being undertaken. While there may be little to no need for items such as lighting and signage in a rural setting, these are a crucial component of the project when building in an urban landscape. With ITS and Electrical costs falling in the mid to lower end of the sample benchmarks displayed, while also bearing in mind the scope of the work relative to this project (due to the minimal ITS work and pre-existing streetlighting), we believe the ITS and Electrical budget to be reflective of market standard for this type of application.



9.2.4 DEMOLITION

While this project reflects a relatively demolition-heavy scope of work, this can often vary based upon the individual requirements of any given project. This can be seen from the benchmark samples above, in which three of eight samples had no element of demolition. Bearing this in mind, however, we do note that the budget set forth by the Consortium for the costs associated with demolition are once again falling in the middle of those displayed in our sample projects. On this basis, we are able to surmise that this is within a reasonable range of market standard for this type of work and that this will provide the CJV adequate resources for this scope of work.

9.3 DESIGN-BUILD CONTRACT COST REVIEW

9.3.1 UNIT RATE INTERROGATION

As discussed above in Section 9.1, WT have conducted an interrogation of individual unit rates to provide a further stress-test of the budget figure provided by the Consortium and their individual sub-contractors. This granular detail allows us to review costs for specific large-value line items included within the Project Budget which generally comprise the bulk of the cost of the work.

A summary of these high-value line items has been included below, with Average Award Price unit rates as published by MDOT included for comparative purposes. In each instance, we have interrogated the top ten high-value line items to provide the basis of our opinion.

DAN'S EXCAVATING		Contract Value \$222,5				
Description	Quantita	11-16	Conso	rtium	MDOT Average Rate	
Description	Quantity	Unit	Unit Price	Extension	Unit Price	Extension
Ground Anchor, Perm	1271	EA	\$9,638	\$12,250,051	\$10,000	\$12,710,000
Open-Graded Dr Cse, 16 inch	817517	SYD	\$15	\$12,042,025	\$16	\$13,170,199
Mobilization - Road	1	LS	\$11,185,000	\$11,185,000	Defined	\$11,185,000
Noise Wall, Panel	419499	SFT	\$27	\$11,133,503	\$20	\$8,482,270
Excavation, Earth	983928	CYD	\$11	\$10,951,119	\$7.57	\$7,448,335
Structural Steel, Plate, Furn and Fab	4855200	LB	\$2.12	\$10,293,024	\$1.64	\$7,962,528
Mobilization-Bridges	1	LS	\$9,400,000	\$9,400,000	Defined	\$9,400,000
Substructure Conc, High Performance	15683	CYD	\$494	\$7,749,911	\$252	\$3,952,116
Soldier Pile	44783	FT	\$167	\$7,471,148	\$132	\$5,911,356
Reinforcement, Steel, Epoxy Coated	3568570	LB	\$1.46	\$5,210,112	\$1.12	\$3,996,798
Mobilization - Sound Walls	1	LS	\$4,880,000.00	\$4,880,000	Defined	\$4,880,000
Pavt, Rem	696375	SYD	\$6.89	\$4,798,024	\$6.82	\$4,749,278
Noise Wall, Drilled Shaft, 42 inch Dia.	14867	FT	\$308	\$4,581,266	\$241	\$3,582,947
Total Value of Unit Rates		50%		\$111,945,183		\$97,430,827

XALA			\$52,213,995			
	0		Cons	ortium	MDOT Average Rate	
Description	Quantity	Unit	Unit Price	Extension Unit Price	Unit Price	Extension
Conc Pavt, Nonreinf, 11 inch, High Performance	355817	Syd	\$45	\$15,833,857	\$51	\$18,274,761
MOBILIZATION	1	LS	\$7,900,000	\$7,900,000	Defined	\$7,900,000
Conc Pavt, Nonreinf, 10 inch, High Performance (Service Drive)	160946	Syd	\$48	\$7,725,408	\$49	\$7,833,242
Shoulder, Nonreinf Conc, High Performance	102516	Syd	\$45	\$4,613,220	\$34	\$3,490,670
Joint, Contraction, Cp, Modified	237744	Ft	\$15	\$3,542,386	\$12	\$2,762,585
HMA, Temp Pavt (3E3)	13535	Ton	\$116	\$1,570,060	\$12	\$162,420
Joint, Contraction, Cp, Modified (Service Drive)	106124	Ft	\$15	\$1,591,860	\$68	\$7,216,432
High Friction Surface Treatment	80558	Syd	\$19	\$1,530,602	\$21	\$1,651,439
HMA, Temp Pavt (5E3)	8693	Ton	\$141	\$1,227,886	\$74	\$643,282
HMA, Temp Pavt (4E3)	7769	Ton	\$131	\$1,013,855	\$79	\$613,751
Total Value of Unit Rates		89%		\$46,549,133		\$50,548,582

Table 16 – CA Hull Cost Review

HULL		Contract Value				
Description	Ouantity	Unit	Conso	ortium	MDOT Average Rate	
Description	Quantity	Unit	Unit Price	Extension	Unit Price	Extension
Substructure Conc, High Performance	41087	Cyd	\$710	\$29,171,770	\$383	\$15,756,454
Structures, Rem (S01)	1	LSUM	\$4,950,000	\$4,950,000	Lump Sum	\$4,950,000
Reinforcement, Steel, Epoxy Coated	6718766	Lb	\$1.35	\$9,070,335	\$1.03	\$6,920,329
Superstructure Conc, Night Casting, High Performance	7274	Cyd	\$235	\$1,709,390	\$332	\$2,414,895
Texturing Conc	28495	Syd	\$75	\$2,137,125	\$100	\$2,849,500
Prest Conc Bulb-Tee Beam, Furn, 48 inch by 49 inch	5431	Ft	\$325	\$1,765,075	\$205	\$1,113,355
Superstructure Conc, Form, Finish, and Cure, Night Cast	1	LSUM	\$1,275,000.00	\$1,275,000	Lump Sum	\$1,275,000
Structural Steel, Plate, Furn and Fab	774000	Lb	\$1.70	\$1,315,800	\$1.28	\$990,720
Total Value of Unit Rates		59%		\$51,394,495		\$36,270,253

As can be seen through the above, the costs presented by the various DBJV team members are generally reflective of the Average Award Price published by the MDOT and echo our benchmarking review above that the works fall within a reasonable range of average market pricing.



9.3.2 SOFT COST INTERROGATION

Soft Costs on the Project are generally inclusive of items such as Insurance and Bonding, Permits, Quality Assurance and Control, Site Security and other Job Site Costs, as well as Fees for the work.

While we note that Soft Costs for the Project are relatively low, comprising only 14% of the overall Project Budget, we feel this is justified. With a Consortium consisting of DBLLC team members who are self performing the work, the level of oversight required from any one party can be reduced to allow for optimization of resources.

Further, WT understand that, given the DBLLC's status in the MDOT market around the project site, it is expected that they will have the ability to combine and share resources in and effort to control soft costs associated with the management and construction process. Again, further substantiating the competitive soft cost budget presented.

9.3.3 KEY SUBCONTRACTORS

With critical key scopes of work such as Highway Structures, Tunneling, Earth and Roadworks (which comprise approximately 94% of the overall D&C Costs) being self-performed by members of the CJV, there is significant confidence in the developing budget that is not generally available in most agreements with one primary DB Contractor. This has been further highlighted in the table below:

CONTRACTOR	CONTRACT VALUE	% SELF- PERFORMANCE	% SUBCONTRACTED
MI75C	\$90,813,341	14.4%	
DANS	\$220,838,462	35.1%	
AJAX	\$52,213,995	8.3%	
JAYDEE	\$138,850,000	22.1%	
HULL	\$87,176,667	13.9%	
AUDIO-VISUAL SUB	\$132,400		0.0%
STAKING SUB	\$4,150,000		0.7%
PERM SIGN SUB	\$2,015,017		0.3%
PAVT MRKG SUB	\$4,331,863		0.7%
BARRICADE SUB	\$4,129,184		0.7%
GUARDRAIL SUB	\$1,201,606		0.2%
CURB-MISC CONC SUB	\$6,470,006		1.0%
FENCE SUB	\$6,927,654		1.1%
PLANTING SUB	\$4,529,842		0.7%
SURFACE SEALER SUB	\$4,057,436		0.6%
CLEARING SUB	\$611,085		0.1%
SEWER VIDEO SUB	\$428,882		0.1%
SEEDING SUB	\$367,915		0.1%
TOTAL	\$629,245,356	93.7%	6.3%

Table 17 - Self Performed and Subcontracted Works Summary



We understand that Dan's, Ajax, Jay Dee and CA Hull have continued to refine their cost estimate as design documents progressed and bid submission drew nearer. With this constant input into items which comprise approximately 94% of the cost of the project, we are confident that significant cost overruns can be avoided during the implementation of the work.

9.4 TUNNELING COST REVIEW

As previously discussed, through our initial cost review it became apparent that the scope of work associated with the tunnel construction was atypical to those we have commonly seen. As such, we have elected to assess this work independently to demonstrate where the budget falls within a range of historical projects.

9.4.1 INDEPENDENT TUNNEL BENCHMARKS

WT have researched other projects we have encountered which were representative of the conditions and methodology being implemented on the I-75 Segment 3 Project. A summary of our findings for these have been included in the table below.

Project	Сарех	Project Length	Cost/Mile (Millions)	Tunnel Diameter	Equipment	Geology
Project A	\$114,325,200	1.68	\$68.05	15.4'	Mixed/Slurry	Unknown
Project B	\$682,216,821	9.13	\$74.72	23.3'	Mixed/Slurry & EPB	Unknown
I-75	\$138,850,000	3.98	\$34.889	14'	NPF TBM	Glacial Tills

Table 18 – Independent TBM Benchmarks

While it can be seen from the above that the current \$Million/Mile presented by Jay Dee for the Project is below what has been seen on other projects, we note that the differing tunnel diameter and equipment are likely the key driving factors behind this.

Furthermore, while we do not have geological information for the two reference projects, it can be inferred that the soil conditions differ from the I-75 Segment 3 Project based upon the differing equipment used. On this basis, we have opted to conduct a review of several more closely related projects, and specifically those completed by Jay Dee.

9.4.2 JAY DEE TUNNEL BENCHMARKS

We have completed an analysis of several projects delivered by Jay Dee Contractors. By assessing comparable projects successfully delivered by the contractor performing the work, we can view how the budget for this project compares to those previously completed.

To ensure an "apples-to-apples" assessment of the Cost/Mile analysis, we have included relevant background information pertaining to Equipment and Geology of the individual projects which have the potential to impact the project cost.



Table 19 – Jay	/ Dee TBM Benchmarks					
PROJECT	CAPEX	PROJECT LENGTH	COST/MILE (MILLIONS)	TUNNEL DIAMETER	EQUIPMENT	GEOLOGY
Project 1	\$496,700,000	6.99	\$71.06	18'-10"	EPB TBM	Glacial Tills
Project 2	\$163,821,041	1.48	\$110.69	18'-10"	EPB TBM	Glacial Tills
Project 3	\$184,334,566	8	\$23.04	16'	Main Beam (MB) TBM	Limestone > 10,000 psi
Project 4	\$109,514,681	3.84	\$28.52	14'	ЕРВ ТВМ	Glacial Tills
Project 5	\$202,820,000	5.85	\$34.67	13'	ЕРВ ТВМ	Glacial Tills
Project 6	\$50,455,739	4.85	\$10.40	13'	Sewer rehabilitation	N/A
Project 7	\$154,700,000	0.51	\$303.33	20'	ЕРВ ТВМ	Clay, sand & silt
Project 8	\$327,390,000	4.54	\$72.11	23'	ЕРВ ТВМ	Clay, sand & silt
I-75	\$138,850,000	3.98	\$34.89	14'	NPF TBM	Glacial Tills

As can be seen from the above, Jay Dee have been involved in several quite comparable projects requiring the drilling of varying tunnel diameters and equipment types.

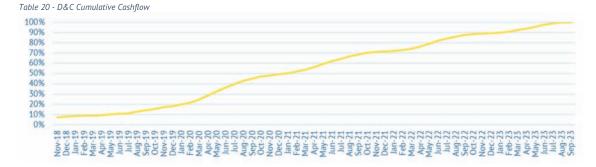
As noted in the table above, the current mandate will require the use of a Non-Pressurized Face ("NPF") Tunnel Boring Machine ("TBM") for the drilling of a 14' Diameter Tunnel, which as been selected as the Consortium notes this type allow for easier obstruction removal. In addition to this, the Geology of the Project Site is generally consistent of Glacial Tills.

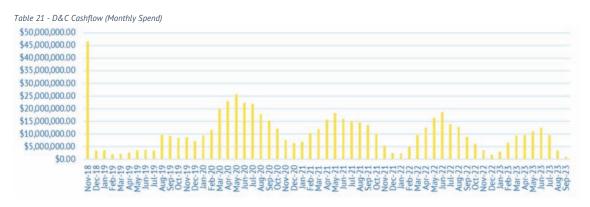
For comparative purposes, we have highlighted Project No. 4 and 5, which we believe to be most reflective of the I-75 Segment 3 Project, as the tunnel diameter, equipment type, and site geology are all relatively consistent.

Upon reflection of this, we can see that the Cost/Mile for the current mandate is slightly above those associated with both Project No. 4 and Project No. 5. Based upon this, we can opine that the budget associated with the tunnel scope of the Project is not only sufficient for the successful delivery but is reflective of those associated with similar projects delivered by Jay Dee.

9.5 CONSTRUCTION CASHFLOW ANALYSIS

WT have received and reviewed an indicative construction cashflow from the Consortium for the Project, which we have summarized in the following tables showing total cumulative and monthly expenditures commencing on Financial Close and ending on Substantial Completion.





As seen in the above analysis, the cashflow curve runs the duration of the design and construction period commencing with an initial peak in month one which will correspond with the initial financial closing costs such as bonding and insurance.

On site construction activities are expected to commence in August 2019 and ramp up in Spring 2020, as has been reflected in the cashflow above. Monthly expenditures remain relatively consistent during the course of the works at an average monthly spend ranging from \$5,000,000 at the low points to upwards of \$20,000,000 during the peak periods. Generally, peaks occur in summer months where the greatest volume of works will be ongoing, with troughs occurring in the winter months. This is reflective of the phased nature of the works and the Seasonal Suspensions of the mainline I-75 as required under the PA.

WT note the high point in the construction expenditures occur in Summer 2020 and Summer 2021. This is reflective of the significant amount of bridge structure and tunneling works (tunnel launch occurs at the beginning of Spring 2020) works throughout this period, in addition to the ongoing roadway works to the SW and SE quadrants. WT consider this cashflow peak to be reasonable given the level of high value materials, equipment and high cost trades on site across the Project.

The cashflow sees additional ramps-ups in Spring/Summer of 2022 and 2023 consistent with works to the NW and NE Quadrants prior to reaching Substantial Completion in August 2023.

The general cashflow curve is reflective of the natural work progression contemplated in the schedule as it pertains to value of work. Based on the above analysis and the monthly spend we believe this cash flow is reflective of planned construction activities and more importantly, not unduly ambitious.

9.6 CHANGE ORDER PROCEDURE

Schedule 9 (Change Procedure) provides the following specifics related to changes.

9.6.1 MDOT CHANGES

MDOT has the right to require a Change by a Change Order or Work Order. A Change is defined as a change to Schedule 17 (Technical Requirements) and generally any addition, decreased, omission, deletion, removal or modification. However, the Developer is not obligated to perform any material change except on mutually agreeable terms. A Change Order means a written order from MDOT in accordance with Schedule 9 (Change Procedures) directing the Developer to make a Change and modifies the Agreement to address the relevant changes.



The PA specifies that Changes are not permitted to alter the contract so that it is either no longer to design, build, finance and maintain as described in the RFP or if the D&C contract amount would be reduced by more than 10% by all change orders. PA Section 6.4.4 does provide that MDOT may, in its sole discretion, deliver a Request for Change Proposal within 180 days following Commercial Close, incorporating Alternative Technical Concepts contained in proposals submitted by unsuccessful proposers.

Work Orders

MDOT has the right to issue a Work Order with respect to any change or in the event of a Dispute regarding the scope of the work. The Work Order will provide a written description and state that it either falls within the original scope of work or direct the Developer to implement an MDOT Change. If the latter, MDOT will state with any Extra Work Costs payable and any extension of time to the Substantial Completion or Final Acceptance Deadline. While the Developer must proceed immediately to implement the change, they have the opportunity to request a Change Order if they disagree with MDOT's assertion that a Work Order is base scope. A failure to reach agreement would be resolved via Dispute Resolution Procedure.

MDOT-Directed Change Orders

MDOT may issue a Request for Change Proposal detailing the proposed MDOT Change. Within 5 days, MDOT and the Developer will consult to define the scope and then after an additional 5 days, the parties will consult on the estimated financial, schedule and other impacts. Within 20 days of the original MDOT request, the Developer will provide a detailed Change Response (which is not considered Extra Work).

While we note the Developer is not able to recover costs for the preparation of change estimates, we would expect that these costs would be folded into any executed change order. In the instance of cancelled change orders, we would expect the majority of these costs would be passed down to the DBLLC who would be responsible for the preparation of the majority of the cost preparation, insulating the Developer from such incurred costs.

The Change Response must include the Developer's opinion on whether it is a compensable event or Force Majeure Event. If so, any extension of time or cost must be separately claimed in accordance with appropriate PA Sections 24-26 related to Delay Events and Relief Events (as further described in Report Section 5.2.4).

The detailed items that must be included in the Change Response are detailed in Schedule 9, Article 1.4 and include all necessary activities, schedule impact, a detailed estimate of any cost savings or Extra Work Costs, and Maintenance Work impact along with other required information. After submission, the next step is to negotiate in good faith a reasonable cost, the timing and method for payment and other details. MDOT may also modify or abandon a contemplated MDOT Change based on the response received.

If agreement is reached, MDOT will issue a Change Order. If the parties are unable to reach agreement, MDOT, in its sole discretion, may resolve through Dispute Resolution without issuing a Work Order or deliver a Work Order directing the Developer to proceed with the work.

MDOT will be responsible for any Extra Work Costs associated with a Change. If there is a decrease in scope, MDOT is entitled to 100% of any net cost savings including financing costs whether during the D&C Term or Maintenance Term plus 100% of any shortening of the schedule.



The process for MDOT Change Orders is considered mechanically consistent with past precedents in the North American P3 market, albeit presented in a slightly atypical format which is likely structured around MDOT's own internal processes.

9.6.2 DEVELOPER INITIATED CHANGES

The Developer has the right to propose a change by issuing a Change Request that is a written request to a change the character, quantity, description, scope or location of any part of the Project Work or any other modification or deviation to the Agreement. The Change Request must contain the same content as outlined for a Change Response in Schedule 9 Section 1.4.2 and summarized above. MDOT has the sole discretion to either accept or reject any such request. If accepted, a Change Order will be executed but the Developer is not entitled to any increase in costs or time extensions for such a change and they will be liable for any incremental increase in MDOT's costs. If the Change Request involves savings, MDOT will be entitled to 50% of the savings. Certain minor changes may be approved in writing as Deviations as further described in the Technical Requirements Article 3.4 related to Design Deviations, Exceptions and Variances.

9.6.3 CONCLUSIONS

WT considers the overall content of the change process to be consistent with similar U.S. P3 agreements although the process itself varies. MDOT requires a detailed Change Response but the process for initial meetings should assist in mitigating that unpaid investment by the Developer. The 100% retention of cost savings for owner-initiated changes is common. As is often seen in other U.S. P3 Agreements, for Developer initiated changes, any increase in costs is their responsibility and a reduction in costs is shared - the 50% is standard.

Once an official Change Order has been issued it is a contractual agreement and if a Work Order is issued the Developer must begin implementation and would therefore appear be subject to a request for Change Order if cancelled. The 10% cap on overall deductions in the DB Contract Price by Change Order is in line with similar P3 Agreements. There does not appear to be any similar specific restriction on the Maintenance work other than a direction that would change the nature described in the RFP.

9.7 SUMMARY

In summary, we believe our comprehensive analysis has provided a substantive basis to confirm the Consortium have a well-considered design and construction cost for the Project. WT opine that based on the completion of both benchmarking and assessment of the detail costing breakdown provided by the DBLLC, we are able to confirm that the DB Contract Price set forth by the DBLLC for the completion of works associated with the Project is sufficient.

The high percentage of the overall DB Contract Price which will be self-performed by the parent companies of the DBLLC is considered a substantive benefit and affords the Consortium with a significant measure of cost certainty at the outset of the Project.

10.0 CONTRACTOR REPLACEMENT ANALYSIS

10.1 POTENTIAL REPLACEMENT PARTIES

A non-exhaustive list of potential replacement DB LLC's which could be engaged in the event of a default by the DB LLC is illustrated in the below table.

ORGANIZATION	STATUS	RELEVANT PROJECTS
Walsh Group	Shortlisted Bidder	 Ohio River Bridges East End Crossing, Ohio Accelerate I-465, Indiana PA Rapid Bridge Replacement Project, Pennsylvania Dan Ryan Expressway, Illinois
Granite Construction	Shortlisted Bidder	 39th Street Conduit Rehabilitation Phase 1 Bypass Tunnel, Illinois PA Rapid Bridge Replacement Project, Pennsylvania I-4 Florida Ultimate Improvements P3
Dragados USA	Shortlisted Bidder	 I-595 Corridor, Florida Autoroute 30, Quebec CAN
Interstate Highway Construction	Non-Bidder	 I-94 Jackson, Michigan I-69 Reconstruction, Michigan I-475 South Interchange to I-69, Michigan

Table 22 – Potential Replacement DBLLCs

We note each of the groups noted above have significant experience with public infrastructure projects of similar size and complexity to the Project, additional experience dealing with civil roadway authorities and MDOT projects. WT opines that a project of this value is within the capability of each of the above noted firms. Furthermore, the three shortlisted proponents above possess experience delivering horizontal infrastructure under a P3 model.

Michigan is also home to a number of first and second tier builders with relevant MDOT experience and/or experience delivering similar Project scopes and would be capable to step in and operate as replacements (either in JV or as a subcontractor to any of the above replacement parties) in the unlikely event that the DB LLC fails.

WT have noted four (4) potential companies with relevant skillsets; Toebe Construction, Hoffman Bros. Inc Excavating, Ri-Can Det. Inc and Kalin Construction Company, Inc. All four (4) companies possess noted experience in heavy civil transportation projects that include mainline, bridge, ramp and reconstruction works, and some would excel in the heavy underground and tunnel construction works.

Ric-Man Det. Inc, a company of Mancini Companies, undertakes heavy underground and tunnel construction in Michigan, Indiana and bordering States. Noted similar projects include the Dearborn, Michigan CSO Project and the Indiana Bridge Rehabilitation Project. Toebe Construction has extensive experience in the construction and rehabilitation of civil transportation infrastructure, including various projects for MDOT such as the 9 Mile Bridge Over I-75 Emergency Replacement, I-75 Gateway IV, and I-96 Widening and Reconstruction. Hoffman Bros. Inc Excavating offers roadway, highway construction services including aggregate and restoration, sitework, and underground pump stations which is inclusive of the current project's scope. They are based in Michigan and have completed the following similar projects: MDOT US-

127 Soundwall Construction, MDOT M-60 Improvements, and MDOT Angling Road Sanitary Sewer. Kalin Construction Company, Inc. strictly works in Michigan and provides heavy civil and highway services as well. A few past similar projects include: I-94 Hickory Creek Bridge, M-47 US-10 Bridge Reconstruction and US-127 Jackson Reconstruction.

Based on the foregoing, it is WT's opinion that there is a suitable pool of relevant general contractors and subcontractors to implement an appropriate replacement strategy in the event of a Default on the part of the DBLLC.

10.2 DESIGN-BUILD CONTRACTOR PERFORMANCE SECURITY PACKAGE

The Consortium have advised that the following performance security package will be implemented by the DBLLC for the benefit of the Developer and the Lenders:

- An P3 Performance Bond ("P3 Bond") equal to 75% of the value of the Design-Build Contract Price assignable to the Developer (and MDOT as an additional Obligee). for a total security value of \$471,934,017.
- A Liquidity Bond in the amount of 7.77% of the DB Contract Price, currently valued at \$48,904,296. This value will be subject to adjustment based on the final debt service amounts.
- A D&C Payment Bond (Labor/Material) in the amount of 100% of the DB Contract Price i.e. \$629,245,356;
- Parent Company Guarantees from the DB LLC members up to a liability cap of 40% of the DB Contract Price \$251,698,142. The Parent Company Guarantees will be on a joint and several basis.

WT note that utilization of the Liquidity Bond to fulfil the liquid requirements has been observed on a number of transactions in the North American market. While the Liquidity Bond cannot be immediately drawn upon in the event of a Default or non-performance by the DBLCC (as with a Letter of Credit or Cash Retention) this form of bond contemplates an expedited period of 5 business days for the funds to flow through. On this basis, while not completely "liquid" the Liquidity Bond is still considered sufficient to address immediate step-in costs without any material cost exposure to the Developer. Furthermore, the sizing of the Liquidity Bond is consistent with sizing we have typically seen for Design- Build Contracts and is intended to provide coverage for Financing LD's up to the Longstop Date for a failure to achieved Substantial Completion.

Furthermore, the sizing of the liquid component is consistent with sizing we have typically seen for Design-Build Contracts and is intended to provide coverage for Financing LD's up to the Longstop Date for a failure to achieved Substantial Completion.

The Parent Company liability cap of 40% is considered reflective of market standard and has been the typical percentage applied on recent DBFM transactions we have overseen. We have typically seen maximum liability ranging from 35% to 60% on most transactions with trends towards the lower end of this range as the North American P3 market has matured. As noted in the following analysis, this cap has generally been considered more than sufficient to cover the theoretical uplift costs associated with a replacement scenario.

While our below scenarios apply the replacement costs against available liquid security and performance bonding (in this case the P3 Bond) and not the Labour and Material Bond due to it's limited application in comparison to a performance bond, and multiple Obligees. However, we would view that a measure of the uplift to the direct construction costs associated with bringing ransom trades back on board could be mitigated through the D&C Payment Bond rather than the P3 Bond, thus providing more residual coverage.



10.3 SCENARIO TESTING

For the purposes of our replacement analysis, we have assumed a conservative downside case scenario whereby the DBLLC is terminated for an insolvency event and the Developer/Lending Group are unable to recover replacement costs directly from the DBLLC via their contractual liability provisions, instead having to rely directly upon the strength of the liquid and bonding security available. This analysis is based upon the budget costing and cashflow provided by the Consortium totalling \$629,245,356 over a period of 59 months.

The analysis below provides a description of the four different scenarios noting the total premium replacement cost calculated, the total premium as a percentage of the DB Contract Price, and the residual Total Security against the value of debt to be advanced.

Table 23 - Replacement Scenarios Summary SCENARIO	EVENT OCCURENCE
Scenario 1: Replacement following Financial Close	Mar-19 (Month 5)
Scenario 2 : Peak of Cashflow / Immediately following "Milestone 1 – TBM Procurement"	Jun-20 (Month 17)
Scenario 3: Midpoint Construction / 2021 Construction Season	May-21 (Month 31)
Scenario 4: 1 month prior to "Milestone 2 - Pump Station Turnover"	Sep-22 (Month 47)

Please refer to Appendix C of this report for our detailed contractor replacement analysis calculations for each Scenario. The following scenarios are based upon the following information:

- Design and Construction Schedule "Segment 3 DBFM (LTA Schedule)" dated July 27, 2018;
- Design and Construction Cashflow "I75 Segment 3 MI75 ATC REVISED Cost Curve 10-9-2018.xlsx".

10.3.1 SCENARIO 11

The DBLLC defaults in March of 2019 (Month 5) approximately 5 months following Financial Close.

At this point in time, activities will primarily be focused on the progression of the design development of the construction works scheduled to come first. The 30% Design Plans are scheduled for submittal during the beginning of this month for the 9 Mile Rd approach, P02, MOT Mainline including NB and SB Laneways, and Demo Detour design of Dallas Bridge due.



Table 24 - Replacement Scenario 1 Summa	ην.
	SCENARIO 1: MARCH, 2019
PHASE	STATE OF COMPLETION
Design	Final Submittal of Baseline Schedule. Final RFC approvals Complete for 2020 Work. Submittal Review of 30% Design Plans for Mainline Tunnel, Shaft Designs, and Temp Electrical Designs. Submittal Review of 30% Design Plans for 9 Mile Rd Approach, P02, MOT Mainline including NB and SB, Detour design for Dallas demo.
Mainline	Design Phase (above).
Tunnel & Pump Station	Additional Geotechnical Investigations have commenced at the shaft locations to confirm risks. Design Phase (above).
Bridge & Ramp Structures	Design Phase (above).

Physical construction on site will not have commenced at this stage, which may serve to provide a cleaner transition for the replacement design-builder.

We will assume a critical path delay in the order of 12 weeks (60 days – 5-day week) whilst the existing contracts are renegotiated, existing subcontract tenders are closed and negotiated. In this instance, there would be sufficient time to transfer the subcontract agreements to a suitable replacement strategy.

Scenario 2

DBLLC defaults during main works in June 2020 (Month 20) immediately following the achievement of Milestone 1 (TBM Procurement). At this point in time, construction activities will primarily be focused on continuing design development of the subsequent years works, completion of the first mainline quadrant, South East ("SE"), and making headway on the Tunnel Structure and Pump Mining.

	SCENARIO 2: JUNE 2020
PHASE	STATE OF COMPLETION
Design	Final RFC approvals received for 2020 Structure Work.
	Submittal Review of 70% Design Plans underway for 2021 Mainline Works, (SB
	MOT 8 Mile to 696 and 696 to 13 Mile) Retaining Walls, and Vehicular and
	Pedestrian Bridges (P04, P05, S04).
Mainline	Mid-way complete of SE Quadrant.
Tunnel & Pump Station	Milestone 1 reached.
	Mining of Pump Station has commenced as well as the Construction of the
	Tunnel Structure.
Bridge & Ramp Structures	Construction underway of P03, P06, S22, S24, S27, S28, S31.

Table 25 - Replacement Scenario 2 Summary

We will assume a critical path delay in the order of 20 weeks (100 days – 5-day week) whilst the existing contracts are renegotiated; existing subcontract tenders are closed and negotiated, and site establishment is adjusted. In our experience, if a DBLLC termination were to occur at this stage of the project, there would need to be a detailed review of all works carried out to date.



Early symptoms of a non-insolvency default would include elements of deficient workmanship, lower quality materials and incomplete quality assurance which would likely result int the accrual of Noncompliance Deductions. On this basis we assume that some of the 'complete work' will be lost and require re-work.

10.3.2 SCENARIO 3

The DBLLC defaults during the 2021 construction season in May 2021 (Month 31) which represents the general "mid-point" of the design and construction period. We will assume a critical path delay in the order of 16 weeks (80 days – 5-day week) whilst the remaining contracts are renegotiated; new subcontract tenders are negotiated, and site establishment is adjusted.

At this point in time, construction activities will primarily be focused on continuing design development of the subsequent years works, completion of the third mainline quadrant, South West ("SW") and making headway on the Tunnel Structure and Pump Mining.

Tuble 26 - Replacement Scenario 5 Summe	
	SCENARIO 3: MAY 2021
PHASE	STATE OF COMPLETION
Design	Final RFC approvals received for Project Structure Work.
Mainline	Mainline SE Quadrant Complete.
	Mid-way complete of SW Quadrant.
	Temp Paving for outside widening of Mainline north of I-696 Complete for 2022 scheduled works.
Tunnel & Pump Station	Work approximately 42% complete (moving from North to South).
	Mining of Pump Station continues.
	Construction of the Tunnel Structure continues.
	Adit Work of Tunnel has just commenced.
Bridge & Ramp Structures	Construction underway of P01, P04, P05, S04, S33 Ramp.

Table 26 - Replacement Scenario 3 Summary

10.3.3 SCENARIO 4

DBLLC defaults in the month prior to the scheduled Milestone 2 (Pump Station) completion date in September 2022 (Month 47). We will assume a critical path delay in the order of 16 weeks (80 days – 5-day week) whilst the remaining contracts are renegotiated; new subcontract tenders are negotiated, and site establishment is adjusted. *Table 27 - Replacement Scenario 4 Summary*

SCENARIO 4: SEPTEMBER 2022 PHASE STATE OF COMPLETION Design All Final RFC approvals received. Mainline Mainline SE Quadrant Complete. Mainline SW Quadrant Complete. Mainline NW Quadrant approx. 87.5% Complete. **Tunnel & Pump Station** Work approximately 96% complete. Mining Complete. Construction of the Tunnel Structure and Pump Structure continues. Adit work of the Tunnel continues. Bridge & Ramp Structures 2019-2022 Bridge and Ramp Work Complete including S01, S03 (SB), S04 (SB), S30, B02 (SB).

As with each of these scenarios, the practical and political requirements of a replacement process may differ and should be considered a best-estimate of the potential replacement cost.



10.3.4 COST IMPLICATIONS

For the purposes of the scenario analysis, we have considered the following factors;

- The quantity of work complete;
- The quantity of work outstanding;
- Cost escalation on outstanding Work i.e. Direct Costs (10%/20%/30%/15% respectively) note: percentages are also assumed to account for re-work required to correct defective work items;
- Cost escalation to main contractor (business specific costs) i.e. Indirect Costs (5%/25%/45%/20% respectively);
- Cost of professional fees are assumed to be unchanged due to assignment provisions;
- Management of works to be executed by Project Co or a replacement Management Contractor;
- Escalation allowances to cover additional time;
- Finance Liquidated Damages;
- Additional costs in relation to Developer administration / staff / tendering etc.; and

Based on the foregoing assumptions, we have calculated the potential cost uplift associated with the retender of the Project. The Direct Cost Escalation and Indirect Cost Escalation are a function of a premium percentage applied to the total outstanding value of work, and are summarized in the following table:

	NET EFFECT TO D&C COST							
Cost Line	Scenario 1	Scenario 2	Scenario 3	Scenario 4				
Base Direct Cost	\$538,658,655	\$538,658,655	\$538,658,655	\$538,658,655				
Executed	\$10,425,432	\$167,414,650	\$301,526,734	\$466,393,460				
Outstanding	\$528,233,222	\$371,244,004	\$237,131,921	\$72,265,195				
Direct Cost	10%	20%	30%	15%				
Escalation	\$52,823,322	\$74,248,801	\$71,139,576	\$10,839,779				

Base In-Direct Costs	\$90,586,701	\$90,586,701	\$90,586,701	\$90,586,701
Executed	\$47,416,034	\$60,246,218	\$71,206,733	\$84,680,718
Outstanding	\$43,170,667	\$30,340,483	\$19,379,968	\$5,905,983
In-Direct Cost Escalation	5% \$2,158,533	25% \$7,585,121	45% \$8,720,986	20% \$1,181,197
Total Cost Escalation	\$54,981,856	\$81,833,922	\$79,860,562	\$12,020,976

In addition to the retendered price uplift, our scenario analysis also accounts for the anticipated step-in costs for the interim period between the event of default and subsequent retender, which includes staffing, legal, and tendering costs as well as liquidated damages (if applicable) for the resultant period of delay. For clarity, the below step-in periods are measured in business days and are relative to the overall critical path delay to the Project and may not necessarily reflect the actual period of time required to replace the DBLLC.



		DELAY INCURRED UPON	N DEFAULT EVENT	
Step-In Costs	60 days	100 days	80 days	80 days
Interim Site Security & Management	\$600,000	\$1,000,000	\$800,000	\$800,000
Owner Due Diligence	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
Legal Administration	\$500,000	\$500,000	\$500,000	\$500,000
Technical Advisory	\$289,207	\$1,138,304	\$1,863,667	\$2,755,371
Noncompliance Deductions Allowance	\$-	\$117,000	\$117,000	\$117,000
Finance LDs	\$9,912,000	\$16,520,000	\$13,216,000	\$13,216,000
Total Step-in Cost	\$12,301,207	\$20,275,304	\$17,496,667	\$18,388,371

Table 29 - Step-In Costs

It is anticipated that majority of the above costs would be incurred in the period immediately following termination of the DBLLC. On this basis we would typically assume that the liquid security would be leveraged to cover these costs as a funds from a traditional performance bond would not be readily available due to the diligence period required by the Surety.

Pursuant to Schedule 4 to the PA, the above analysis includes an allowance for NCP deductions in scenarios 1-3 to reflect noncompliance incurred in the period leading up to the Default as well as during the replacement period. We have assumed the resultant deductions associated with our "Medium Case" D&C Noncompliance analysis for the purposes of our scenarios.

Due to the milestone payment structure of the Project, the associated LD's are adjusted in each scenario to reflect the debt repayment. As advised by the Consortium, we have assumed the following LD's:

\$118,000/day for failure to achieve Milestone 3 (Substantial Completion); and

The Consortium have advised that they do not anticipate that failures to receive Milestone 1 and Milestone 2 will result in an impact on the debt service amount as these funds will be utilized for the purpose of paying the DBLLC with appropriate reductions in payment if the DBLLC fails to achieve a milestone. As such, the contemplated LD mechanism for milestones 1 and 2 does not currently contemplate a daily value assignable to the DBLLC. Instead, the Consortium have advised that the DBLLC will be obligated to compensate the Developer to the extent that there is a funding shortfall, during the period of delay. However, the DBLLC will be entitled to a refund following the point at which the milestone payment is received.

Based on the foregoing analysis, WTP considers the "liquid" portion of the P3 Performance Bond, currently valued at 7.77% of the DB Contract Price to be sufficient to cover the immediate step-in costs.

Furthermore, it should be noted that the liquid portion is also sufficient to cover Financing LD's for failure to achieve Substantial Completion (Milestone 3) up to the Longstop Date in the unlikely event of a delay to Substantial Completion.

We have also analyzed the overall cost of replacement (inclusive of Direct Cost Premium, In-Direct Cost Premium, and Step-In Costs) against the total security package.



WT note that our scenario analysis would typically assume a worst case, insolvency by the Design-Builder, whereby the Parent Company Guarantees would not be available. However, given the structure of the DBLLC we would consider a wholesale insolvency by all members to be unrealistic. As such, we have also conducted our analysis based upon a DBLLC Default event whereby the members of the DBLLC's parent companies remain bound by their obligations under their guarantees. We would expect that a scenario involving insolvency of one of the DBLLC members, while impacting general work progress, would be absorbed by the remaining members of the DBLLC under their joint and several liabilities

In both instances, the Parent Company Guarantees (capped at \$251,698,142 or 40% of the DB Contract Price) and the Performance Bond (\$471,934,017 based on the 75% portion of the DB Contract Price available to the Developer) are both individually capable of covering the noted replacement costs in all four of our scenarios. We have not considered the D&C payment bond mandated under the PA as we understand this is fully assigned to MDOT.

The below table summarizes the remaining security available from the 75% portion of the P3 Performance Bond after deducting the replacement costs, represented as both a numerical value and as a percentage of the revised contract price (base contract price plus cost of replacement).

	Scenario 1	Scenario 2	Scenario 3	Scenario 4
Total Cost of	\$67,283,063	\$102,109,226	\$97,357,229	\$30,409,347
Replacement				
Total Security	\$471,934,017	\$471,934,017	\$471,934,017	\$471,934,017
Balance Security	\$404,650,954	\$369,824,791	\$374,576,787	\$441,524,670
Residual Security Upon	58%	51%	52%	67%
Replacement Event*				

Table 30 - Total Residual Security

*Balance Security represented as a % of the of new contract price inclusive of Direct, In-direct and Step-in Costs.

In addition, we have provided a summary of the residual liquid security (following application of step-in costs) for each of our replacement scenarios to illustrate the relative strength of the Liquidity Bond at the time of replacement.

	Scenario 1	Scenario 2	Scenario 3	Scenario 4
Total Step-In Costs	\$12,301,207	\$20,275,304	\$17,496,667	\$18,388,371
Liquid Portion of P3 Performance Bond	\$48,904,296	\$48,904,296	\$48,904,296	\$48,904,296
Residual Liquid Security	\$36,603,089	\$28,628,992	\$31,407,629	\$30,515,925

Table 31 - Total Residual Liquid Security

10.3.5 CONCLUSIONS

As evidenced by the above calculations, in all scenarios the Total Security is sufficient to cover the combined costs of replacing the DBLLC for a Default. On the basis of our analysis, we opine that the proposed performance security package is sufficient for the purposes of the Project.

Furthermore, we note that the available Liquidity Bond provides sufficient coverage for Delay Liquidated Damages and immediate step-in costs associated with each of our replacement scenarios.

The advice and modelling provided above represent a possible outcome but with limited likelihood.

11.0 MAINTENANCE REVIEW

11.1 OVERVIEW

The Maintenance Work includes Interim Maintenance Work performed by Developer during the D&C Term and Long-Term Maintenance Work performed within the Maintenance Limits during the Maintenance Term. The Maintenance Work includes maintaining the Project in accordance with the Project Documents, the Project Management Plan, the Maintenance Plan and the Renewal Work Plan all as provided by Developer and approved by MDOT during the D&C Term. At the end of the Term, the Developer is required to turn the Project over to MDOT to meet the Handback Requirements as further detailed in the Handback Work Plan (and further detailed below).

The Maintenance Limits are the Storage and Drainage Tunnel Maintenance Limits (Storage and Drainage Tunnel plus Pump Station) and the Roadway Maintenance Limits (I-75 Segment 3 roadway and interchange ramps, cross-bridge structures, service drives and sidewalks). These are initially defined in the Reference Information Documents and are to be updated and submitted to MDOT 90 days after NTP.

The Developer is required to provide the resources, equipment, materials and services required including sufficient levels of properly trained personnel, on-Site and off-Site facilities, storage areas, garages, fleet vehicles, computer hardware and software, tools and other items as required to maintain safe, reliable roadways and facilities.

<u>Article 24 of the Schedule 17</u> (Technical Requirements) outlines the Maintenance Requirements. Exhibit 24-A I provides the Long-Term Maintenance Performance Measures and Exhibit 24-A II details the Interim Maintenance Performance Measurements. These exhibits details by Element, the individual performance requirement, inspection and measurement method and performance measurement standard. The Project Standards are detailed in <u>Part B of Schedule 17</u>.

On or before the Substantial Completion Date, Developer is required to deliver the Maintenance Performance Security which will remain in effect until the Expiration Date.

11.2 SUMMARY OF THE SERVICES

The tables below provide a summary of the scope of services to be provided by the Developer for Interim and Log Term Maintenance, Renewal Work and Handback Work. A general listing of the required scope items for both Interim and Long-Term Maintenance is also found in the Project Scope section of this report (3.4).

PROJECT AGREEMENT REFERENCE	SERVICE	KEY OBJECTIVES AND SCOPE ITEMS
Project Agreement – Section 17 Maintenance Requirements; Technical Requirements Article 24	Interim & Long-Term Maintenance Periods	Establish a self-monitoring program with the main objective of maximizing public safety, reliability and availability. Coordinate, plan and perform in a manner that will provide safe conditions for the maintenance staff and the public, while minimizing traffic and other disruptions
Project Agreement – Section 17 Maintenance Requirements; Technical Requirements Article 24	Interim & Long-Term Maintenance Periods	Provide the resources, equipment, materials and services required to perform the Maintenance Work in accordance with the requirements of the Project Documents. Provide sufficient levels of properly trained personnel, on-Site and off-Site facilities, storage areas, garages, fleet vehicles, computer

Table 32 - Combined Interim/Long-Term Maintenance Periods



PROJECT AGREEMENT REFERENCE	SERVICE	KEY OBJECTIVES AND SCOPE ITEMS
Project Agreement –	Interim & Long-Term	hardware and software, tools and other items as required to maintain safe, reliable roadways and facilities. Coordinate, plan and perform the Interim Maintenance Work and Long-Term Maintenance Work required by the Project Documents in a manner that provides safe conditions for Developer's staff and the traveling public while minimizing traffic disruptions Interim Maintenance Plan and update – covering routine and
Schedule 17 Technical Requirements Article 24.5	Maintenance Periods	non-routine maintenance during the D&C period Maintenance Plan and updates -covering the Maintenance Term See Report Section 11.6 for further details.
Project Agreement – Schedule 17 Technical Requirements Article 24	Interim & Long-Term Maintenance Periods	Perform the Maintenance Work in accordance with the standards and specifications summarized in Project Standards in Schedule 17 (Technical Requirements) Part B.
Project Agreement – Schedule 17 Technical Requirements Article 24.5	Interim & Long-Term Maintenance Periods	Hold monthly meetings with the appropriate MDOT representatives to discuss Maintenance Work and follow requirements of 3.3.1.1 of Schedule 17.
Project Agreement – Schedule 17 Technical Requirements Article 24.5	Interim & Long-Term Maintenance Periods	Conduct all Maintenance Work in accordance with all applicable Laws including those pertaining to safety and Safety Standards.
Project Agreement – Schedule 17 Technical Requirements Article 24.5	Interim & Long-Term Maintenance Periods	Create and maintain a quality management system to monitor the performance of the Maintenance Work including a means to evaluate Developer's level of performance against the minimum Maintenance Performance Requirements and document any Noncompliance Events/Points and/or Unavailability Events.
Project Agreement – Schedule 17; Technical Requirements Article 24.5	Interim & Long-Term Maintenance Periods	On an annual basis, create a consolidated annual Maintenance Annual Report.
Project Agreement – Schedule 17; Technical Requirements Article 24.5	Interim & Long-Term Maintenance Periods	Determine and stock necessary spare parts including, at a minimum, attenuator parts, guardrail panels, guard rail, and Pump Station essential spare parts.
Project Agreement – Schedule 17; Technical Requirements Article 24.11	Interim & Long-Term Maintenance Periods	 Maintain the following records: Maintenance Records, as well as any other records as required under the Project Documents; Complete records of Incidents that affect the maintenance of the Maintenance Limits; Complete records of all inspections executed tests and assessments, as well as results of all tests, assessments and the results of those inspections; Details of all Renewal Work executed. All data in relation to all original tests, graphics and other records in relation records;



PROJECT AGREEMENT REFERENCE	SERVICE	KEY OBJECTIVES AND SCOPE ITEMS
		 Complete series of quarterly reports; and Monthly records in relation to Lane Closures.
Project Agreement – Section 17 Maintenance Requirements; Technical Requirements Article 24.10	Interim & Long-Term Maintenance Periods	 Plan and implement a program of inspections with trained and competent personnel which: Verifies the continuing safety for the Public; Prioritizes Defects requiring immediate and urgent attention because they are likely to create a danger or serious inconvenience to the Public; Identifies Defects to be included for repair; Is responsive to reports or complaints received from MDOT and the Public; and Collates data to monitor performance of the Project and to establish priorities for future Maintenance and Renewal Work.
		Also undertake: Specialist Inspections as outlined in TR Table 24-2 for: Roadway, Bridges, Landscaping/Vegetation, Storage and Drainage Tunnel and Pump Station. Performance Inspections – randomly selected, detailed inspections of at least 5% of Performance Measures

Table 33 - Interim Maintenance Requirements during D&C Period

PROJECT AGREEMENT REFERENCE	SERVICE	KEY OBJECTIVES AND SCOPE ITEMS
Project Agreement – Section 17 Maintenance Requirements; Technical Requirements Article 24	Commencement of Interim Maintenance Work – Prior to NTP	Record a video of the Elements within the D&C Limits as a record of the existing conditions and prepare an inspection report. Submit the Video Inspection Report and video to MDOT for approval.
Project Agreement – Section 17 Maintenance Requirements; Technical Requirements Article 24	Interim Maintenance for Existing Pump Stations (NTP to Milestone 2 Completion)	Routine Maintenance for seven (7) existing MDOT Existing Pump Stations along I-75 (Segment 3) until demolition. MDOT will be responsible for electrical consumption charges while Developer must provide emergency power.
Project Agreement – Section 17 Maintenance Requirements; Technical Requirements Article 24	Interim Maintenance work within D&C Limits (NTP to Substantial Completion)	 Routine Maintenance for elements within the D&C Limits damaged by normal wear, forces of nature, or acts of third parties or damage from Developer's work including: Roadbeds, underdrains and roadside; Existing facilities that are to remain in place; Haul routes within D&C Limits; Temporary roads (including crossovers; Temporary structural works required for structure erection; and Other temporary facilities constructed by Developer not used by the public or open to traffic. Additional specifics of Interim Maintenance include: Maintain roadways, structures, service drives and sidewalks within the D&C Patch existing pavements and structures; Repair potholes; Repair shoulder drop-offs;



PROJECT AGREEMENT REFERENCE	SERVICE	KEY OBJECTIVES AND SCOPE ITEMS
		 Replace/repair existing shoulders; Replace/repair traffic attenuators and guardrail Replace/repair temporary and permanent barrier wall; Maintain delineators, signing and pavement markings; Maintain detour routes initiated by Developer; Maintain soil erosion and sedimentation control measures; Mow grassed areas and maintain vegetation within the D&C Limit; Maintain walls, noise walls, retaining walls and temporary fencing; Remove graffiti on Elements within the D&C Limits including construction equipment and temporary construction facilities; Maintain storm sewer system, underdrains, catch basins and temporary drainage systems related to construction activities; Maintain traffic control devices supplied by Developer, including any that are displaced by MDOT snow removal; Maintain bridge barrier railing and other crash barrier appurtenances and perform repairs if damaged; Repair damage caused by Developer's operations and Work not properly protected from naturally occurring events; Repair damaged facilities necessary for public travel and safety; Maintain access for local traffic to property adjacent to the Work; Provide incident management; Winter operations for pedestrian bridges and car lot; and Perform street and roadway sweeping.
Project Agreement – Schedule 17 Technical Requirements Article 2,4, 24.3	Interim Maintenance for the Existing Lighting System and Freeway Lighting Systems (NTP to Substantial Completion)	Maintain Existing Freeway Lighting System and any components of the Freeway Lighting System designed and constructed by Developer.
Project Agreement – Schedule 17 Technical Requirements Article 2.4	Interim Maintenance for the Non-Maintained Facilities (NTP to Substantial Completion)	 Non-Maintained Facilities that must be maintained during the D&C Term include: Service drive lighting owned and maintained by DTE; Service drive signals and Non- MDOT signage MDOT ITS equipment; and Elements outside the Maintenance Limits.
Project Agreement – Schedule 17 Technical Requirements Article 24.3	Seasonal Suspension (NTP to Substantial Completion)	All routine maintenance during the Seasonal Suspension. Prior to the Seasonal Suspension clean all temporary drainage facilities and provide temporary seeding and mulching in accordance with MDOT requirements. Maintain soil erosion and sediment control facilities throughout the Seasonal Suspension. Provide a Seasonal Suspension plan to MDOT showing the active lanes to be maintained along with temporary barrier, attenuators, signing or any other item that will remain during the work suspension. Submit this plan at least 60 days prior to the Seasonal Suspension for review and comment.



PROJECT AGREEMENT REFERENCE	SERVICE	KEY OBJECTIVES AND SCOPE ITEMS
		MDOT will perform winter operations on roads and facilities open to traffic during Seasonal Suspensions, except for pedestrian bridges and car lot.
Project Agreement – Schedule 17; Technical Requirements Article 18	Seasonal Suspension Maintenance of Traffic (NTP to Substantial Completion)	Remove all traffic control devices that are not required for the protection of motorists or for work area delineation during Seasonal Suspensions, and store off-site. Properly protect the blunt ends of traffic barriers to remain. Cover or remove all non-applicable temporary signs including global signs. Maintain a minimum of one lane in each direction of the I-75 Service Drives with no pavement drop offs adjacent to active traffic.

Table 34 - Long Term Maintenance Requirements

PROJECT AGREEMENT	SERVICE	KEY OBJECTIVES AND SCOPE ITEMS
REFERENCE		
Project Agreement – Section 17 Maintenance Requirements; Technical Requirements, 2.3, Article 24	Long Term Maintenance General Requirements & Objectives (Commencement Date to Expiration Date)	 Establish a self-monitoring program with the main objective of maximizing public safety, reliability and availability. Coordinate, plan and perform in a manner that will provide safe conditions for the maintenance staff and the public, while minimizing traffic and other disruptions. Other objectives include: Maintain the I-75 (Segment 3) in a manner appropriate for a facility of the character of the I-75 (Segment 3) and in compliance with the requirements of the Project Documents; Minimize delay and inconvenience to the traveling public; Identify and correct all Defects and damages; Minimize the risk of damage, disturbance to or destruction of third-party property; Coordinate with and enable MDOT, MDOT's subcontractors and others with statutory duties in relation to the I-75 (Segment 3) to perform such duties; Perform systematic inspections, periodic maintenance and routine maintenance in accordance with the Developer's Maintenance Plan and Safety Plan; Conduct all Maintenance Work in accordance with all applicable Laws including those pertaining to safety and Safety Standards; Provide all resources necessary for the performance of the Long-Term Maintenance Work; and Maintain I-75 (Segment 3) to be available 24 hours per day, 365 days per year.
Project Agreement – Section 17 Maintenance Requirements; Technical Requirements, 2.3, Article 24	Long Term Maintenance – Reports, Meetings (Commencement Date to Expiration Date)	Deliver Long Term Maintenance Report that complies with all requirements of Table 24-3 of Schedule 17. Reports are delivered in draft monthly with final report quarterly and all information summarized annually including Renewal Work.
Project Agreement – Section 17 Maintenance Requirements; Technical Requirements, Article 24.5	Long Term Maintenance – Road Closures	For any planned closure, submit a Conceptual Transportation Management Plan to MDOT for review and comment at least 20 business days prior. Issue Lane Closure Notices as required. Maintain a log of the closure periods and identify the closure periods in the Maintenance Report.



PROJECT AGREEMENT REFERENCE	SERVICE	KEY OBJECTIVES AND SCOPE ITEMS
Project Agreement – Section 17 Maintenance Requirements; Technical Requirements Article 24.6	Long Term Maintenance Computerized Maintenance Management System (Commencement Date to Expiration Date)	Provide a Maintenance Management Information System (MMIS) database including all Relevant Infrastructure to be maintained and details for each asset. The MMIS database will include required planned preventive maintenance activities and document details on performance. The MMIS software must have these functional capabilities: scheduling, database of equipment, database of planned/preventive maintenance tasks, descriptions and work codes, work order generation, technician identification, spare parts inventory, purchasing requisitions, and repair history. Training on the MMIS must be provided to MDOT personnel.
Project Agreement – Section 17 Maintenance Requirements; Technical Requirements Article 24	Long Term Maintenance for Tunnel and Pump Station (Tunnel Maintenance Commencement Date until Expiration Date)	Maintain the Storage and Drainage Tunnel and Pump Station including shafts and audits commencing at Milestone 2. The Pump Station will be operated by Oakland County Water Resources Commissioner.
Project Agreement – Section 17 Maintenance Requirements; Technical Requirements Article 24	Long Term Maintenance for the Roadway (Project Maintenance Commence Date to Expiration Date)	 Routine maintenance for all Relevant Infrastructure within the Maintenance Limits including realigned and reconstructed I-75 mainline, service drives, sidewalks, and ramps including Rigid and flexible pavement; pavement markings; guardrails and safety barriers; retaining walls, noise walls and fencing; earthworks, embankments and cuttings; pedestrian crossings over I-75 within the Maintenance Limits including winter operations Structural Elements of cross road bridges over I-75 (Segment 3); new carpool lot adjacent the to the 12 Mile Road interchange drainage facilities, underdrains, drains and catch basins I-75 mainline regulatory and non-regulatory signage; Landscaping and mowing; Litter removal, debris removal and sweeping Graffiti removal for structures, retaining walls and noise walls except for designated locations; Incident Management within the Maintenance Limits including service drives.

Table	35 -	Renewal	Work	Requirements	

PROJECT AGREEMENT REFERENCE	SERVICE	KEY OBJECTIVES AND SCOPE ITEMS
Project Agreement – Section 17 Maintenance Requirements; Technical Requirements Article 24.9	Renewal Work General Requirements (Commencement Date to Expiration Date)	Renewal Work Plan covering performance requirements, measurement procedures and threshold values for renewal. Address inspection procedures and frequencies, preventative maintenance, planned maintenance schedule, maintenance procedures, diagnostics, maintenance contractors, major systems/equipment manufacturers, spare parts and Lane Closure Plans.



PROJECT AGREEMENT REFERENCE	SERVICE	KEY OBJECTIVES AND SCOPE ITEMS
Project Agreement –	Renewal Work	Maintain time log of all unplanned maintenance and repairs Submit Monthly Renewal Work Report Further details in Report Section 11.6. Renew Elements when any of the following conditions are
Section 17 Maintenance Requirements; Technical Requirements Article 24.9	(Commencement Date to Expiration Date)	 evident: Targets for individual Elements fall below 75% average compliance; Individual Elements are in fair condition, but suggesting need for early replacement, rehabilitation or repair of individual Element and/or maintenance action to meet Performance Requirement; "Reliability" is less than 99.9% for any Element that, should it fail, the safe operation of the Project would be in jeopardy or an immediate or imminent safety hazard would result (safety critical Element); "Reliability" is less than 90% for Element other than a safety critical Element; The Element ceases to function, or dies; or Frequency of repair is higher than that recommended in the manufacturer's preventive maintenance schedule.
Project Agreement – Section 17 Maintenance Requirements; Technical Requirements Article 24.9	Renewal Work Schedule (Commencement Date to Expiration Date)	Prepare on annual and monthly basis a Renewal Work Schedule. Monthly Renewal Work Schedule includes all maintenance and renewal activities, the dates, times, and durations of each and the total quantity of planned maintenance hours and lane hours. Additional details in Report Section 11.6.

Table 36 - Handback Requirements

The minimum Design Life requirements are found in <u>Schedule 17, Article 3, Table 3-6</u> to be used in Residual Life calculations. Residual Life requirements for Pavement are found in <u>Schedule 17, Article 25.2</u>.

PROJECT AGREEMENT REFERENCE	SERVICE	KEY OBJECTIVES AND SCOPE ITEMS
Project Agreement – Section 17 Maintenance Requirements; Technical Requirements Article 25	Handback Work Plan	Submit Handback Work Plan containing the methodologies and activities to ensure that the Handback Requirements are achieved at the end of the Term including a Residual Life Methodology and must include the Developer's proposed processes for Elements at Termination Date including tests and inspection for assessment of the condition and Residual Life; Renewal Work; plan for the transition of maintenance responsibilities to MDOT and satisfaction of the acceptance criteria; and MDOT staff training. Further detail in Report Section 11.6.
Project Agreement – Section 17 Maintenance Requirements; Technical Requirements Article 25	Project Handback Condition Reports	 Conduct inspections and deliver Project Handback Condition Reports as follows; No less than 42 months prior to Scheduled Expiration Date - conduct initial handback inspection and submit Preliminary Project Condition Report; On the first anniversary of the date of the initial report, conduct inspection and submit the Prefinal Project Handback Condition Report; and Within 45 days of the Scheduled Expiration Date, conduct final inspection and submit Final Project Handback Condition Report

11.3 WORK OUTSIDE OF SCOPE

During the Maintenance Term, MDOT and its subcontractors are responsible for the following:

- Winter operations (snow and ice removal and control)
- Adopt-a-Highway Program
- MDOT ROW outside the Maintenance Limits
- Freeway Lighting System (maintained by the P3 Lighting Contractor through the P3 Lighting Contract)
- MDOT traffic signals and traffic signal timing
 - I-696 existing structures:
 - S05 of 63103
 - S16 of 63103
 - S17 of 63103
 - S18 of 63103
 - S19 of 63103
- The Service Drive and bridge lighting is owned and maintained by DTE.
- The Pump Station will be operated by Oakland County Water Commission.



11.4 KEY PERSONNEL

As described in <u>PA Section 7</u> and <u>Schedule 17, Article 3</u>, the Key Personnel required during the Maintenance Term include the Developer's Project Manager, the Maintenance Manager, Maintenance Quality Manager and Environmental Compliance Manager. The Project Manager and Maintenance Manager positions are required to be available for contact 24 hours/day and 7 days/week. The Key Personnel may be changed no more frequently than every three years without incurring liquidated damages. Any change in Key Personnel requires the prior written consent of MDOT.

The *Developer's Project Manager* (PM) is responsible for Developer's performance of all obligations and responsibilities set forth in the Project Documents including performance and resourcing for overall design, construction, maintenance and contract administration on behalf of Developer. The PM is required to be assigned to the Project full time and located at the Site until the end of the Term. The primary focus for the Developer's Project Manager during the D&C Term is their expertise in managing complex P3 highway/bridge construction. After Final Acceptance, subject to MDOT's approval, the Developer is able to propose a different Project Manager with P3 maintenance experience similar to the construction experience of the original PM.

The *Maintenance Manger* is responsible for overall maintenance and contract administration matters on behalf of Developer, including safety and environmental compliance following commencement of the Maintenance Term and interfacing with MDOT in compliance with the maintenance requirements of the Project Documents. The Maintenance Manager is required to have a minimum of 15 years of experience in operation and maintenance of freeway infrastructure.

The *Quality Manager* (QM) is responsible for overall quality management and contract compliance, and is required to report to Developer's Project Manager, have no direct immediate profit and loss responsibility for the Project and have the authority to stop Project Work. The D&C Term requirements for the QM are listed as a bachelor's degree in Engineering and/or Construction or equivalent and a minimum of ten (10) years of quality management experience on large transportation infrastructure design-build projects and have training in the use and application of quality programs including the application of ISO 9001. At the commencement of the Maintenance Term, the duties of the Quality Manager are to be assumed by the Maintenance Quality Manager; alternatively, the Quality Manager, if suitably qualified, may transition into the position of the Maintenance Quality Manager. The Maintenance Quality Manager shall be submitted and approved by MDOT at the beginning of the Maintenance Term.

The *Environmental Compliance Manager* (ECM) is responsible for the implementation of all the environmental design and construction commitments and conditions of Environmental Approvals required for the Project throughout the Term. During the Maintenance Term, the ECM is required to be on Site as necessary to assure environmental compliance and/or as requested by MDOT. The requirements listed for the ECM include a minimum of ten (10) years of experience, with demonstrated expertise with construction management; permitting compliance; and overall environmental compliance on large-scale, complex transportation projects with environmentally sensitive areas.

The *Developer's Safety Manager* is a noted Key Personnel position which will be required throughout the Project inclusive of the Maintenance Term. The Consortium have confirmed that the designated safety manager will remain engaged for the duration of the Term.

11.5 MAINTENANCE MANAGER RESPONSE

The comments provided to date are based upon preliminary information provided as part of the Lenders Technical Advisor Presentation, dated June 21, 2018.

The Interim Maintenance activities to be provided during the D&C Term will be performed by the DB LLC with the pricing included as part of the lump sum construction price. The major elements include: the existing Freeway Lighting, existing Pump Stations, incident management and the maintenance of the construction ROW including pavement, structures, and all other existing elements. In addition, the DB LLC will provide the maintenance for the Storage Tunnel and Pump Station from the completion of Milestone 2 through to Substantial Completion.

The Long-Term Maintenance will be self-performed by the Developer (Oakland Corridor Partners, the special purpose vehicle). The basis stated for this approach is that it will create greater efficiency and lower costs as the maintenance activities will not be considered a profit center. Given the requirements, they believe that a small team can deliver the day-to-day maintenance requirements. They will outsource key, specialist services and contract, on a competitive basis, major renewals and maintenance. This approach will eliminate the need for any Interface or Maintenance agreements.

In acknowledgement of the relatively comprehensive performance requirements, the Consortium have developed detailed analysis of the NCP regime to ensure appropriate allowances for deductions in the Maintenance budget. Please refer to Section 14 for our own analysis of the individual KPI's and deduction scenario modelling.

The delivery strategy has been formulated based upon advice from a Maintenance Advisor with a track record of operating highway assets in North America with pricing inputs utilizing local benchmarks and supplemented by the input from the DBLLC. The view of the Developer is that while the performance requirements are at a higher level, they are manageable with an appropriately staffed maintenance team.

Renewal Work/Handback

The life-cycle Renewal Work risk will be retained at the Developer level. They believe that the maintenance contract term of 25-years minimizes the number of major maintenance activities that must be undertaken. Unit pricing is to be provided by the DB LLC for the major renewal activities. This is considered reliable information as civil, pavement and structural rehabilitation in that area are a major part of their business. The below table identifies the key assumptions with regards to the frequency of renewal work.

Table 37 - Renewal Work Plan				
ACTIVITY	FREQUENCY INTERVAL			
Pavement Mainline/Ramps (Concrete)				
Joint sealing, localized patching	Annual			
Major concrete repair program	10 years + handback			
Pavement Service Road (Asphalt)				
Crack sealing, localized patching	Annual			
Mill and inlay regime	10 years			
Novachip or surface sealing	Year 15			
Structures - Bridges				
Bridge deck repair	10 years			
Repaint bridge concrete surface	9 years			
Bridge joint repair	15 years + Handback			
Bridge substructure repair	Year 24 (Handback)			
Sign Panels – Ground & Overhead				
Sign replacement	20 years (design life)			
Pavement Striping				
Recessed Thermoplastic	5 years			
Storage and Drainage Tunnel				
Cleaning	20 years + Handback			
Pump Station				
Replace (2) Pumps	Year 20 (design life)			
Pump Station Electrical/Mechanical Renewal	Year 20			

They have also identified that they consider the renewal/handback risk to be lower as they are providing a 30-year design for the pavements (both rigid and flexible) over the required 20-year design. This takes into consideration that some of the elements will be placed into service early and accommodates the required residual life at Handback.

The Developer's PM and the Maintenance Manager will have the primary responsibility for assuring that all Renewal Work follows the plan and that the schedule and activities are continually updated to reflect current conditions.

The Handback process will begin approximately three years ahead to include all of the necessary inspections for all assets followed the required process and there is sufficient lead time for any supplemental Renewal Work.

Mobilization

The Developer's maintenance advisor has indicated that OCP will develop the related plans in accordance with the PA and Technical requirements that will guide the maintenance work plan program. This maintenance work plan will include a ramp up and mobilization process that will include the selection and training of the operations team with sufficient time to ensure both office and field requirements are set up and implemented. For instance, it is expected that the Maintenance Manager will be on the ground full-time six months prior to Substantial Completion with prior involvement during the Interim Maintenance Term. In addition, prior to the D&C substantial completion, the staff of the maintenance organization will be cross trained with the existing D&C maintenance team. This cross training will include an integration of management staff and technical team with the MDOT oversight staff to ensure a seamless operation



following Substantial Completion. It is expected this ramp up will occur no less than one month prior to D&C substantial completion.

Inspections

Due to the high level of requirements for Noncompliance they have assigned an individual who sole responsibility is to assure that the appropriate inspections are taking place and that the necessary follow-up activities are underway – the Senior Engineering Inspector.

OCP has stated that they will implement a plan to include daily inspection of the facility to continually evaluate the condition and asset category performance utilizing the in-house staff. They will use licensed third-party consultants and contractors that will provide asset inspection for specialty services on a frequency that exceeds the contractual requirements and industry recommendations. Each asset will require the development and implementation of an inspection regime and the current expectations and budget have accounted for this.

As part of an active work plan, there will be a portfolio of specialty contractors that will be available to provide necessary repairs on a planned or emergency basis. The assert that the availability and proximity of SPV team members provide a second level of response capabilities for necessary repairs.

11.5.1 PROPOSED TEAM – INTERIM MAINTENANCE

The DBLLC will provide the Interim Maintenance activities as part of their fixed price Design-Build Contract. The details on the scope for the Interim Maintenance are shown in the Project Scope section of this report (3.4). Their execution strategy is to hire a supervisor and crew to focus on the Interim Maintenance activities. The designated crew will focus on the inspections and ongoing maintenance activities. Any major maintenance they will coordinate with the appropriate member of the DB LLC depending on the expertise needed. The plan is for the designated crew will be four people – the supervisor, two laborers and one operator. They manager will drive the job daily, create the necessary entries for required maintenance and make the necessary assignments and/or coordinate with other parties as needed.

The Developer's maintenance advisor has indicated that the MMIS software will be selected and implemented during the Interim Maintenance Phase. The team will continue to use the system during the Long-Term Maintenance work plan development and to evaluate maintain the asset inventory and current condition. The MMIS will be utilized to administer and manage the work task orders that will ultimately update the asset inventory record system

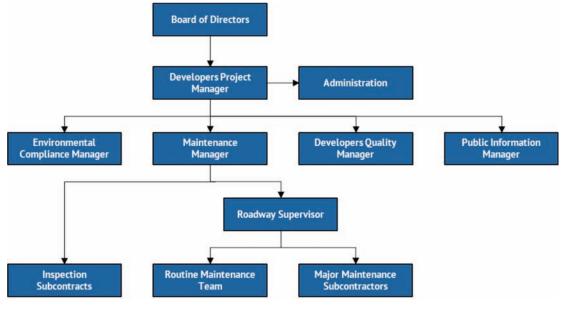
11.5.2 PROPOSED TEAM – LONG TERM MAINTENANCE

The Agreement requires in <u>Article 3 of Schedule 17 (Technical Requirements</u>) that the following Key Personnel to be in place during the Maintenance Term: Developer's Project Manager, Maintenance Manager, Maintenance Quality Manager, Developers Safety Manager, Public Information Manager and Environmental Compliance Manager. We understand that the proposed maintenance approach contemplates the full-time engagement of both the Developers Project Manager and Maintenance Manager for the duration of the Project Term. The remaining positions (which carry over from the Construction Period) will selectively ramp down from full time engagement down to 50% allocation during the initial "Transition Period" of year following commencement of the Maintenance Term to ensure adherence to the mandated plans and protocols. Following the Transition Period, this will ramp down to an approximately 25% allocation to the Project with selective ramp up as required to meet Project needs.

We consider this to be an appropriate strategy as steady state operations will not require a full-time commitment on the part of these individuals, with the Developer's Project Manager, Maintenance Manger, and the maintenance team generally assuming responsibility for day-to-day operations.

Their maintenance strategy includes (1) a small group of full-time professionals to coordinate, manage and supervise the maintenance activities as well as comply with the reporting requirements for MDOT. This is to include the Maintenance Manager, Maintenance Quality Manager, Roadway Supervisor and (2) a five-person crew of laborers who will perform minor maintenance tasks and provide continuous monitoring of the facility and incident response; and (3) a network of third-party vendors that will perform major maintenance activities and inspections.

The Quality aspects will be under the leadership of the Maintenance Quality Manager. As indicated above The PM is required to be assigned to the Project full time and located at the Site until the end of the Term. Both the Project Manager and Maintenance Manager positions are required by the PA to be available for contact 24 hours/day and 7 days/week. At least one employee must be available Monday through Friday from 6 a.m. until 8 p.m. to respond to any maintenance issues within 30 minutes. At all other times the response requirement is one hour.



The current proposed Long-Term Maintenance organization is shown below.

Figure 10 – Maintenance Organizational Structure

Their current proposed allocation of the Maintenance work activities across the categories of self-perform, outsource and contract are shown in the below table.



Table 38 - Allocation of Maintenance Work Activities

Allocation of Work (to be finalized)

Self-Perform:

- Incident response
- Daily inspection
- Guardrail repair (minor)
- Debris removal
- Litter removal
- Small sign repair
- Fence repair
- . Graffiti removal
- Bridge expansion joint cleaning .
- . Bridge washing
- Pedestrian bridge winter
- maintenance
- Pavement repairs (minor)
- Sidewalk and curb repairs (minor)
 Pavement repairs (major)
- Pavement inspection (routine)
- Landscape inspection

Outsource/On Call:

- Towing
- Sweeping
- Pavement markings
- Guardrail repair (major)
- Crack sealing
- Concrete joint sealing
- Catch basin cleaning
- Large sign repair
- Landscaping, mowing, tree
 - trimming
- Storm water pump maintenance
- Concrete barrier repairs
- Haz-mat response

 - Sidewalk and curb (major)
 - Bridge deck, parapets,
 - superstructure
 - Substructures
 - . Bridge railing

Their proposed Routine Maintenance Team resources are as shown in the below table:

Bridge expansion joint repairs

3rd Party Contracts:

- Bridge inspection
- Over head sign structure inspection
- Retaining wall and sound wall inspection
- Bridge rating for OS/OW permitting
- Pavement condition data collection (Condition, Rutting, Ride, Skid resistance)
- Closed drainage system inspection
- · Storage and drainage tunnel inspection
- Pump station inspection

STAFF	# FTES	EQUIPMENT	NOTES
Foreman	2	 (3) Pick-up Trucks 	The Lead
Asst Foreman/Equipment	1	 6-wheel Dump Truck 	Maintenance
Operator		 Small Trailer (Incident Response) 	Manager will
Laborer/Roadway Maintainers	3	 Large Trailer 	coordinate with DOT
Truck Driver/Highway Maintainer	3.3	 Skid Steer 	at a policy level and
Tow Truck Driver	1	 Truck Mounted Crash 	the Foreman will be
		Cushion/Attenuator	the day-to-day
		 Dynamic Message Boards 	coordinator with
		 (2) Arrow Boards 	MDOT and local
		 Tow Truck 	crews.

The designated roles for the staff have been identified as follows:

The Developer PM will run the SPV and be the key contact with the Equity Members. He will oversee the operations through the D&C Term and on into the Maintenance Term. He will coordinate closely with the Maintenance Manager to assure all contractual requirements are being met.

The Maintenance Manager will manage the MDOT relationship, manage the overall ongoing O&M activities, ensure team performance and compliance. The Maintenance Manager will make sure that all work plans are properly updated and submitted to MDOT including the Maintenance Plan, PMP, Renewal Work Plan, and Handback Work Plan. The Maintenance Manger will attend all coordination meetings with MDOT and ensure proper meeting minutes and document management takes place.



The Maintenance Manager will also take responsibility for the coordination of engineering inspection, and will schedule the necessary inspections, coordinate the 3rd party inspectors, review inspection reports, ensure proper repairs are performed, and submit all reports per requirements to MDOT. Coordination, administration and management of the third-party services will also fall under the remit of the Maintenance Manager.

The Maintenance Quality Manager and Developer Safety Manager will be the point person for quality control/assurance and health and safety compliance respectively.

The Roadway Supervisor will coordinate all maintenance tasks and activities properly divided between and performed by the in-house maintenance team and the outsourced subcontractors. The Roadway Supervisor will coordinate the field inspection of the subcontracts and vendor contracts, supervise the work, and hire the in-house routine maintenance team.

A Working Foreman will manage a 4-person team for routine maintenance and work with the Roadway Supervisor to make sure that the necessary material and equipment procurement takes place.

In addition, it is expected that at least one administrative person will be needed to provide support for reporting, data entry, inventory tracking, contractual monitoring, etc. During the ramp-up phase additional support will be made available.

The indicated Public Information Manager position will continue to be filled by the same personnel as for the D&C Term – Delora Tyler Hull.

The Consortium have engaged a number of employees to enable the self-performance of Incident Management services. Specifically bringing onboard both a Truck Driver/Highway Maintainer and a Tow Truck Driver. In addition to this, the Consortium will provide incentive fees for wreckers, and added 3rd party back up response resources during adverse weather periods.

After receiving supplemental information and further discussions with the maintenance advisor team, WT can see that the team has a solid outline for how to perform the Maintenance Work. The key for success will be the personnel involved. If the Developer PM and Maintenance Manager are of the caliber of the resumes provided and they are 100% dedicated to the project there should be sufficient expertise to assure that a comprehensive plan is developed and carried out. The Maintenance Quality Manager will need to be of a similar caliber – the current expectation is to use the Manager from the D&C Term. Since these are Key Personnel positions MDOT will also be monitoring and need to approve of any replacements.

There will need to be a comprehensive program of reporting and reviews by the Key Personnel. It will be critical to hire the right additional staff, we have not yet received information as to the required skill sets they anticipate for the non-Key Personnel positions. The same will apply for the program of subcontracting – to balance cost effectiveness with responsiveness and quality delivery.

The performance requirements for this project are exceptionally detailed as further discussed in the Noncompliance section below. Therefore, the inspection regime and tracking system will need to be of a corresponding granularity. The plan to have a Senior Engineer Inspector to head up this program is an appropriate approach that will be a significant step in placing sufficient focus on this issue.



11.6 MAINTENANCE MANAGER PLANS AND REPORTS REQUIRED

The PA mandates the following maintenance plans to be submitted and implemented by the Developer.

INITIAL PLAN	UPDATES TO PLAN		
As a condition to Financial Close, submit an Interim	During the D&C Term annually following NTP.		
Maintenance Plan for MDOT review and MDOT approval is			
a condition for NTP.	At least 45 days prior to completion of Milestone 2 for		
	the Storage and Drainage Tunnel.		
LONG TERM M			
Within 45 days after NTP, submit draft Maintenance Plan	On October 1 of each Fiscal Year after Maintenance		
to MDOT for review and comment, with a final version	Commencement Date, submitted to MDOT for approval.		
provided for approval within 90 days after NTP.			
RENEWAL WORK			
Within 90 days after NTP, submit Draft Renewal Work	At a minimum, an annual update including Renewal		
Plan to MDOT for review and comment with final draft	Work activities.		
provided for approval 180 days prior to scheduled			
Maintenance Commencement Date.	Maintain a time log of all unplanned maintenance and		
Francendice commencement pate.	repairs with all statistics included in monthly		
	Maintenance Report.		
	Submit Renewal Work Report monthly as part of		
	Maintenance Report including all Planned Renewal		
	Work, Work performed, and confirmation of compliance		
	with maintenance procedures.		
HAND	BACK		
Six months prior to Substantial Completion, a Handback	Annually update with a final Handback Work Plan		
Work Plan must be submitted including a Residual Life	submitted to MDOT for approval at least 60 months		
Methodology.	before the anticipated expiration of the Term or earlier		
	termination of the Agreement.		
	termination of the Agreement.		

During the D&C Term, the Developer is required to provide a Seasonal Suspension plan to MDOT showing the active lanes to be maintained along with temporary barrier, attenuators, signing or any other item that will remain during the work suspension. Submit this plan at least 60 days prior to the Seasonal Suspension for review and comment.

Table 41 - Additional Plan Updates & Reporting Requirements			
ADDITIONAL LONG-TERM MAINTENANCE PLAN & REPORTING REQUIREMENTS			
PLAN	FREQUENCY		
PMP COMPONENTS			
Environmental Compliance and	Update as necessary for Maintenance Work		
Mitigation Plan			
Environmental Protection Training Plan	Annually on October 1		
Transportation Management Plan	Update as necessary for Maintenance Work		
Conceptual Transportation Management	20 business days prior to Planned Closure		
Plan			
MAINTENANCE PLAN COMPONENTS			

Table 41 - Additional Plan Updates & Reporting Requirements



PLAN	FREQUENCY	
Interim Maintenance Plan Regulated Substances Management Plan Maintenance Safety Plan		
	Annually on October 1	
Maintenance Quality Plan		
Incident Management Plan		
Vegetative Maintenance Plan		
Renewal Work Schedule	Initial: Not later than 90 days before the beginning of the second full calendar year after the Substantial Completion Date, Not later than 90 days before the beginning of the third full calendar year after the Substantial Completion Date and 90 days before each calendar year thereafter, updated Renewal Work Schedule: 5 year look ahead Annually on October 1; Monthly on first of the month; One year look ahead Quarterly, 14 days prior to start of each Quarter.	
Renewal Work Plan	Annually on October 1	
Renewal Work Completed	Not later than 60 days after the end of each calendar year, a written report of the Renewal Work performed in the immediately preceding calendar year that describes:	
Draft Maintenance Report	Monthly (Draft); 7 days after the beginning of each month	
Final Maintenance Report	Quarterly (Final); 14 days after the start of each Quarter	
Annual Maintenance Report	Annually on October 31 for approval by MDOT	
HANDBACK		
Project Condition Handback Reports	 Preliminary Project Condition Report: no less than 42 months prior to Scheduled Expiration Date; Prefinal Project Handback Condition Report: on first anniversary of the date of the initial report; and Final Project Handback Condition Report: within 45 days of the Scheduled Expiration Date. 	

The required plans and reports are consistent with similar P3 projects of this nature.

Noncompliance Events include any failure to submit or update any Plan by the time prescribed or in accordance with this Agreement with three (3) Noncompliance Points (NCP). Also, any failure to comply with any approved Plan is an application of four (4) NCP. There is only a 24 hours response time and the recurrence interval are 2 hours, so a plan five days late could result in 15 NCPs.

11.7 PENALTIES FOR NON-COMPLIANCE

The Developer is required to provide comprehensive self-monitoring and reporting of Performance Events (Noncompliance Events and Unavailability Events) in accordance with <u>Article 3 of Schedule 17</u> (Technical Requirements). The Quality Management Plan is specifically required to include processes for noncompliance review and disposition, including the development of a Noncompliance Event tracking system along with reporting processes, corrective and preventative action response strategies for Noncompliance Events. The Maintenance Plan/Maintenance Quality Plan must evaluate the level of performance against the minimum Maintenance Performance Requirements. This must include the method of tracking and reporting Defects, Noncompliance Events, Noncompliance Points, and Unavailability Events accumulated throughout the Maintenance Term.

The Developer is required to document any Performance Event in detail in the Maintenance Management Information System ("MMIS") along with completed actions. For Noncompliance Events, information must include the designated periods (as further described below) for that event and any Noncompliance Points that should be assessed (both from Appendix A or B as applicable). For Unavailability Events the applicable Unavailability Factor and time periods (in 15-minute increments) along with any Unavailability Adjustments due must be included.

In addition to Developer's self-monitoring and reporting process, MDOT is entitled to identify Performance Events, and document such directly into the MMIS.

11.7.1 LONG TERM MAINTENANCE

As discussed in Section 5.2.2 of this Report, the primary deductions to the Availability Payments are Noncompliance Adjustments and Unavailability Adjustments. The PA provides that these deductions are agreed upon liquidated damages and not penalties. Additional details on the adjustments during the Maintenance Term are described in Report Section 14 Payment Mechanisms.

Noncompliance Adjustments

Noncompliance Points are a system designed to measure the Developer's performance levels and compliance with the requirements of this Agreement throughout the Term. Noncompliance Events for Maintenance Failures during the Maintenance term which may result in the assessment of Noncompliance Points are detailed in <u>Appendix B to Schedule 4 (Payment Mechanism)</u>. The Response Times are specified for Mitigation, Temporary Repair and Permanent Repair (as applicable) along with Recurrence Intervals (as further explained below) and the Noncompliance Points to be assessed if a Noncompliance Event is not addressed within the allowable periods.

The maximum points that may be assessed for a particular Noncompliance Event currently range from 1-5 points for each event as detailed in Appendix B. MDOT may assess less than the maximum points for a particular event. MDOT can assess \$1,500 (indexed annually) per Noncompliance Point for each deduction event.

If the root cause of a series of Noncompliance Events is deemed substantially the same and the Developer fails to take the appropriate actions to resolve these Noncompliance Events, the Deduction will be increased to \$4,000 per point (indexed annually). These are triggered after three Noncompliance Events in a single day or after four Noncompliance Events in a rolling consecutive seven-day period.

The categories of Noncompliance Events are Pavement/Curbs/Sidewalks; Drainage; Bridges/Structures; Pavement markings/delineators; Signs; Walls/Fences; Landscaping; Erosion/Slope control; Litter/Debris removals; Guardrails/safety barriers; Tunnel and structures; Pump Station; Incident Management; Maintenance of Traffic and a variety of general contractual compliance items.

Also, during the Maintenance Term MDOT may replace Noncompliance Events and add an alternative in its place. This is based on the provision in <u>Schedule 4</u>, <u>Section 4.6</u> that any existing contractual obligation of Developer may become an alternate Noncompliance Event if the Developer fails to comply with that contractual obligation at least twice and MDOT provides notice within 15 days of the second occurrence that the obligation will be added as a Noncompliance Event upon the next failure and such failure occurs. As part of this provision, the total number of Noncompliance Points in Appendix B is not allowed to increase more than 10% although reductions may be made to stay within that growth limit.



Unavailability Adjustments

Developer is required to reasonably minimize impacts to the operations and maintenance of the Relevant Infrastructure, including minimizing Unavailability Events. For Unavailability Events during the Maintenance Term, Unavailability Adjustments are deducted from the Availability Payments. They are calculated in 15 minute intervals for each event and based on the specific type of lane that is unavailable as shown in the below table. No adjustments are made for Permitted Lane Closures that are approved by MDOT and meet the requirements of <u>Schedule 17, Article 18</u>. If a Permitted Lane Closure exceeds the approved duration, then it becomes an Unpermitted Lane Closure as do all lane closures that do not meet the requirements for a Permitted Lane Closure. The adjustments will be not assessed if part of a Relief Event and MDOT is properly notified.

Table 42 - Maintenance Term Unavailability Factors

UNAVAILABILITY FACTORS PER ONE HOUR INTERVAL (INDEXED ANNUALLY)			
Mainline Shoulder	\$100		
Mainline I-75 (per lane)	\$6,000		
High Impact Ramp \$6,00			
Other Ramp (per lane)	\$500		
Service Drive (per lane)	\$500		
Overpass/Underpass (per lane) \$500			

The maximum Unavailability Adjustment is \$100,000 per day (indexed annually).

11.7.2 INTERIM MAINTENANCE DURING D&C TERM

Noncompliance Adjustments

The same process as described above applies to Noncompliance Adjustments during the D&C Term except that the measurement standard is Appendix A of Schedule 4 and any deductions are made from the Milestone Payments.

<u>Appendix A of Schedule 4</u> provides that during the Interim Maintenance period the I-75 mainline and bridge approach pavements are to meet the Pavement Surface Evaluation and Rating System (PASER) which is a visual inspection of condition as well as specific items detailed for cracks, potholes and "broken up areas". The D&C Term requirements are in the same categories as the Long Term Maintenance for the Noncompliance Events with variations to reflect existing facilities and the D&C Work. One main variance is 20 points for I-75 bridges that do not maintain existing design loads

As per <u>Schedule 17, Article 24.3.3</u>, during the period from NTP to the commencement of the fall Seasonal Suspension date following NTP, the Developer will not be assessed for Noncompliance Points if Noncompliance Events occur in any of the following areas of the Interim Maintenance Work (as described in <u>Exhibit 24A II and Schedule 4 Appendix A NCP Table)</u>: Roadway, Structures, Earthworks, Embankments and Cuttings.



Unavailability Adjustments

The same process described above applies to the D&C Term except that the primary focus is the D&C Work rather than Interim Maintenance activities. The D&C Term Unavailability Factors are shown in the below table. The adjustments will be not assessed if part of a Delay Event and MDOT is properly notified.

Table 43 - Unavailability Factors D&C Term			
UNAVAILABILITY FACTORS PER 1HOUR			
INTERVALS			
(INDEXED ANNUALLY)			
Mainline Shoulder	\$200		
Mainline I-75 (per lane)	\$3,500		
High Impact Ramp	\$3,500		
Other Ramp (per lane) \$100			
Service Drive (per lane)	\$100		
Overpass/Underpass (per lane)	\$50		

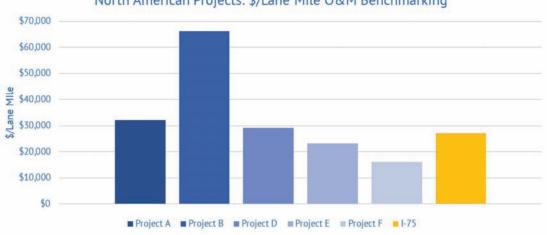
11.7.3 CONCLUSIONS

The associated mechanisms for Unavailability and Noncompliance Events are considered reflective of market precedent for horizontal DBFM P3 procurements. Please refer to Section 14 (Payment Mechanism) for detailed analysis on KPI's and scenario analysis.

12.0 MAINTENANCE COST REVIEW

12.1.1 MAINTENANCE COST BENCHMARKING

WT have reviewed a sample of recent comparable projects from the North American market to provide comparable Maintenance Term benchmarking for the project.



North American Projects: \$/Lane Mile O&M Benchmarking

The graph above provides a listing of comparable projects that have achieved Financial Close in North America. The Maintenance Costs for these projects are reported in 2018 dollars.

As can be seen from the above, we note that the historical cost range for this work is between \$16,086 to \$66,290 per lane mile per annum, with a cost of \$27,099 (at 55 lane miles) provided by the Consortium in their latest pricing update, which falls within the range of benchmarks reviewed.

12.2 FACILITIES MANAGER OPERATIONAL COSTS

12.2.1 TRANSITION/MOBILIZATION

SPV Transition

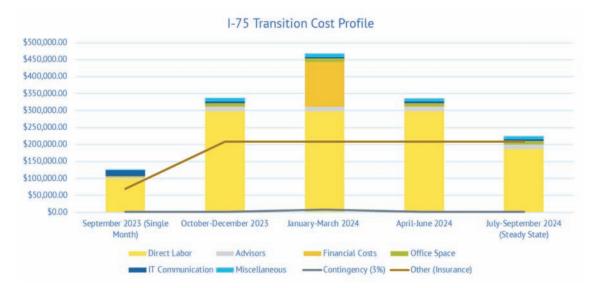
The operational cost summary provided by the Consortium contemplates an initial transition period of 12 months spanning August 2023 through to the end of July 2024. The general approach contemplates the retention of key Developer personnel (which will have been engaged during the construction period) in order to facilitate the transition to steady-state operations during the Maintenance Term, following which selective staff will be reduced to a more ad-hoc role while the maintenance team is brought on board to handle day-to-day operations and renewal activities under the oversight of the Developer staff.

The costs which have been modelled comprise Direct Labor, Advisors, Financial Costs, Office Space, IT Communication, and Miscellaneous Costs as follows:

Figure 11 - FM Benchmarks Historical Projects: \$/Lane Mile O&M Benchmarking

Table 44 - Transition Cost Allocations	
TRANSITION COST	VALUE (\$)
DIRECT LABOR	\$1,179,436
ADVISORS	\$54,167
FINANCIAL COSTS	\$137,417
OFFICE SPACE	\$42,250
IT COMMUNICATION	\$35,300
MISCELLANEOUS	\$44,333
CONTINGENCY (3% ON ABOVE COSTS)	\$15,673
OTHER (INSURANCE)	\$903,179
TOTAL	\$2,411,755

Figure 12 - Transition Cost Profile



Direct Labor salaries are modelled at \$297,863 per quarter for a from commencement of the Maintenance Term to the end of June 2024, following which salaries will normalize to the budgeted costs for steady state operations at a value of \$186,561. WT note that, as the Consortium will also be undertaking the Maintenance aspect of the works, there will be a substantive element of continuity with respect to personnel involved in the Project during Construction, through the Transition period, and into the Maintenance Term. The graph below displays how these personnel will transition their involvement throughout these periods.



Table 45 - Staff Allocations PERSONNEL	CONSTRUCTION PERIOD	TRANSITION PERIOD	MAINTENANCE TERM
DEVELOPERS PROJECT MANAGER / CEO	100%	100%	100%
CFO	100%	100%	50%
FINANCIAL ASSISTANT	100%	0%	0%
CTO ("MAINTENANCE MANAGER")	100%	100%	100%
ENGINEER	100%	0%	0%
ADMINISTRATIVE ASSISTANT	100%	100%	50%
DEVELOPERS SAFETY MANAGER	100%	50%	25%
PUBLIC INFORMATION MANAGER	100%	50%	25%
OFFICE MANAGER	100%	0%	0%
ENVIRONMENTAL COMPLIANCE MANAGER	100%	50%	25%
D&C/MAINTENANCE QUALITY MANAGER	100%	50%	25%

This demonstrates that the Consortium have planned for a gradual modification in the required on-site management resources as the construction phase of the project nears completion and the maintenance term commences, which is a suitable approach.

Furthermore, costs associated with Advisors is limited to Legal Support for the duration of the Transition period, with a quarterly expenditure of \$12,500.

Financial Costs are primarily inclusive of Banking Fees with the exception of the January-March 2024, which sees an anticipated spike in costs associated SPV Audit and Tax Filing with additional allocations for Financial Model Escrow, Insurance Trustee, Trustee, Security Trustee, and the Indenture Trustee. This expenditure is reflective of Financial Costs for subsequent years of the Maintenance Term and aligns with year end reporting.

Office Space includes fees associated with Office Supplies, Expenses, and Space for the duration of the Transition Period.

IT Communication costs see an initial expenditure in the first month of operations which is relative to the purchase of Laptops, Desktops and Printers. Mobile Phones and IT Support will continue for the duration of the transition period and into operations which is considered appropriate.

Finally, the Mobilization costs account for some Miscellaneous expenses such as Travel, Car Lease, SPV Project Website, Partnering and Project Specific Communication which are all consistent for the Transition period.

The proposed transition costing and allocations are considered appropriate in the context of the Project, with a sufficient transition period with retained Developer staff to ensure a smooth transition into steady-state operations while the maintenance team gradually takes on more responsibilities for day-to-day management. Key personnel will remain engaged on a semi-regular basis and the Chief Technical Officer (i.e. Maintenance Manager) will remain a key fixture in the delivery of the Project throughout the Term.



Maintenance Mobilization

As part of the Mobilization costs, the Consortium will purchase a number of pieces of equipment to service the Project during the maintenance term. A summary of these purchases and the associated cost investment is included below for reference.

Table 46 - Equipment Capital Costs		
EQUIPMENT CAPITAL COSTS	QUANTITY	COST
Pick Up Trucks	3	\$50,000
6-Wheel Truck	0	\$100,000
Trailer (Small)	1	\$20,000
Trailer (Large)	1	\$60,000
Skid Steer	1	\$90,000
Truck Mounted-Crash Cushion/Attenuator	1	\$115,000
Dynamic Message Boards	1	\$20,000
Arrow Boards	2	\$10,000
Miscellaneous Tools	1	\$50,000
Office Set Up - IT, Computers, Etc.	1	\$100,000
EQUIPMENT CAPITAL COST TOTAL		\$625,000

*6-Wheel Truck To Be Leased

In addition to the initial capital cost associated with the equipment identified above, the Consortium have allocated funds to the Annual Maintenance Budget of \$100,000 per annum, as can be seen further below. WT understand these costs are intended to cover selective leasing, equipment renewal, replacement, repairs, fuel, etc. as required over the duration of the term.

Separate from this, Due to the level of continuity with the Developer team during the commencement of the Maintenance Term (specifically the Developer Project Manager and Technical Director) the Consortium have not specifically included a ramp-up budget relative to maintenance staff in advance of Substantial Completion. We understand that hiring of the balance of the maintenance team and purchase of the above-referenced equipment will occur in the two months leading into Substantial Completion. However, we note that the nominated Maintenance Manager (Brad White) will be involved in the project as early as the Interim Maintenance Period with a gradual ramp up leading into Substantial Completion which has been reflected in the SPV costs. This early involvement should, in our opinion, provides the Developer with appropriate time to source, engage, and on-board the remaining maintenance team members in order to facilitate day one operations following handover from the DBLLC. We would also expect that any resource constraints could be readily managed via retention of the DBLLC's interim maintenance resources and paid via the annual maintenance budget.

Furthermore, the current maintenance approach contemplates the implementation of the MMIS during the Interim Maintenance Period, and as such negates the need for standing up this aspect of the maintenance approach prior to Substantial Completion. Administration has also been budgeted under the SPV costs and will transitions through from the Construction Period which, with the exception of staff on-boarding, will not require a formalized transition.



12.2.2 SPV COSTS

WT have received and reviewed the Consortiums SPV cost breakdown "I75 Final SPV_Budget Model_081718" outlining detailed costs assumptions for Developer costs during the Maintenance Term. Costs have been presented on a quarterly basis in order to align with the payment mechanism and are delineated into the following key categories:

- Direct Labor inclusive of all key roles identified under the PA (Developer Project Manager,
- Developer Safety Manager, etc.) in addition to a financial buffer to account for variances in salaries;
- Advisors Legal fees;
- Financial Costs Insurance and Security Trustee Fees, Banking Fees, and SPV Audit/Tax filing costs;
- Office Space Inclusive of office space lease, supplies, and furniture;
- IT/Communications Mobile phones, IT Support, and Laptops/Desktop Computers;
- Miscellaneous Travel expenses, car leases, partnering and project specific communications, etc.;
- Contingency 5% contingency built into overall budget (excluding other costs below);
- Others Insurance, Bonds, Insurance Brokerage Fees and Deductible for Developer.

		FULL TERM (25		AVERAGE	
SPV COST BREAKDOWN - MAINTENANCE TERM		YEARS)		ANNUAL	
Developers Project Manager / General Manager	\$	6,781,219	\$	271,249	
CFO	\$	2,220,750	\$	88,830	
CTO ("Maintenance Manager")	\$	5,287,500	\$	211,500	
Administrative Assistant	\$	1,110,375	\$	44,415	
Developers Safety Manager	\$	888,300	\$	35,532	
Public Information Manager	\$	740,250	\$	29,610	
Environmental Manager	\$	888,300	\$	35,532	
Maintenance Quality Manager	\$	1,110,375	\$	44,415	
Subtotal - Direct Labor	\$	19,027,069	\$	761,083	
Advisors (Legal)	\$	1,250,000	\$	50,000	
Financial Costs (LTA, LIA, Trustee, Accounting/Tax/Audit)	\$	3,425,000	\$	137,000	
Office Space	\$	1,125,000	\$	45,000	
IT/Communications	\$	649,000	\$	25,960	
Miscellaneous (Travel, cars, Website, Community events)	\$	1,013,000	\$	40,520	
Contingency	\$	373,100	\$	14,924	
Others (Bonds, Broker Fees, and Deductible)	\$	2,945,255	\$	117,810.20	
Subtotal - Other Costs	\$	10,780,355	\$	431,214	
GRAND TOTAL - SPV Costs	\$	29,807,424	\$	1,192,297	

Table 47 - SPV Cost Breakdown for Maintenance Term

Based on our review of the proposed labor budget, WT confirm that the key individuals mandated under the PA have been accounted for on the basis of the allocations described above in Section 12.2.1 above, with sufficient support staff to enable steady state operations. For clarity, the Chief Technical Office ("CTO") identified above is synonymous with the Maintenance Manager position identified in the Maintenance Review Section. Salaries noted are considered competitive with appropriate burden costs and performance bonuses built in.



Further, WT note that the budgetary considerations for Office Space, IT/Communications, and Miscellaneous appear appropriate for the continued support of the noted key individuals, with added buffer by way of the 5% contingency in the event of any unforeseen costs or administrative requirements.

The annual expenditure of SPV costs has been modeled for each individual year of the Term, and experiences minor fluctuations as represented in the below table:

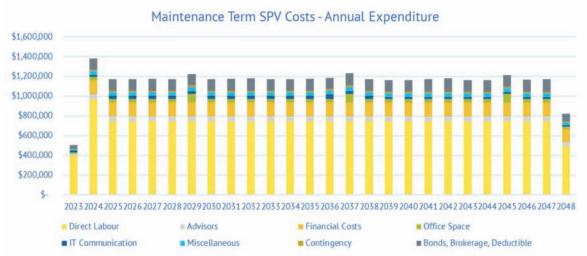


Table 48 - Maintenance Term SPV Costs - Annual Expenditure

As can be seen from the above, the annual spend in generally consistent on a year-on-year basis with minor fluctuations in office space associated with new furniture purchases.

WT note that the above profile includes the transition period referenced in Section 12.2.1 above which explains the cost differential in Years 2023 and 2024 versus the other year of the term. Year 2023 technically commences at Substantial Completion at the end of August 2023 with a correspondingly smaller spend due to the shorter year. Year 2024 represents the highest spend due to the increased staffing allocations during the transition period, which drop off somewhat during the subsequent years following commencement of steady-state operations. Year 2048 is correspondingly a shorter year due to the handback occurring at the end of August 2048, corresponding with the PA expiry date.

Based on our review of information provided, WT consider the SPV cost budget for the Maintenance Term to be appropriately sized and structured consistently with the proposed long-term maintenance and management approach.



12.2.3 ANNUAL MAINTENANCE COSTS

The Consortium have provided their Annual Maintenance costs, with a budget of \$1,488,363 per annum. Costs have been assigned against 6 main headings, as follows:

- Labor
- Equipment
- Office/Yard

- Material
- Outsourced Activities
- MDOT NCP Fee

Table 49 - O&M Annual Budget Cost Allocations	606 7
FACILITIES MANAGEMENT EXPENSES	COST
Labor	
Roadway Supervisor	\$100,000
Working Foreman	\$0
Equipment Operator	\$120,000
Truck Driver/Highway Maintainer	\$75,000
Tow Truck Driver	\$231,000
Labor Subtotal	\$596,000
Equipment	
Maintenance and Fuel	\$45,000
Equipment Subtotal	\$45,000
Office/Yard	
Yard rental	\$0
Equipment rental	\$10,000
Comms/IT for staff	\$14,400
Asset Management Software Licenses	\$24,000
Office Subtotal	\$48,400
Material	
Self Performed Activities	\$300,000
Material Subtotal	\$300,000
Outsourced Activities	
Inspections	\$95,000
Slope Mowing	\$23,545
Bridge Deck and Approach Repair	\$48,646
Road Sweeping	\$57,148
Pump Station Maintenance	\$23,000
Generator Maintenance	\$6,000
Outsource Subtotal	\$253,339
MDOT NCP Fees	\$135,375
Contingency (3%) and Margin (5%)	\$110,249
TOTAL ANNUAL BUDGET	\$1,488,363

The project has a Total Lane Mile length of 55 Miles. Using the Consortium's pricing of \$1,488,464 this provides a cost of \$27,063/Lane Mile.

As can be seen from the table above, O&M costs are generally reflective of Labour, Equipment, Materials, Outsourced Activities and MDOT NCP Fees. This is reflective for Operation and Maintenance of this type of asset and in captures what we would expect to be the full range of services required for this.



The above costs include detail around the works that are to be subcontracted by the Consortium to third party providers (i.e. "Outsourced Activities"). We would not expect the Consortium to carry these skills inhouse and the services that have been shown as an out-sourced cost are typical of a contract of this nature. Further analysis of these costs shows the following dollar per unit for the services:

- Bridge Deck and Approach Repair \$0.16/SF Deck Area
- Road Sweeping \$1,039/Lane Mile
- Pump Station Maintenance \$1,917/Month
- Generator Maintenance \$500/Month

Further commentary is included below pertaining to Subcontracted Services

12.2.4 SUBCONTRACTED SERVICES

A key metric of the FM Submission analysis is a review of the ratio of services that the Consortium are proposing to self deliver versus the amount of works that is proposed to be out-sourced.

Outsourced services can carry a level of risk, as the performance standards of the third-party supply chain will have a direct impact on the performance payments and any deductions to the contract for performance and availability failures. To compound this issue, it is highly unlikely that the Consortium can agree back to back payment terms and corresponding deductions with their third-party suppliers, which creates a payment gap that the Consortium are responsible for.

Nonetheless, it is understood that pricing associated with subcontracted O&M services has been derived from a number of sources, namely AECOM and Louis Berger who have direct, relevant past experience with these types of services.

The Consortium has proposed to outsource approximately 17% of the annual service fee, which is within a reasonable range set by previous transactions and therefore provides a suitable proposal.

OUTSOURCED ACTIVITIES	COST	% TOTAL
Inspections	\$310,636	37%
Slope mowing	\$23,545	9%
Bridge deck and approach repair	\$48,646	19%
Road sweeping	\$57,148	23%
Pump Station Maintenance	\$23,000	9%
Generator Maintenance	\$6,000	2%
OUTSOURCE TOTAL	\$253,339	100%

Table 50 – Outsourced Activities Summary

Of the 17% out-sourced services, 37% is attributable to Inspections and 9% is attributable to Slope Mowing, with 19% and 23% associated with Bridge Deck and Approach Repair and Road Sweeping, respectively, which we believe to be typical for a transaction of this scope and scale.



12.2.5 SUMMARY

Through both our benchmarking analysis and assessment of the Consortium's cost build-up for fees associated with the Maintenance Term aspect of the Project, we can conclude that the cost associated with this work should provide adequate service provision to meet the requirements of the Project.

13.0 LIFECYCLE COST REVIEW

13.1 LIFECYCLE COST BENCHMARKING

13.1.1 PREMISE

Once an asset has been installed there is a requirement to maintain the asset during its normal economic life and a requirement to replace the asset at the end of its normal economic life. In the case of P3 transactions this is especially relevant, given the performance requirements and the hand-back conditions that are typically prescribed.

The modelling that has been completed within this report considers Lifecycle expenditure based on actual P3 transactions which have been tendered by leading P3 developers.

Costs are therefore based on modelling of the economic life of installed assets and the frequency on which these assets are required to be replaced to meet performance standards and hand-back conditions under an abatement/ deductions model scenario.

The graphs below show the profile of lifecycle expenditure of various asset components across a number of recent P3 Highway Infrastructure transactions. The data has been extracted from each comparable project and analysed to be presented as anonymous to protect the security of this information.

13.1.2 PAVEMENT BENCHMARKS

We have extracted the average annual pavement replacement value from a number of comparable projects delivered throughout North America. Through this, we are able to observe a range of reinvestment from \$6,632 through to \$14,815 per lane mile per annum.

Project No	Lane Miles	Pavement Lifecycle Cost	Average Annual Lifecycle Cost	Average Annual Lifecycle Cost Per Lane Mile
Project 1	77.4	\$15,405,980	\$513,333	\$6,632
Project 2	220	\$67,399,021	\$2,246,634	\$10,212
Project 3	166.6	\$42,087,992	\$1,402,931	\$8,421
Project 4	225	\$100,002,492	\$3,333,416	\$14,815
Project 5	226.8	\$71,154,819	\$2,371,827	\$10,458
Project 6	31.6	\$12,060,571	\$344,588	\$10,905
Project 7	32.1	\$15,703,987	\$314,080	\$9,784
Project 8	267.2	\$75,727,721	\$2,247,113	\$8,410
I-75	55	\$11,296,299	\$451,852	\$8,215

Table 51 - Pavement Benchmarks

PARTNERSHIP



Average Annual Pavement Replacement Per Lane

Figure 11 - Pavement Benchmarks

As can be seen from the above, we note that costs associated with pavement replacement over the course of the term fall within a range of historical benchmark data from comparable projects.

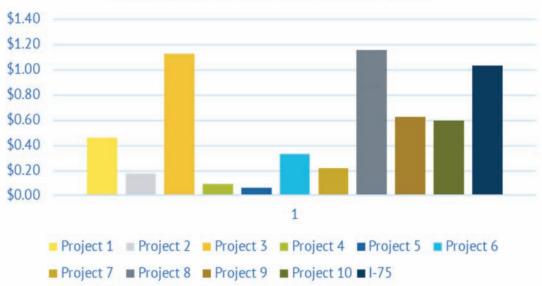
For clarity, all cost data analysed in the above is presented in Real (Current Day) dollars for comparative purposes.

13.1.3 HIGHWAY STRUCTURE BENCHMARKS

Similar to Pavement, we have extracted the average annual rehabilitation cost of highway structures on a cost per square foot basis from a number of comparable projects delivered throughout North America. Through this, we are able to observe a range of reinvestment from \$0.06 to \$1.16 per square foot deck area per annum.

Project Number	Structures Rehab	SF Total Deck Area	Average Annual Lifecycle Cost	Average Annual Cost/SF
Project 1	\$11,922,117	1045426	\$476,885	\$0.46
Project 2	\$26,542,591	4292856	\$780,664	\$0.18
Project 3	\$4,303,216	109265	\$122,949	\$1.13
Project 4	\$1,668,017	559296	\$47,658	\$0.09
Project 5	\$1,059,228	506407	\$30,264	\$0.06
Project 6	\$8,379,677	850607	\$279,323	\$0.33
Project 7	\$5,666,585	864031	\$188,886	\$0.22
Project 8	\$21,949,999	628967	\$731,667	\$1.16
Project 9	\$36,003,131	1911789	\$1,200,104	\$0.63
Project 10	\$5,706,340	317245	\$190,211	\$0.60
I-75	\$8,018,294	310636	\$320,732	\$1.03

Table 52 - Highway Structure Benchmarks



Average Annual Deck Rehab Per SF

Figure 12 - Highway Structure Benchmarking

As can be seen from the above, we note that costs associated with highway structure rehabilitation over the course of the term fall above the observed range of historical benchmark data from comparable projects, representing additional budget sufficiency for the delivery of this work.

Again, all cost data analysed in the above is presented in Real (Current Day) dollars for comparative purposes.

13.2 RESIDUAL LIFE REQUIREMENTS

Residual, or Remaining Useful Life of assets is prescribed in PA Article 25 – Handback. Assets which have a Design Life specified in Article 3 which exceeds the Term, the Residual Life at Handback will be calculated as the Design Life less the years of the Term. In no case shall the Residual Life be less than 3 years at the end of the Term unless specified otherwise in the Project Documents. A summary of these specified design lives has been included in the table below, with specific assets to be replaced during the life of the term per the Consortium's lifecycle model highlighted for reference.

ASSET	DESIGN LIFE (Years)
Flexible Pavement	20 ⁽²⁾
Rigid Pavement	20 ⁽²⁾
Bridges (highway and pedestrian)	75
Large Culverts (larger than 10 ft Diameter)	75
Highway Culverts	50
Storage and Drainage Tunnel	100
Intelligent Transportation Systems (ITS) ⁽¹⁾	15
Sensor Systems ⁽¹⁾	15



ASSET	DESIGN LIFE (Years)
Traffic Signals ⁽¹⁾	20
Sign Structures	30
Overhead Sign Structures	30
Sign Panels	20
Traffic Barriers (Guardrails, Concrete Barriers, Cable Barriers)	20
End Treatments (Anchorages, Terminals, Crash Cushions/Impact Attenuators)	20
Pavement marking, Striping	5
Concrete Curb and Gutter	20
Fence Barriers	20
Noise Walls	75
Lighting Structures	30
High Mast Light Tower Structures	30
Pump House	40
Pumps	20

(1) Items exempt from renewal pursuant to Non-Maintained Facilities and Non-Maintained Work requirements.

(2) Technical Requirements indicate a design life of 20 years; however, Consortium analysis is based on a 30-year replacement period.

WT note that while there are various assets to be replaced during life of the term not specifically identified within the Renewal Profile include Traffic Barriers, End Treatments, Curb and Gutter and Fence Barriers, the Consortium have confirmed that adequate allowances are included within the renewal budget to accommodate any required repairs and/or replacements as they are encountered.

13.3 LIFECYCLE COST ANALYSIS

The DB Contract Price provided by the Consortium is \$629,245,356 and the Lifecycle cost is \$25,270,793 over the 25-year operating term – equivalent to 4.0% of the DB cost.

Table 53 - LC Cost Breakdown		
RENEWAL WORKS	COST	% Total
Mainline	\$12,319,861	50%
RCC Pavement	\$4,257,635	17%
Bridge & Structure	\$5,312,226	22%
Signs & Over head Structure	\$300,000	1%
Pavement Marking	\$2,000,000	8%
Equipment	\$450,000	2%
Service Road	\$3,862,691	16%
RCC Pavement	\$2,562,691	10%
Signs & Over head Structure	\$100,000	0%
Pavement Marking	\$1,200,000	5%
Storage and Drainage Tunnel	\$2,440,128	10%
Tunnel Renewal	\$1,800,000	7%
Drainage Inspection	\$640,128	3%
Pump Station	\$540,000	2%
Pumps x 3 Units	\$530,000	2%
Screens, Electrical and Mechanical	\$10,000	0%
Handback	\$5,372,073	22%
Pavement	\$975,973	4%
Bridge & Structure	\$2,706,069	11%
Signs & Over head Structure	\$50,000	0%
Pavement Marking	\$300,000	1%
Storage & Drainage Tunnel	\$1,060,032	4%
Pump Station	\$280,000	1%
RENEWALS SUBTOTAL	\$24,534,751	100%
Contingency	\$736,043	3%
RENEWALS SUBTOTAL	\$25,270,793	103%

The lifecycle has been provided from the Consortium to WT as a total cost asset relative to the individual components of the Project.

As is expected, the majority of lifecycle costs are those associated with the Mainline alignment, comprising 50% of the overall LC budget. As discussed, there are requirements surrounding residual life of the various assets at the time of handback. This has been reflected in the Handback component of the LC breakdown, reflecting a further 22% of the LC budget. As expected, the service road will require renewal of pavement, signage and pavement marking over the course of the term, resulting in 16% of the total LC budget. Storage and Drainage Tunnel renewal is relative to the tunnel specifically, and Pump Station works consists of pump replacement as well as some screens, mechanical and electrical system updates. These works represent 10% and 2% of the LC budget, respectively.

Further, it is understood that LC pricing has been developed by leveraging input from the DBLLC, specifically utilizing real-time quantities and unit rates to allow for a consistent cost basis across both the Capex and Opex budgets.



The Consortium have also provided their lifecycle cost profile in returnable schedule format, which is shown as a cost per annum. The following table provides a breakdown of the annual spend associated with each cost item.

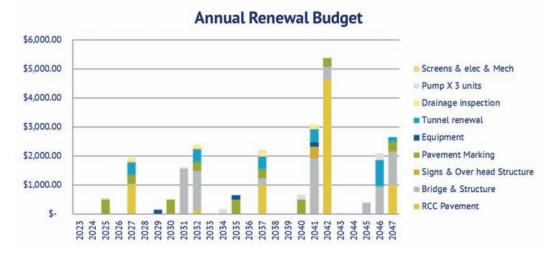


Table 54 – Annual Renewal Budaet

The planned expenditure per annum, as can be expected, contains significant peaks and troughs ranging from \$56,650 to \$5,527,455 per annum, which is indicative of the replacement requirements of the various assets identified previously. As the Consortium will be directly managing these works and will subcontract major renewal works to appropriately resourced contractors, we would expect this level of expenditure to be easily managed by the team.

The following table illustrates the annual spend relative to the overall DB Contract Price.

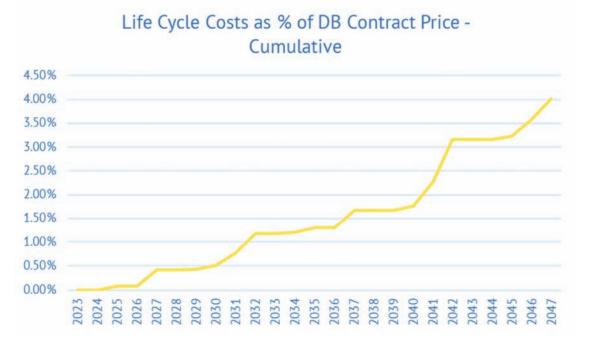


Table 55 - Life Cycle Costs as % of CAPEX (Annual)



Further to the above analysis, the graph below demonstrates cumulative expenditure as a percent of the DB Contract Price

Table 56 – Life Cycle Costs as % of CAPEX (Cumulative)



13.4 SUMMARY

The proposed lifecycle budget is considered appropriate based on the results of our independent benchmarking and interrogation of the detailed costing. Assumptions are consistent with the noted renewal work plan and appropriately respond to the residual lifecycle requirements under the PA.

14.0 PAYMENT MECHANISM

14.1 AVAILABILITY PAYMENTS DURING THE MAINTENANCE TERM

The Availability Payments are made at the end of each quarter and continue until the Expiration Date based on the following formula:

$$AP_{q,y} = \text{QTMAP}_{q,y} - \text{QUA}_{q,y} - \text{QNCA}_{q,y}$$

$$QTMAP_{q,y} = QMAP_{q,y} + QRWP_{q,y}$$

AP – Availability Payment

QTMAP = Quarterly Maximum Availability Payment

QUA = Quarterly Unavailability Adjustment

QNCA = Quarterly Noncompliance Adjustment

QMAP = Quarterly Unavailability Adjustment

QRWP = Quarterly Noncompliance Adjustment

The Quarterly Maximum Availability Payment will be a function of the annual Maximum Availability Payment ("MAP") which indexed for inflation according to the following formula:

$$MAP_{y} = BaseMAP \times k \times \frac{I_{y}}{I_{Base}} + BaseMAP \times (1-k)$$

BaseMAP = Base Availability Payment

k = indexed portion of the BaseMAP

 I_y/I_{base} = Ratio of the MAP Index divided by the MAP Index as of 8/1/18;

(1-k) = unindexed portion of the BaseMAP.

The MAP-based payment and quarterly payments is considered consistent with past precedents in the US P3 market and is utilized on various asset classes. We have no material concerns from an implementation standpoint.

14.2 UNAVAILABILITY PAYMENT DEDUCTIONS

14.2.1 UNAVAILABILITY ADJUSTMENTS

Payments may also be reduced to account for Unavailability Events, triggered when the Developer (a) fully or partially closes a lane for any purpose or (b) fully or partially blocks ingress to or egress from a Lane for any purpose and such blockage is not a Permitted Lane Closure. These actions will be considered as "Permitted" if MDOT and the relevant Authorities Having Jurisdiction approve the closure in advance and the closure complies with all of the Maintenance of Traffic Requirements of <u>Article 18 of Schedule 17 (Technical Requirements</u>). <u>Article 18</u> also specifies the off-peak hours when maintenance is allowed (18.5.(vi)) unless otherwise approved by MDOT. These terms also apply to Renewal Work.

If a Permitted Lane Closure goes beyond the duration approved by MDOT or does not comply with the other Agreement terms, then that closure will be treated as "Unpermitted."

Unavailability Adjustments are calculated by multiplying the number of 1-hour intervals for each Unavailability Event by the Unavailability Factor, specifics are provided in <u>Schedule 4 (Payment Mechanism)</u> <u>– Table A</u>. The factors range from \$100 -\$6,000 during the Maintenance Term depending on the location of the closure and are shown in the below table.

<u>Article 24 of Schedule 17</u> states in 24.5.9 that "In emergencies, Developer may be required to close the Relevant Infrastructure within the Maintenance Limits to the general public should circumstances either compromise the safety of the public or as is necessary to protect the facility's assets. Coordinate with MDOT and agencies that may be impacted by closures." All closures are required to be logged and included in the Maintenance Report. The blockage of access to a Lane in order to respond to an Incident or Emergency is considered a Permitted Lane Closure, but only until such time as the such time as threat to safety, infrastructure, or environment has been mitigated.

ROAD ELEMENT	\$/1 HOUR	\$/24 HOUR
Mainline Shoulder	\$100	\$2,400
Mainline I-75 (per lane)	\$6,000	\$100,000 (Capped)
High Impact Ramp	\$6,000	\$100,000 (Capped)
Other Ramp (per lane)	\$500	\$12,000
Service Drive (per lane)	\$500	\$12,000
Overpass/Underpass (per lane)	\$500	\$12,000

Table 57 - Maintenance Term Unavailability Factors

As noted previously, Unavailability Adjustments are limited to an aggregate value of \$100,000 per day. This provides a threshold and mitigates associated deduction risk for extended (or numerous) Unavailability Events over the course of a day.



14.2.2 D&C TERM UNAVAILABILITY REVIEW

For the purpose of our analysis, we have modelled our unavailability events through the D&C term based upon an average year in the D&C Term. During this time the asset will be undergoing works associated with Mainline, Shoulder, Ramp, Service Drive and Overpass/Underpass works, thus presenting an appropriate opportunity for unavailability.

Throughout the D&C Term, we have assumed that Unavailability Events will occur in relation to the Consortium's ability to respond to Incidents, with a failure to respond within the required timeframes to avoid NCPs resulting in a knock-on impact, resulting in lane and shoulder unavailability.

Further, for the purpose of our assessment we have assumed delays associated with the Bridge demolition, refurbishment and construction program. While the allotted timeframes included for bridge closures associated with this work are generally reasonable, we note that the work associated with this has the potential to present challenges and subsequently lengthen the closures.

14.2.3 D&C PERIOD UNAVAILABILITY MODELING

The modelling that has been completed below across the functional areas demonstrates the length of Unavailability Events required to occur to trigger a best, base, medium, and downside-case scenario.

	Main	.	Unavailability Factor	Probability of Failure					
Ref	Heading	Subheading (Per 15 Mins.)		No. 15 Min. Increments	Reoccurrence Per Year	Total 15 Min. Increments	Deductions		
1	D&C Term	Unavailability Events			Best	Case			
1.0		Mainline Shoulder	\$200.00	0	0	0	\$ -		
2.0		Mainline I-75 (per lane)	\$3,500.00	0	0	0	\$ -		
3.0		Overpass/Underpass per lane	\$50.00	0	0	0	\$ -		
	1	1		0	0	0	\$		

Table 58 - D&C Unavailability Best Case Scenario

Table 59 -		ailability Base Case Scenario				Probability	of Failure		
Ref	Main Heading	Subheading	Unavailability Factor (Per 15 Mins.)		No. 15 Min. Increments	Reocurrence Per Year	Total 15 Min. Increments	De	ductions
1	1 D&C Term Unavailability Events				Base Case				
1.0		Mainline Shoulder	\$200.00		2	1	2	\$	400
2.0		Mainline I-75 (per lane)	\$3,500.00		2	1	2	\$	7,000
3.0		Overpass/Underpass per lane	\$50.00		0	0	0	\$	-
					4	2	4	\$	7,400

Table 60 - D&C Unavailability Medium Case Scenario

Ref	Main	Subheading	Unavailability Factor		Probability of Failure				
Kei	Heading	Subheaunig	(Per 15 Mins.)		No. 15 Min. Increments	Reocurrence Per Year	Total 15 Min. Increments	De	ductions
1	1 D&C Term Unavailability Events					Mediu	ım Case		
1.0		Mainline Shoulder	\$200.00		5	1	5	\$	1,000
2.0		Mainline I-75 (per lane)	\$3,500.00		5	1	5	\$	17,500
3.0		Overpass/Underpass per lane	\$50.00		44	1	44	\$	2,200
					54	3	54	\$	20,700

Table 61 - D&C Unavailability	Downside	Case	Scenario
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Ref	Main	Subheading	Unavailability Factor	Probability of Failure				
Kei	Heading	Subheaunig	(Per 15 Mins.)	No. 15 Min. Increments	Reocurrence Per Year	Total 15 Min. Increments	De	ductions
1	1 D&C Term Unavailability Events				Worst	t Case		
1.0		Mainline Shoulder	\$200.00	11	1	11	\$	2,200
2.0		Mainline I-75 (per lane)	\$3,500.00	11	1	11	\$	38,500
3.0		Overpass/Underpass per lane	\$50.00	83	3	248	\$	12,400
	1			105	5	270	\$	53,100



Upon reflection of the above, we note that in all instances, the deductions associated are relatively negligible in comparison with the Capex value and can be readily covered by the DBLLC Under their obligations. As such, we have not conducted further interrogation of the Unavailability Deductions for the D&C Term.

14.2.4 MAINTENANCE TERM UNAVAILABILITY REVIEW

For the purpose of our analysis, we have modelled our unavailability events based upon the 20th year in the Maintenance Term. During this time the asset will be undergoing the most significant renewal anticipated throughout the term, thus presenting the most significant opportunity for unavailability.

We have assumed that Unavailability Events may occur as a result of implementation of the Diamond Grinding program, resulting from a delay in the Consortium reopening lanes following the Diamond Grinding work.

Additionally, we have assumed that Unavailability Events will occur in relation to the Consortium's ability to respond to Incidents (similar to during the D&C term), with a failure to respond within the required timeframes to avoid NCPs resulting in a knock-on impact, resulting in lane and shoulder unavailability.

Finally, as the Consortium will be obligated to repair the bridge decks during the Maintenance term, we have modelled our assessment on the presumption that there will be instances in which this work is delayed, resulting in Unavailability.



14.2.5 MAINTENANCE PERIOD UNAVAILABILITY MODELING

The modelling that has been completed below across the functional areas demonstrates the length of Unavailability Events required to occur to trigger a best, base, medium, and downside-case scenario.

	Main	120110200000000	Probability of Failure						
Ref	Heading	Functional Area	No 1 Hr. Increments	Reoccurrence Per Year	Total 1 Hr. Increments	Deductions			
2	Maintenan	ce Term Unavailability Events		Best C	ase	N.			
1.0		Mainline Shoulder	0	0	0	\$0.00			
2.0		Mainline I-75 (per lane)	0	0	0	\$0.00			
5.0		Service Drive per lane	0	0	0	\$0.00			
6.0		Overpass/Underpass per lane	0	0	o	\$0.00			
	1			0	0	\$0.00			

Table 63 - Maintenance Unavailability Base Case Scenario

Ref	Main Heading	Functional Area
2	Maintenan	ce Term Unavailability Events
1.0		Mainline Shoulder
2.0		Mainline I-75 (per lane)
5.0		Service Drive per lane
6.0		Overpass/Underpass per lane

No 1 Hr. Increments	Reoccurrence Per Year	Total 1 Hr. Increments	Deductions
	Base (lase	
3	1	3	\$300.00
3	1	3	\$18,000.00
0	0	0	\$0.00
0	0	0	\$0.00
	2	6	\$18,300.00

Table 64 - Maintenance Unavailability Medium Case Scenario

	Main	Sal Conservation and a second				
Ref	Heading	Functional Area	No 1 Hr. Increments	Reoccurrence Per Year	Total 1 Hr. Increments	Deductions
2	Maintenan	ce Term Unavailability Events		Mediun	n Case	
1.0		Mainline Shoulder	8	2	8	\$800.00
2.0		Mainline I-75 (per lane)	8	2	8	\$48,000.00
5.0		Service Drive per lane	3	1	3	\$1,500.00
6.0		Overpass/Underpass per lane	0	0	0	\$0.00
				5	19	\$50,300.00

	Main		Probability of Failure						
Ref	Heading	Functional Area		Reoccurrence Per Year	Total 1 Hr. Increments	Deductions			
2	Maintenance	e Term Unavailability Events		Downsid	e Case				
1.0		Mainline Shoulder	15	2	15	\$1,450.00			
2.0	1	Mainline I-75 (per lane)	15	2	15	\$87,000.00			
5.0	2	Service Drive per lane	8	1	8	\$3,750.00			
6.0		Overpass/Underpass per lane	109	1	109	\$54,600.00			
				6	146	\$146,800.00			

Table 65 - Maintenance Unavailability - Downside Case Scenario

Upon reflection of the above, we note that while in all instances the deductions associated are relatively negligible in comparison with the Annual Maintenance Budget, WT have opted to conduct further interrogation of the Unavailability Deductions for the Maintenance Term below.

Best-Case Scenario

WT has assumed that under a best-case scenario the Consortium will receive no point deductions for unavailability failures for the functional areas. WT opines that whilst this would be an unlikely outcome, this is possible to achieve with diligent scheduling practices for the renewal works which incorporate appropriate buffers to ensure lane availability is resumed after night work activities.

Unavailability Failure: Base-Case Scenario

Under our base-case scenario the Consortium accumulates a total of 6 unavailability period hours across the functional areas, comprising 2 No. separate occurrences.

In this scenario, we have specifically accounted for 3 No. incidents when the wrecker services are delayed, resulting in an impact to both the I-75 Mainline and the I-75 Mainline Shoulder.

The base case scenario results in total annual deductions of \$18,300, which is equivalent to 1.1% of the Annual Maintenance service fee. Such financial deductions would not be expected to cause undue cashflow or operational issues.

Unavailability Failure: Medium-Case Scenario

Under our Medium-case scenario the Consortium accumulates a total of 20 unavailability period hours across the functional areas, comprising 5 No. separate occurrences.

In this scenario, we have specifically accounted for 3 No. incidents when the implementation of diamond grinding results in an impact to the I-75 Mainline and the I-75 Mainline Shoulder, as well as the Service Drives.

We have also allowed for 5 no. incidents when wrecker services are delayed, resulting in an impact to both the I-75 Mainline and the I-75 Mainline Shoulder.



The medium case scenario results in total annual deductions of \$50,300, which is equivalent to 3.1% of the Annual Maintenance service fee. Such financial deductions would not be expected to cause undue cashflow or operational issues.

Unavailability Failure: Downside-Case Scenario

Under our Downside-case scenario the Consortium accumulates a total of 146 unavailability period hours across the functional areas, comprising 6 No. separate occurrences.

In this scenario, we have specifically accounted for 8 No. incidents when the implementation of diamond grinding results in an impact to the I-75 Mainline and the I-75 Mainline Shoulder, as well as the Service Drives.

We have also allowed for 7 no. incidents when wrecker services are delayed, resulting in an impact to both the I-75 Mainline and the I-75 Mainline Shoulder.

In addition, our downside-case scenario assumes that there will be unavailability of bridges, with 5% of bridge closures being extended a period of 1 week.

The downside-case scenario results in total annual deductions of \$146,800, which is equivalent to 9.1% of the Annual Maintenance service fee. Although such financial deductions would not be expected to cause undue cashflow or operational issues, it remains critical that the Consortium ensure all closure activities are implemented in accordance with industry best practices to ensure allotted timeframes are able to be achieved.

Conclusions

On the basis of the foregoing analysis, it is WT's opinion that the Unavailability regime for the Maintenance Term is considered low risk in terms of likelihood and severity based upon our analysis and deduction modelling.

We note that with the timeframes allowed under the PA, we would expect the Consortium to be capable of minimizing impacts encountered due to Unavailability of the various functional areas.

14.3 NONCOMPLIANCE PAYMENT DEDUCTIONS

14.3.1 NONCOMPLIANCE ADJUSTMENTS

As previously discussed in Report Section 11.7.1, Noncompliance Events for Maintenance Failures during the Maintenance Term may result in the assessment of Noncompliance Points (as further detailed in <u>Appendix B</u> to <u>Schedule 4</u> (Payment Mechanism) of the PA. As is standard for DBFM procurements, the circumstances giving risk to a Noncompliance Event have been identified via a number of Key Performance Indicators ("KPI's") which refer to specified obligations under the PA or Technical Requirements.

Response Times are specified for Mitigation, Temporary Repair and Permanent Repair (as applicable) along with Recurrence Intervals and the Noncompliance Points to be assessed if a Noncompliance Event is not addressed within the allowable periods.

The Response Times run concurrently; for example, for Element 3.2(a) "Approach Slabs" the Mitigation Period is 7 days, Temporary Repair 60 days and Permanent Repair 180 days. Therefore, the total allowed time for Permanent Repair would be the 180 days running from the original occurrence. Failing to meet the time

requirements for each of these actions is subject to an assessment of the specified Noncompliance Points. Not all events have timeframes for all three categories; there is often not a stated Mitigation option, there may be only a Permanent Repair Period such as pavement crack sealing or no Temporary Repair Period as for permanent sign supports. Some events have no response times listed such as a failure to schedule or attend any meeting by the time prescribed or failure to properly dispose of litter although the meeting item has a 4 hours recurrence period listed.

If an event extends beyond the specified Response Times without being resolved, it is deemed a Recurrence Event. In that case a new set of periods are identified in Appendix B as the Recurrence Interval for Mitigation, Temporary Repair and Permanent Repair (as applicable). These automatically commence without further notice. For example, in the 3.2(a) Approach Slabs example above, the new periods would be: Mitigation 4 hours, Temporary Repair 3 days and Permanent Repair 14 days. A failure that becomes a Recurrence Event continues to be assessed Noncompliance Points for each Recurrence Event until it is resolved. For instance, in the Approach Slab situation, if Mitigation, Temporary Repair and Permanent Repair did not occur for an additional 28 days and 3 hours beyond the original 180 days – Noncompliance Points of 3 points could be assessed for each failure; an additional 18 points for Recurrence Events.

The maximum points that may be assessed for a particular Noncompliance Event currently range from 1 -5 points per each event as detailed in Appendix B. MDOT may assess less than the maximum points for a particular event. MDOT is currently proposing to assess \$1,500 (indexed annually) per Noncompliance Point for each deduction event. This can increase to \$4,000 per point (indexed annually) if there is a consistent unaddressed root cause across multiple events. This element of a "ratchet" mechanism for performance deductions is consistent with past P3 precedent and provides incentivization to the Developer to implement appropriate mitigating measures to address persistent failures.

When a Noncompliance Event occurs, the Developer must comply with the reporting requirements and take any necessary actions to mitigate and, if applicable, and complete any temporary repair within the allowed timeframe per Appendix B of Schedule 4. This is to be followed by any necessary permanent repair within the allocated timeframe. A MDOT authorized representative must be satisfied that the Noncompliance Event has been fully mitigated, temporarily repaired or permanently repaired to avoid an assessment of Noncompliance Points. Timeframes may be extended if there are direct impacts from a Compensable Relief Event or based on direction from MDOT. There are also extenuating circumstances where a temporary repair period is not specified but the Developer obtains agreement from MDOT for an extension of time as further detailed in <u>Schedule 4</u>, <u>Section 4.4</u>.

As compared to similar P3 projects, the Noncompliance Table in Appendix B has similar Element Categories. Many of the permanent repair times are similar. The current base value for Noncompliance Points is 50% of several similarly-procured projects, which is considered a noteworthy mitigant. However, there are certain aspects to the regime that are considered more stringent than those found in similar Projects, as further detailed below.

The Noncompliance regime applies the listed Noncompliance Points ("NCPs") for each instance of mitigation, temporary repair and permanent repair plus again for the Recurrence Intervals which are usually very short. This will result in a greater application of NCPs, which has been reflected in the Maintenance budget.



14.3.2 NONCOMPLIANCE THRESHOLDS

The PA contemplates two different thresholds associated with Persistent Developer Default, those specifically associated with Incident Management Noncompliance Events, and all others.

We note that the default thresholds associated with Noncompliance Events is slightly atypical in that it only contemplates thresholds giving rise to a Default under the PA. Historically, there have been several additional thresholds incorporated into the PA in addition to a Default threshold in order to enable the authority to enact a measure of course-correction. This would generally include Increased Oversight, Personnel Replacement, Entity Replacement, Written Notice, and finally Default.

The Persistent Developer Default thresholds for NCP's have been split between Incident Management Noncompliance Events (discussed below) and Non-Incident Management Noncompliance events and are considered independent from one another. For clarity, exceeding either threshold would result in a Default under the PA.

A Persistent Developer Default for Incident Management Noncompliance Events will occur upon incurring the following:

- 100 Noncompliance Points in any 12 consecutive months; or
- 250 Noncompliance Points in any 36 consecutive months.

In addition, the PA contemplates a more holistic Default threshold (consistent with past P3 precedent) for all other non-Incident Management Noncompliance Events, which will occur upon incurring the following points:

- 300 Noncompliance Points in any 12 consecutive months; or
- 750 Noncompliance Points in any 36 consecutive months.

While previous iterations of the PA had contained relatively stringent Noncompliance Points thresholds, the current thresholds referenced above (as of PA Addendum 3) are considered manageable due to the increase in these amounts in addition to a reduction in Noncompliance Points assessed for certain Noncompliance Events. Our analysis of potential Noncompliance Events relative to these thresholds is discussed below.

14.3.3 D&C PERIOD NONCOMPLIANCE EVENTS

WT note that the D&C Period Noncompliance regime is reflective of past P3 precedent in that it contemplates KPI's which directly pertain to the undertaking of the work (such as Quality Control, Safety issues, etc.) as well as general project administration (i.e. contractor payment terms, insurance requirements, etc.).

ELEMENT CATEGORY	NO. KPI'S	OVERVIEW	NCP RANGE (PTS)	DEDUCTIONS
Roadway	7	Meet PASER Ratings, maintain	3-5	\$4,500 -
		quality of roadways.		\$7,500
Drainage	4	Drainage Condition, Interim	2-5	\$3,000 -
		Maintenance		\$7,500
Structures	19	Condition of structures, failure to	2-20	\$3,000 -
		maintain structural design loads.		\$30,000

Table 66 – D&C Noncompliance Events



ELEMENT	regory KPI'S OVERVIEW		NCP RANGE	DEDUCTIONS		
CATEGORY			(PTS)			
Pavement	4	Interim maintenance, repair and	3-4	\$4,500 -		
Markings, Object		maintain pavement markings,		\$6,000		
Markers, Barrier		barriers and delineators.				
Markers and						
Delineators						
Permanent Sign	6	Remove graffiti from signage,	2-4	\$3,000 -		
Supports		maintain connections.		\$6,000		
Permanent Signs	2	Remove dirt, debris, graffiti.	2	\$3,000		
Fences, Walls and	3	Structural integrity, functionality	2-4	\$3,000 -		
Sound Abatement		and graffiti removal.		\$6,000		
Landscaping	5	Interim maintenance and removal	2-5	\$3,000 -		
		of hazardous obstructions.		\$7,500		
Earthworks,	5	Maintain slopes, maintain erosion	2-5	\$3,000 -		
Embankments and		and sedimentation control		\$7,500		
Cuttings		measures.				
Litter and	8	Interim maintenance remove debris	2-5	\$3,000 -		
Obstructions/Debris		from roadways.		\$7,500		
Removal, Sweeping						
Guardrails and	3	Install and maintain guardrails and	5	\$7,500		
Safety Barriers		safety barriers in working condition.				
Roadway Lighting	5	Maintain fixtures, provide power to	3-5	\$4,500 -		
		lighting standards		\$7,500		
Pump Station	ump Station 8 Maintain function		3-5	\$4,500 -		
		operations of existing pump		\$7,500		
		stations.				
Incident	5	Wrecker and Developer response to	5	\$7,500		
Management		incidents, lane clearing.				
Snow and Ice	2	Maintain pedestrian bridges.	2	\$1,500		
Control						
МОТ	1	Perform MOT	1-5	\$1,500-\$7,500		
General	4	Damage repair, MDOT notification,	2-4	\$3,000 -		
		comply with implemented plans,		\$6,000		
		attend meetings.				
Payments	ayments 5 Developer payments		2-5	\$3,000 -		
				\$7,500		
Insurance	1	Provide confirmation of insurance.	3	\$4,500		
Requirements						
Submittals	3	Provide submittals per the PA.	3	\$4,500		
SUMMARY	15		0-20	\$0 - \$30,000		

Through our analysis of the above, we note that there are a number of KPI categories which are expected to present challenges through the D&C Term. Particularly, Litter and Obstructions/Debris Removal and Incident Management.



14.3.4 D&C PERIOD KEY PERFORMANCE INDICATOR REVIEW

As there are a number of KPI's pertaining to Litter and Obstructions/Debris Removal, and Sweeping which leave room for interpretation, we understand these may present risk throughout the D&C term. Specifically associated with Debris, Litter and Obstructions.

Further, due to challenges associated with wrecker availability and traffic constraints, WT understand that areas of interest are present surrounding the KPI's associated with Incident Management. Nonetheless, given the Consortium, and specifically the DBLLC's presence during the D&C Term, we would expect them to be able to respond to Incidents in a timely manner.

We note that both the risks and associated mitigatory measures have been reflected in our analysis below.

14.3.5 D&C PERIOD NONCOMPLIANCE POINTS MODELING

The modelling that has been completed below across the project service functions demonstrates how many Noncompliance Failures are required to occur to trigger a best, base, medium, and downside-case scenario. We have included commentary surrounding assumptions and observations under the various scenarios below.

	Prohohility of Failure											
KPI Category	Best Case		Deductions	Base Case	Points	Deductions	Medium Case		Deductions	Downside Case	Points	Deductions
Roadway												
Subtota	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Drainage Subtota	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Structures												
Subtota Pavement Markings, Object Markers, Barrier Markers and Delineators	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Subtota	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Permanent Sign Supports Subtota	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Permanent Signs		1.9	25.526		2.41	theorem 1		167	Markette	1.00	80	2001222
Subtota	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Fences, Walls and Sound Abatement												
Subtota	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Landscaping												
Subtota Earthworks, Embankments and Cuttings	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Earthworks, Embankments and Cuttings Subtota	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Litter and Obstructions/Debris Removal, Sweeping		•	\$0.00		0	30.00			30.00		0	30.00
Subtota	0	0	\$0.00	4	15	\$22,500.00	8	30	\$45,000.00	16	60	\$90,000.00
Guardrails and Safety Barriers	24		- 800 c.e.	20			1983			, X753		
Subtota	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Roadway Lighting	50 50		7055935				- 25			100		
Subtota	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Pump Station												
Subtota	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Incident Management Subtota	11	25	\$34,500.00	15	27	\$40,500.00	24	48	\$72,000.00	36	60	\$90,000.00
Snow and Ice Control		15	\$34,500.00	15	21	\$40,500.00	29	40	\$72,000.00	30	60	\$90,000.00
Subtota	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
MOT			20,00	-		40.00						44144
Subtota	0	0	\$0.00	0	O	\$0.00	0	0	\$0.00	0	D	\$0.00
General			100-000									
Subtota	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	D	\$0.00
Payments									-			
Subtota	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Insurance Requirements												
Subtota	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Submittals	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	*****
Subtola	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00

Table 65 - D&C Noncompliance Scenario Analysis

Noncompliance Failure: Best-Case Scenario

Under our best-case scenario the DBLLC accumulates 11 No. Incident Management Noncompliance Events, which would incur 23 No. Incident Management Noncompliance Points. This would not breach the 100-point threshold for Persistent Developer Default.

Specifically, we have accounted for 1 No. incidents where the Wrecker incident response is not achieved in less than half of an hour, with a further 1 No. incidents where the Consortium does not respond within half of an hour between the hours of 6am and 8pm. Additionally, we have assumed a total of 6 No. incidents for

the Consortium failing to meet the incident response time between the hours of 8pm and 6am and 3 No. Incidents failure to clear a blocked lane in less than 2 hours.

The above would result in total annual deductions of \$34,500, equivalent to 0.006% of the Capex budget for D&C work. This is not considered to be impactful from a cashflow perspective and would be fully passed down to the DBLLC.

Noncompliance Failure: Base-Case Scenario

Under our base-case scenario the DBLLC accumulates 15 No. Incident Management Noncompliance Events, which would incur 42 No. Incident Management Noncompliance Points. Again, this would not breach the 100-point threshold for Persistent Developer Default.

Our base-case scenario would also incur 4 No. non-Incident Management Noncompliance Events, which would incur 15 No. Incident Management Noncompliance Points. This would also not breach the 300-point threshold for Persistent Developer Default.

We note that in this scenario the Noncompliance Events are again relatively limited, with Non-compliances occurring primarily in Incident Management and few in Litter and Obstruction/Debris Removal and Sweeping.

Specifically, we have assumed a total of 1 No. each in which the Consortium fails to remove litter before mowing operations, maintain construction sites in a neat condition, remove debris from travel lanes, and remove debris from roadway shoulders.

In addition, we have assumed 3 No. incidents where the Wrecker incident response is not achieved in less than half of an hour, with a further 3 No. incidents where the Consortium does not respond within half of an hour between the hours of 6am and 8pm. Additionally, we have assumed a total of 6 No. incidents in which the Consortium fail to meet the incident response time between the hours of 8pm and 6am and 3 No. for failure to clear a blocked lane in less than 2 hours.

This would result in total annual deductions of \$63,000, equivalent to 0.01% of the Capex budget for D&C work. This is not considered to be impactful from a cashflow perspective and again will be fully passed down to the DBLLC.

Noncompliance Failure: Medium-Case Scenario

Under our medium-case scenario the DBLLC accumulates 24 No. Incident Management Noncompliance Events, which would incur 48 No. Incident Management Noncompliance Points. Again, this would not breach the 100-point threshold for Persistent Developer Default.

Our medium-case scenario would also incur 8 No. non-Incident Management Noncompliance Events, which would incur 30 No. Incident Management Noncompliance Points. This would also not breach the 300-point threshold for Persistent Developer Default.

Furthermore, we note that in this scenario the Noncompliance Events are inclusive of Incident Management and Litter and Obstruction/Debris Removal and Sweeping.

We have assumed a total of 2 No. each in which the Consortium fails to remove litter before mowing operations, maintain construction sites in a neat condition, remove debris from travel lanes, and remove debris from roadway shoulders.

Further, we have assumed 6 No. incidents where the Wrecker incident response is not achieved in less than half of an hour, with a further 6 No. incidents where the Consortium does not respond within half of an hour between the hours of 6am and 8pm. Additionally, we have assumed a total of 6 No. incidents in which the Consortium fail to meet the incident response time between the hours of 8pm and 6am and 6 No. for failure to clear a blocked lane in less than 2 hours.

This would result in total annual deductions of \$117,000, equivalent to 0.02% of the Capex budget for D&C work. This is not considered to be impactful from a cashflow perspective and again will be fully passed down to the DBLLC.

Noncompliance Failure: Downside-Case Scenario

Under our downside-case scenario the DBLLC accumulates 36 No. Incident Management Noncompliance Events, which would incur 60 No. Incident Management Noncompliance Points. Again, this would not breach the 100-point threshold for Persistent Developer Default.

Our downside-case scenario would also incur 16 No. non-Incident Management Noncompliance Events, which would incur 60 No. Incident Management Noncompliance Points. This would also not breach the 300-point threshold for Persistent Developer Default.

Furthermore, we note that in this scenario the Noncompliance Events are inclusive of Incident Management and Litter and Obstruction/Debris Removal and Sweeping.

In this scenario we have accounted for a total of 4 No. each in which the Consortium fails to remove litter before mowing operations, maintain construction sites in a neat condition, remove debris from travel lanes, and remove debris from roadway shoulders.

Additionally, we have anticipated a total of 12 No. incidents where the Wrecker incident response is not achieved in less than half of an hour, with a further 12 No. incidents where the Consortium does not respond within half of an hour between the hours of 6am and 8pm. We have also assumed a total of 6 No. incidents in which the Consortium fail to meet the incident response time between the hours of 8pm and 6am and 6 No. for failure to clear a blocked lane in less than 2 hours.

This would result in total annual deductions of \$180,000, equivalent to 0.03% of the Capex budget for D&C work. This is not considered to be impactful from a cashflow perspective, nor would we anticipate the Consortium to breach the applicable NCP thresholds identified previously.

Further, we would expect the Consortium exercise appropriate monitoring of the DBLLC performance throughout the construction period to ensure there are no impacts to the Developer's obligations under the PA and will pass down any liability to the DBLLC throughout the delivery of the D&C works.

Conclusions

On the basis of the foregoing analysis, it is WT's opinion that the Noncompliance regime for the D&C Term is considered low risk in terms of likelihood and severity based upon our KPI risk analysis and deduction modelling.

While we note that the KPI's associated with Incident Management response times pose unique challenges, with the Consortium's approach to Incident Response and specifically the intention to self-perform this work rather then rely on third party services, we would anticipate the Consortium's ability to provide a response in the prescribed timeframes to be drastically increased.

As such, we would not anticipate the NCP regime during the D&C Term to materially or adversely impact the Consortium's delivery of the Project.

14.3.6 MAINTENANCE PERIOD NONCOMPLIANCE EVENTS

WT note that the Maintenance Period Noncompliance regime is reflective of past P3 precedent in that it contemplates KPI's which directly pertain to the undertaking of the work (such as Quality Control, Safety issues, etc.) as well as general project administration (i.e. contractor payment terms, insurance requirements, etc.).

Table 67 - Maintenance Noncompliance Events

ELEMENT CATEGORY	NO. KPI'S	OVERVIEW	NCP RANGE (PTS)	DEDUCTIONS			
Roadway	55	Maintain quality of roadways, user	1-5	\$1,500 -			
		warnings, inspections.		\$7,500			
Drainage	8	Drainage Condition, Maintenance	2-5	\$3,000 -			
				\$7,500			
Structures	27	Condition of structures, inspections,	2-20	\$3,000 -			
		failure to maintain structural design		\$30,000			
		loads.					
Pavement	6	Maintenance, repair and maintain	3-4	\$4,500 -			
Markings, Object		pavement markings, barriers and		\$6,000			
Markers, Barrier		delineators.					
Markers and							
Delineators							
Permanent Sign	11	Remove graffiti from signage,	2-5	\$3,000 -			
Supports		maintain connections. Repair		\$7,500			
		damaged sign structures.					
Permanent Signs	9	Remove dirt, debris, graffiti, signage	3-4	\$4,500 -			
		accuracy.		\$6,000			
Fences, Walls and	5	Structural integrity, functionality	2-5	\$3,000 -			
Sound Abatement		and graffiti removal.		\$7,500			
Landscaping	10	Maintenance and removal of	2-5	\$3,000 -			
		hazardous obstructions.		\$7,500			
Earthworks,	4	Maintain slopes, maintain erosion	3-5	\$7,500 -			
Embankments and		and sedimentation control		\$12,500			
Cuttings		measures.					
Litter and	8	Maintenance remove debris from	2-5	\$3,000 -			
Obstructions/Debris		roadways.		\$7,500			
Removal, Sweeping							
Guardrails and	3	Maintain guardrails and safety	5	\$7,500			
Safety Barriers		barriers in working condition.					
Storage and	5	Maintenance and inspections.	3-5	\$4,500 -			
Drainage Tunnel				\$7,500			
Pump Station	12	Maintain functionality and	3-5	\$4,500 -			
		operations of pump station, conduct		\$7,500			
		inspections.					
Incident	5	Wrecker and Developer response to	1-5	\$1,500-\$7,500			
Management		incidents, lane clearing.					



ELEMENT CATEGORY	NO. KPI'S	OVERVIEW	NCP RANGE (PTS)	DEDUCTIONS			
Snow and Ice Control	2	Maintain carpool lots and walkways.	2	\$1,500			
MOT	1	Perform MOT	5	\$7,500			
General	4	Damage repair, MDOT notification, comply with implemented plans, attend meetings.	2-4	\$3,000 - \$6,000			
Payments	5	Developer payments	2-5	\$3,000 - \$7,500			
Insurance Requirements	1	Provide confirmation of insurance.	3	\$4,500			
Submittals	3	Provide submittals per the PA.	3	\$4,500			
SUMMARY	15		0-20	\$0 - \$30,000			

Through our analysis of the above, we note that there are a number of KPI categories which are expected to present challenges through the Maintenance Term. Particularly, Roadways, Drainage, Fence, Walls and Sound Abatement, Litter and Obstructions/Debris Removal, Guardrails and Safety Barriers, Storage and Drainage Tunnel, Pump Station and Incident Management

14.3.7 MAINTENANCE PERIOD KEY PERFORMANCE INDICATOR REVIEW

Risks associated with Pavement are generally due to the Consortium's ability to react within the required repair times. While we note that this may be due to circumstances beyond the Consortium's control, i.e. instances where weather may restrict their ability to conduct repairs. Nonetheless, we would expect the 14-day timeframe for temporary repairs to be achievable in most circumstances. Further, the Consortium is required to conduct repairs post-testing pertaining to ride quality and skid resistance. We understand that crews will remain on standby post-testing should they be required to repair the pavement, thus reducing the response time.

Damage to fences, noise walls, retaining walls and abutments may be encountered during the term of the asset. As the Consortium is required to respond to such damage within a one-hour timeframe, we note the requirements are quite stringent. To counteract this, we understand the Consortium intend to treat such damage as an incident, thus enabling rapid response. Further, the Consortium may stock fence parts and safety parts for quick repair work.

There are a number of KPI's which pertain to Litter and Obstructions/Debris Removal are noticeably vague and lack defined criteria, and as such may present a risk throughout the Maintenance term. Specifically associated with Debris, Litter and Obstructions, WT understand that the Consortium will attempt to minimize and reduce exposure through subcontractor enforcement, pass down of obligations to subcontractors, or video monitoring, in addition to the self performance of the majority of roles associated with this work.

There is a KPI associated with the functionality of the pumps in the Pump Station with a relatively tight timeframe for response. While this specifically notes the deduction is applied through any instance where pumps are not functioning properly, we understand there to be significant redundancy in the system. Further, the Consortium will conduct regular inspections, coupled with standby equipment in the event of failure.

Due to challenges associated with wrecker availability and traffic constraints, WT have been advised that areas of interest are present surrounding the KPI's associated with Incident Management. Nonetheless, it is understood that steps are being taken to mitigate these risks including rental of a tow truck, added personnel, incentive fees for wreckers, and added third party back up response resources during adverse weather periods.

We note that both the risks and associated mitigatory measures have been reflected in our analysis below.

14.3.8 MAINTENANCE PERIOD NONCOMPLIANCE POINTS MODELING

The modelling that has been completed below across the project service functions demonstrates how many Noncompliance Failures are required to occur to trigger a best, base, medium, and downside-case scenario. We have included commentary surrounding assumptions and observations under the various scenarios below.

KPI Category	Probability of Failure											
	Best Case	Points	Deductions	Base Case	Points	Deductions	Medium		Deductions	Downside Case	Points	Deductions
Roadway		1										
Subtota	0	0	\$0.00	4	17	\$25,500.00	8	34	\$51,000.00	15	65	\$97,500.00
Drainage Subtota	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Structures												
Subtota Pavement Markings, Object Markers, Barrier Markers and Delineators		0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Subtota	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Permanent Sign Supports Subtota	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Permanent Signs		U	50.00	0	v	\$0.00	0		50.00	0	U	\$0.00
Subtota	. 0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Fences, Walls and Sound Abatement Subtota	0	0	\$0.00	2	9	\$13,500.00	2	9	\$13,500.00		25	\$34,500.00
Landscaping			30.00		-	\$13,100.00	-	<u> </u>	313,300.00			114100.00
Subtota	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Earthworks, Embankments and Cuttings Subtota	. 0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Litter and Obstructions/Debris Removal, Sweeping Subtota	0	0	\$0.00	1	2	\$3,000.00	2	7	\$10,500.00	3	12	\$18,000.00
Guardrails and Safety Barriers		2/7				Prode Collinson in		216	COLOR POLICE			
Subtota Storage and Drainage Tunnel	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Storage and Urainage Tunnes Subtota	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Pump Station			50.00	· ·	·	20.00			20.00			20.00
Subtota	0	0	\$0.00	0	1	\$1,875.00	1	3	\$3,750.00	1	5	\$7,500.00
Incident Management Subtota	4	8	\$12,000.00	15	27	\$40,500.00	20	36	\$54,000.00	22	38	\$57,000.00
Snow and ice Control		8	\$12,000.00	15	41	\$40,500.00	20	20	\$54,000.00	22	28	\$57,000.00
Subtota	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
MOT						Stration of	11000		automas .			
Subtota	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
General Subtota	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Payments			30.00		0	30.00	0		30.00	0	0	30.00
Subtota	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Insurance Requirements Subtota	. 0	o	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Submittals Subtota		0	\$0.00	0	0	\$0.00	0	0	\$0.00	0	0	\$0.00
Subtota	0	U	50.00		0	30.00	0	0	30,00	0	0	30.00

Table 68 – Maintenance Noncompliance Scenario Analysis

Noncompliance Failure: Best-Case Scenario

Under our base-case scenario the Consortium accumulates 4 No. Incident Management Noncompliance Events, which would incur 8 No. Incident Management Noncompliance Points. This would not breach the 100-point threshold for Persistent Developer Default.

Specifically, we have accounted for 1 No. incidents where the Wrecker incident response is not achieved in less than half of an hour, with a further 1 No. incidents where the Consortium does not respond within half of an hour between the hours of 6am and 8pm. Additionally, we have assumed a total of 1 No. incidents for the Consortium failing to meet the incident response time between the hours of 8pm and 6am and 1 No. failure to clear a blocked lane in less than 2 hours.



The above would result in total annual deductions of \$12,000, equivalent to 0.7% of the Annual Operating budget for Maintenance work. We note that the Consortium have incorporated an allowance for Noncompliance Deductions into the maintenance budget in the amount of \$135,000 per annum which is adequate to cover the above referenced deductions.

Noncompliance Failure: Base-Case Scenario

Under our base-case scenario the Consortium accumulates 15 No. Incident Management Noncompliance Events, which would incur 27 No. Incident Management Noncompliance Points. Again, this would not breach the 100-point threshold for Persistent Developer Default.

Our base-case scenario would also incur 7 No. non-Incident Management Noncompliance Events, which would incur 29 No. Incident Management Noncompliance Points. This would also not breach the 300-point threshold for Persistent Developer Default.

In this scenario the Noncompliance Events are inclusive of Roadway, Fences Walls and Sound Abatement, Litter and Obstructions/Debris Removal, Sweeping, Pump Station and Incident Management.

Specifically, we have assumed 1 No. Incidents in which cracking/joints +0.5" occur, as well as a failure to meet Ride Quality, Skid Resistance and lack of warning to Road Users.

With respect to Fences, Walls and Sound Abatement, we have modelled for 1 No. occurrences of structural damage and damage which allows access to the highway.

Further, we have included 1 No. incidents relating to Litter and Obstructions/Debris Removal, Sweeping in which the Consortium do not remove litter before mowing.

Additionally, we have assumed that, while relatively unexpected, there may be minor instances in which pump functionality may cause issues with discharge rates. For this, we have expected a 0.25 No. incident rate, or once every four years due to the relatively unlikely occurrence of this.

Finally, accounted for 3 No. incidents where the Wrecker incident response is not achieved in less than half of an hour, with a further 3 No. incidents where the Consortium does not respond within half of an hour between the hours of 6am and 8pm. Additionally, we have assumed a total of 6 No. incidents for the Consortium failing to meet the incident response time between the hours of 8pm and 6am and 3 No. failure to clear a blocked lane in less than 2 hours.

The above would result in total annual deductions of \$84,375, equivalent to 5.2% of the Annual Operating budget for Maintenance work. Again, this would be appropriately covered by the Consortiums Noncompliance Deduction allowance and gives confidence that the NCP budget has been conservatively sized.

Noncompliance Failure: Medium-Case Scenario

Under our medium-case scenario the Consortium accumulates 20 No. Incident Management Noncompliance Events, which would incur 36 No. Incident Management Noncompliance Points. Again, this would not breach the 100-point threshold for Persistent Developer Default.

Our medium-case scenario would also incur 13 No. non-Incident Management Noncompliance Events, which would incur 53 No. non-Incident Management Noncompliance Points. This would also not breach the 300-point threshold for Persistent Developer Default.

In this scenario the Noncompliance Events are inclusive of Roadway, Fences Walls and Sound Abatement, Litter and Obstructions/Debris Removal, Sweeping, Pump Station and Incident Management.

Specifically, we have assumed 2 No. Incidents in which cracking/joints +0.5" occur, as well as a failure to meet Ride Quality, with 2 No. Incidents relative to Skid Resistance and lack of warning to Road Users.

With respect to Fences, Walls and Sound Abatement, we have modelled for 1 No. occurrences of structural damage and damage which allows access to the highway.

Further, we have assumed 1 No. incidents relating to Litter and Obstructions/Debris Removal, Sweeping in which the Consortium do not remove litter before mowing, and do not remove debris from traffic lanes in the required response time.

Additionally, we have assumed that, while relatively unexpected, there may be minor instances in which pump functionality may cause issues with discharge rates. For this, we have expected a 0.5 No. incident rate per annum/ or once every two years.

Finally, we have accounted for an average of 4 No. incidents where the Wrecker incident response is not achieved in less than half of an hour, with a further 4 No. incidents where the Consortium does not respond within half of an hour between the hours of 6am and 8pm. Additionally, we have assumed a total of 8 No. incidents for the Consortium failing to meet the incident response time between the hours of 8pm and 6am and 4 No. failure to clear a blocked lane in less than 2 hours.

The above would result in total annual deductions of \$132,750, equivalent to 8.2% of the Annual Operating budget for Maintenance work. This is not considered to be impactful from a cashflow perspective and would be adequately funded through the NCP allowance incorporated into the Annual Operating Budget.

Noncompliance Failure: Downside-Case Scenario

Under our Downside-case scenario the Consortium accumulates 22 No. Incident Management Noncompliance Events, which would incur 38 No. Incident Management Noncompliance Points. Again, this would not breach the 100-point threshold for Persistent Developer Default.

Our Downside-case scenario would also incur 24 No. non-Incident Management Noncompliance Events, which would incur 101 No. non-Incident Management Noncompliance Points. This would also not breach the 300-point threshold for Persistent Developer Default.

In this scenario the Noncompliance Events are inclusive of Roadway, Fences Walls and Sound Abatement, Litter and Obstructions/Debris Removal, Sweeping, Pump Station and Incident Management.

Specifically, we have assumed 3 No. Incidents in which cracking/joints +0.5" occur, as well as a failure to meet Ride Quality, with 4 No. Incidents relative to Skid Resistance and lack of warning to Road Users.

With respect to Fences, Walls and Sound Abatement, we have modelled for 2 No. occurrences of structural damage and 3 No. occurrences of damage which allows access to the highway.

Further, we have assumed an average of 1 No. incidents relating to Litter and Obstructions/Debris Removal, Sweeping in which the Consortium do not remove litter before mowing, and 2 No. incidents in which they do not remove debris from traffic lanes in the required response time.

Additionally, we have assumed that there may minor instances in which pump functionality may cause issues with discharge rates. For this, we have expected a 1 No. incident rate per annum.

Finally, we have accounted for an average of 4 No. incidents where the Wrecker incident response is not achieved in less than half of an hour, with a further 4 No. incidents where the Consortium does not respond within half of an hour between the hours of 6am and 8pm. Additionally, we have assumed a total of 10 No. incidents for the Consortium failing to meet the incident response time between the hours of 8pm and 6am and 4 No. failure to clear a blocked lane in less than 2 hours.

The above would result in total annual deductions of \$214,500, equivalent to 13.3% of the Annual Operating budget for Maintenance work. While in this instance, the \$135,000 NCP allowance built into the operating budget would be exceeded, the associated delta in our opinion could be absorbed by the Developer without materially impacting operations.

Conclusions

On the basis of the foregoing analysis, it is WT's opinion that the Noncompliance regime for the D&C Term is considered low risk in terms of likelihood and severity based upon our KPI risk analysis and deduction modelling.

While we note that the KPI's associated with Incident Management response times pose unique challenges, with the Consortium's approach to Incident Response and specifically the intention to self-perform this work rather then rely on third party services, we would anticipate the Consortium's ability to provide a response in the prescribed timeframes to be drastically increased.

As such, we would not anticipate the NCP regime during the Maintenance Term to materially or adversely impact the Consortium's delivery of the Project, provided the Consortium continually remain diligent in monitoring NCP accumulation during the Maintenance term.

Additionally, as has been reflected in our analysis, it is highly unlikely that NCP events would persist over an extended period of time. As discussed above, we would expect that the Consortium will be able to change or add resources, adjust operational practices, purchase new equipment, etc. to correct these issues after a certain timeframe. In addition, we note that although the Maintenance budget is fixed, the Consortium could increase the budget to address under-performance, rather than incur further financial penalties associated with NCP's.

14.4 SUMMARY

In conclusion, we note that the majority of exposure to unavailability deductions will occur during the implementation of the renewal works program during the long-term maintenance period. Provided the Consortium has implemented best scheduling practices, we would expect there to be adequate notice in advance of any such occurrences. Furthermore, we would expect that subcontracts for renewal work would appropriately pass-down the risk for unavailability deductions to the contractors to appropriately insulate the Developer from having to carry these penalties. As such, we would not anticipate unavailability to adversely impact the delivery of the project.

We note, also, that there are a number of KPI's included in the NCP Deduction Regime which may considered stringent in relation to past precedents, however upon review of the relative weighting/severity of the individual KPI's (specifically response times and associated NCP's/deductions) relative to the default thresholds under the PA, we do not view these as being materially impactful from an overall perspective. On this basis, we would opine the mechanism to be of low risk.



Furthermore, we note that the Consortium has taken significant mitigative measures (reflected in both the operating budget and maintenance strategy) to ensure that the more challenging KPI's are responded to adequately and to avoid financial impact or potential Persistent Developer Default. Provided the Consortium remains diligent in monitoring NCP's encountered during the course of the term, we would expect this to be manageable by the Consortium and the DBLLC.

15.0 EQUATOR PRINCIPLES

The Equator Principles apply to all new project financings globally with total project capital costs of US\$10 million or more, and across all industry sectors. In addition, while the Principles are not intended to be applied retroactively, they can be applied to all project finance covering expansion or upgrade of an existing facility where changes in scale or scope may create significant environmental and/or social impacts, or significantly change the nature or degree of an existing impact.

The Principles also extend to project finance advisory activities. In these cases, Equator Principles Financial Institutions (EPFI) commit to make the client aware of the content, application and benefits of applying the Principles to the anticipated project, and request that the client communicate to the EPFI its intention to adhere to the requirements of the Principles when subsequently seeking financing.

The risk of the project is categorized in accordance with internal guidelines based upon the environmental and social screening criteria of the International Finance Corporation (IFC). Projects are classified in one of three categories as follows:

- Category A Projects with potential significant adverse social or environmental impacts that are diverse, irreversible or unprecedented;
- Category B Projects with potential limited adverse social or environmental impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures; and
- Category C Projects with minimal or no social or environmental impacts.

It is our understanding from the information provided to date that the Consortium are well equipped to comply with all requirements of the Project Agreement including to identify and report upon the social, economic and natural environmental impacts of the development.

For High-Income OECD Countries, the regulatory, permitting and public comment process requirements meet all of the set standards; in the U.S. for federalized transportation projects, this is implemented via the National Environmental Policy (NEPA) process. As a transportation infrastructure project based within a high-income OECD country, an Environmental Impact Statement document was prepared under the NEPA review standards which includes a thorough public involvement process. The Project is viewed as a critical part of the overall I-75 Modernization project which received an initial Record of Decision in 2006; a subsequent Re-evaluation for Segment 3 was concurred by FHWA on February 9, 2018.

The I-75 Modernization Project is the result of over 20 years of planning and design with an established purpose and need that supports the mobility needs of local and interstate commerce as well as national and civil defense as well as to accommodate traffic, population and employment growth, land use changes, safety issues and reduce congestion along the I-75 corridor. As part of the Project Agreement. all of the requirements of the NEPA evaluation must be implemented.

Based on the forgoing, it is WT's opinion that the Project has been thoroughly vetted through the NEPA process to establish the purpose and need, receive and respond to public input, select the least impact alternative and establish appropriate mitigation measures.



Further, the Project provides additional features to reduce social or environmental impacts including adding a HOV lane to encourage ride sharing, ITS technology upgrades, improved drainage and new pump station to provide additional drainage capacity and reduce flooding, upgrading pedestrian bridges to meet ADA requirements and incorporating community developed aesthetic improvements.

As part of the re-evaluation, an updated air quality analysis confirmed that the project meets all current conformity requirement and noise abatement measures were further augmented based on the most recent standards increasing the noise reduction by 5 dB(A) or more from those previously identified. Mitigation measures have been added that eliminate any potential impacts to the Northern Long-Eared Bat and the Indiana Bat. Related to potentially contaminated sites, nine sites were identified with a medium risk and two were assigned a high-risk potential to impact the project plus two other areas of suspected soil contamination. A designated mitigation strategy will be implemented if contamination is identified during construction.

Based on WT's assessment of the principles above, it is our opinion that the Project scheme is a **Category B** project.

APPENDIX A LTA SCOPE OF SERVICES



1. OVERVIEW

The Client has been shortlisted for the Michigan I-75 Modernization Project (Segment 3) DBFM. WT have been engaged by the Client to provide the below listed Phase I LTA Services in relation to the Clients bid on the Project. Should the Client subsequently be selected as Preferred Proponent for the Project, WT will subsequently provide the Phase II through IV LTA Services.

2. PHASE I: UP TO APPOINTMENT OF PREFERRED PROPONENT

In addition to the more detailed sections below, WT will provide a general overview of the project and the procurement process for the benefit of the Lenders. As part of our obligation to assess the principal risks associated with the project, we will summarize our overall findings via a risk matrix outlining the mitigation measures or the transfer of obligations from the Consortium to the design-build contractor.

WT confirms we will support the Lenders in their negotiations with the Consortium and will incorporate any other prudent technical information of which they should be made aware of in our report.

Team Capability:

WT will provide commentary on:

- The ability of the Consortium (equity, design, construction, and principle sub-trades) to deliver the project;
- The details of the construction contractor's (or design-build joint ventures) experience and proposed resourcing to perform the project.

Project Document Review:

WT will provide commentary on:

- The contractual structure and the effectiveness of risk transfer to contractors / subcontractors;
- The relevant sections of the Project Agreement and Schedules and the identification of key Project risks;
- The design-build agreement including payments, design liability, long-stop date, liquidated damages, performance security, parent company guarantees, change order control, liability limits, warranty periods, dispute resolution procedure;
- The maintenance agreement including payments, performance security, parent company guarantees, abatement regimes and service requirements.
- The interface agreement including the division of responsibilities, payment procedures, setoff rights, risks and mitigation, and clarification of responsibilities contained in the appendices.

Existing Site Conditions:

- WT will provide commentary on:
- The existing site specifics; and
- The background reports to assess environmental, archaeological, and geotechnical issues, which may result in future liabilities (being a desktop review of site conditions, civil, and geotechnical studies provided to WT).

Planning & Approval Issues:

- WT will provide commentary on:
- Planning and permitting including status of other required permits;



- The planning process and governmental requirements, and the reasonableness of the allocated timeframes in the project schedule; and
- The proposed process for obtaining permits, consents, licenses, including availability and timing.

Payment Mechanism:

WT will provide commentary on:

- The adequacy, fairness, and operability of the payment mechanism in practice;
- Any key technical risks on the project with regards to payment and potential mitigation strategies; and
- The mechanics of any construction or maintenance period payment deduction regime (if applicable) and the likelihood and value of deductions resulting from poor performance on the part of the construction contractor.

Design Review:

There are two ways to approach the design review scope:

- Option 1: Review the organization and capabilities of the Design-Build team and consultants. Perform a review and evaluation of the quality, completeness, constructability and maintainability of the design options and criteria, technology employed, and methodology applied; and
- Option 2: Comment on the design vis-à-vis the operational standards, capacity and possible expansion requirements

Through discussions with Ian McNamara, WT understand the design review to be more of a desktop study to assess if the level of the design completed is sufficient from our experience to allow the contractor to base their cost estimates to a degree of confidence or that sufficient consideration of future life-cycle conditions is included. If further down the track, the design review develops in to a more detailed review such as option 2 above, WT will welcome the opportunity to discuss broadening our scope for a Design peer review of the Design-Builder's proposed solution for compliance with the output specifications. Subject to the Consortium's request, WT confirms our ability to incorporate Design peer review into our LTA Scope of Services via subcontract with an affiliated engineering firm, subject to further remuneration.

Construction Review:

WT will provide commentary on:

- The adequacy of the proposed construction schedule and forecast critical path including the potential for delays;
- The ability of the construction contractor and any major subcontractors to manage the risks
- assumed by them under the construction contract;
- The project documents, technical specifications, and project requirements;
- The constructability means and method of the design and construction plan;
- Any risks associated with the use of innovative or untried materials or constructions techniques;
- The Consortium/construction contractor's approach to meeting any environmental requirements outlined the Project Agreement;
- the approach to site conditions, remedial works and the impact of environmental issues on both the construction and the long-term operations of the Project;
- The conditions of any existing structures and plans to upgrade, integrate, or demolish them (if applicable); and



• The contractual mechanisms and process for the achievement of milestones, Substantial Completion, commissioning, and handover.

Operations and Maintenance/Rehabilitation Program:

WT will provide commentary on:

- The services team structure;
- The adequacy of the proposed Commissioning Phase and time allowed for maintenance resources to ramp up and to transition to the Maintenance Phase;
- Scope of Maintenance Services and reasonableness for proposed contractor to deliver services;
- Proposed Maintenance management structure and adequacy of number of resources to service contract;
- Service Delivery Review;
- Services Term Sheet Review;
- Review of any proposed interface deed;
- Review proposed costs for mobilization, operations (if any) and maintenance;
- Analyze and evaluate the proposed operations and maintenance/renewal plans; and
- Review operating (if any) and maintenance costs benchmarking against market rates.

WT understand from the LTA RFP that it is anticipated that the MDOT will have full responsibility for the operation of the asset, including the completion of routine maintenance works and all emergency response activities while Project Co will retain responsibility for completion of major maintenance activities as well as regular formal asset inspections through the course of the concession. WT understand that this arrangement may be subject to change and confirm that our fee accounts for any shifts in this scope as we consider the level of diligence required to be consistent regardless of the risk allocation.

Project Costs:

WT will provide commentary on:

- The adequacy of the proposed construction cost expenditure based on a preliminary Cost Plan provided by the construction contractor including a comparison with market rates (benchmarking) and the appropriateness of any contingencies; and
- The construction contractor's drawdown payment schedule and the cost, operational and performance assumptions included in the financial model for the Project, including the profile of the payments during the construction period and the risk of time and cost overruns.

Payment Mechanism Review

WT will provide commentary on:

- The payment mechanism in order to assess the level of risk to Financiers in terms of unavailability and performance. A payment mechanism/abatement model will be provided by Oakland Corridor Partners and their Services Technical Adviser may interrogate and verify the model or develop its own model to conduct scenario analysis to determine likely levels of abatement;
- Provide sensitivity and scenario analysis to determine potential abatement that could be expected to occur over the services period under a base case, downside and worst-case scenarios. In the provision of sensitivity analysis to determine abatement, this should be on a base case, downside case and worst-case basis by varying the probability and magnitude of risk events over the project



life. This should also be from a bottom up approach and include analysis / comment on likelihood, duration and impact over the concession period;

- Comment on the level of abatement assumed by the services provider and the impact of scenario testing on project cashflows;
- Comment on the likelihood of default and termination due to accumulated abatement. Where possible compare the regime to similar PPP projects with respect to the level of abatement risk and termination provisions; and
- Review and comment on the extent to which abatement risk is outside the control of Project Co or service provider, strategies for mitigating this risk and the appropriateness of any allowance / contingencies in the services costs / lifecycle budget to cover this e.g. vandalism.

Performance Security/Contractor Replacement:

WT will provide commentary on:

- The construction contractor proposed security packages including letters of credit, bonds, parent guarantees, and the proposed limits on liability; and
- The potential default and replacement of the construction contractor including estimates of time and cost implications for the consortium.



APPENDIX B LENDERS' Q&A

APPENDIX C CONTRACTOR REPLACEMENT SCENARIOS

Construction Contractor Replacement Scenarios

I-75 Segment 3 DBFM

			Net Effect to Cost			
	Cost Line Scenario 1		Scenario 2	Scenario 3	Scenario 4	Explanatory Notes
A	Base Direct Cost	\$ 538,658,655	\$ 538,658,655	\$ 538,658,655	\$ 538,658,655	Per DB Cashflow (Based on 90/15 Split per detailed costs)
A1	Executed	\$ 10,425,432	\$ 167,414,650	\$ 301,526,734	\$ 466,393,460	Work completed based on point of failure within the cash flow curve provided by DBLLC
A2	Outstanding	\$ 528,233,222	\$ 371,244,004	\$ 237,131,921	\$ 72,265,195	Balance of work outstanding at point of failure.
A3	Direct Cost Escalation	10%	20%	30%	15%	% increase on (A2) - ranging from 10% - 30%. Late events incur greater % due to imposition of step-in and market appetite to take risk on another contractor's work. However the total proportion of work the %
A3	Direct Cost Escalation	\$ 52,823,322	\$ 74,248,801	\$ 71,139,576	\$ 10,839,779	applies to, reduces over time and thus net impact is not greater.

в	Base In-Direct Costs	\$ 90,586,701	\$ 90,586,701	\$ 90,586,701	\$ 90,586,701	Per DB Cashflow (Based on 90/15 Split per detailed costs)
B1	Executed	\$ 47,416,034	\$ 60,246,218	\$ 71,206,733	\$ 84,680,718	Costs incurred based on point of failure within the cash flow curve provided by DBLLC.
B2	Outstanding	\$ 43,170,667	\$ 30,340,483	\$ 19,379,968	\$ 5,905,983	Balance of expenditure outstanding at point of failure.
97	In-Direct Cost Escalation	5%	25%	45%	20%	% increase on (B2) from 5% to 45% In-direct costs include general conditions, contractor's fee, insurances, bonding etc. It is our experience that the in-direct cost will be increased upon a retendered
85	In-Direct Cost Escalation	\$ 2,158,533	\$ 7,585,121	\$ 8,720,986	\$ 1,181,197	appointment in the event of a termination / default / step-in having been necessary due to price risk-loading.

		Delay incurred upon Default Event				
c	Step-In Costs	60 days	100 days	80 days	80 days	"Working Days - shift in critical path past the Substantial Completion Date assuming all float and compensable delays are consumed"
C1	Interim Site Security & Management	\$ 600,000	\$ 1,000,000	\$ 800,000	\$ 800,000	\$10,000 per day (USD) interim measures (on-call gate security, patrols and surveilliance) It is imperative when a replacement / step-in rights are being exercised that the work, materials and assets are protected and secured whilst technical review and conflication can take place to determine termination payments set.
C2	Owner Due Diligence	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$1,000,000 sum for counter charges by Authority. Termination proceedure expert reports, analysis, dispute resolution etc.
C3	Legal Administration	\$ 500,000	\$ 500,000	\$ 500,000	\$ 500,000	\$500,000 sum for legal services Definition of notices, unwinding equity and ownership structures, counter-claims etc.
C4	Technical Advisory	\$ 289,207	\$ 1,138,304	\$ 1,863,667	\$ 2,755,371	Allow 0.5% of work completed (A1+B1). Certification of works completed to date for purposes of retendering and delination of responsibility. Increased oversight through to completion.
C5	D&C Noncompliances	\$ -	\$ 117,000	\$ 117,000	\$ 117,000	Allowence for D&C Noncompliances, Assuming 'Medium Case Scenario' as per Payment Mechanim Analysis in the amount of \$117,000 for Scenarios 2-4. Due to timing of Scenario 1 replacement it is assumed that NCP's will not be incurred at this stage as works to the mainline will not have commenced.
C6	Finance LDs	\$ 9,912,000	\$ 16,520,000	\$ 13,216,000	\$ 13,216,000	Project LD's as follows: Milestone 1 LD's - Nil Milestone 2 LD's - Nil Substantial Competition LD's - \$118,000 / day Final Acceptance LD's - Nil All scenarios assume critical path delay impacting achievement of Substantial Completion equal to period of Step-In
с7	Total Step-in Cost	\$ 12,301,207	\$ 20,275,304	\$ 17,496,667	\$ 18,388,371	Based on WT experience, the cost of step-in can vary greatly based on the nature of the default. An insolvency event is often a late indication of a distressed contractor which can mean corners have been can and work may be defactive. The cast associated with remedial or corrective work cannat be reasonably estimated, however the up(b) swithin (3) and (83) above will imfaight this.

D	Total Cost of Replacement	\$ 67,283,063	\$ 102,109,226	\$ 97,357,229	\$ 30,409,347	Total of (A3+83+C7)
D1	Total Security	\$ 471,934,017	\$ 471,934,017	\$ 471,934,017	\$ 471,934,017	Value of P3 Performance Bond
D2	Balance Security	\$ 404,650,954	\$ 369,824,791	\$ 374,576,787	\$ 441,524,670	
D3	Residual Security Upon Replacement Event	58%	51%	52%	67%	=D2/(k+8+0) % of new contract price inclusive of Direct, In-direct and Step-in Costs based on face value of original bonding from 50%.

		Scenario 1	Scenario 2	Scenario 3	Scenario 4	
E	Total Step-In Costs	\$ 12,301,20	7 \$ 20,275,304	\$ 17,496,667	\$ 18,388,371	Total of (A3+B3+C7)
E1	Liquidity Bond	\$ 48,904,296	\$ 48,904,296	\$ 48,904,296	\$ 48,904,296	
E3	Residual Liquid Security	\$ 36,603,08	9 \$ 28,628,992	\$ 31,407,629	\$ 30,515,925	=(E1+E2)-E Remaining Liquid Security Available (Liquidity Bond) after application of Step-In Costs.



APPENDIX D INFORMATION RECEIVED



Index	Path	FileName	Туре
1	Bid Info	LTA Presentation_V7.pdf	PDF
2	Bid Info	LTA Presentation_V7.pptx	Document
3	Bid Info	Technical Advisors in Public-Private Partnerships.pdf	PDF
4	Bid Info	NCP-Long Term Maintenance Commentary_Berger Comments-v1.xlsx	Excel Document
5	Bid Info\Cashflow\Superseded	I-75 DC S-Curve (4 year).xlsx	Excel Document
6	Bid Info\Cashflow\Superseded	FW_ I75 Segment #3 CJV Price Drop 7-02-2018.msg	File
7	Bid Info\Cashflow\Superseded	I-75 Segment 3 MI75Constructors Price drop 7-02-18.xlsx	Excel Document
8	Bid Info\D&C Costs\Superseded	ProjectParis2018.txt	Text
9	Bid Info\D&C Costs\Superseded	175 CJV Price Basis 5-25-18_to LTA.xlsx	Excel Document
10	Bid Info\D&C Costs\Superseded	cashflow projectparis2018.xlsx	Excel Document
11	Bid Info\D&C Costs\Superseded	Copy of I75 Segment 3 MI75 Price Drop 7-02-2018 CURRENT.xlsx	Excel Document
12	Bid Info\D&C Costs\Superseded	Copy of I75 Segment 3 MI75 Price Drop 7-02-2018-AM.xlsx	Excel Document
13	Bid Info\D&C Costs\Superseded	I75 Segment 3 MI75 FINAL Cost Curve REVISED 8-17-18.xlsx	Excel Document
14	Bid Info\D&C Costs\Superseded	175 Segment 3 MI75 FINAL Price Drop REVISED 8-17-18.xLsx	Excel Document
15	Bid Info\D&C Costs\	I75 Segment 3 MI75 ATC REVISED Cost Curve 10-9-2018	Excel Document
16	Bid Info\D&C Costs\	175 Segment 3 FINAL Price Drop REVISED 9-20-18_SUBMITTED	Excel Document
17	Bid Info\Geotech	Geotechnical Investigation and Hazardous Materials Survey Data Report.pdf	PDF
18	Bid Info\Geotech	Soil Boring Log Sheets_Roadway.pdf	PDF
19	Bid Info\Geotech	i-75 modernization tunnel investigation.gpj	File
20	Bid Info\Geotech	Groundwater Sampling Data Report.pdf	PDF
21	Bid Info\Geotech	Storage and Drainage Tunnel Geotechnical Data Report.pdf	PDF
22	Bid Info\Geotech	wetransfer-ee074b.zip	Compressed
23	Bid Info\Hazmat	I-75_Modernization_Segment_3_PACS_Report_11302017.pdf	PDF



Index	Path	FileName	Туре
24	Bid Info\Hazmat	I-75_Modernization_Segment_3_PSI_Report_D2_03142018.pdf	PDF
25	Bid Info\NCP Analysis	NCP-Long Term Maintenance Commentary_Berger Comments-v1.xlsx	Excel Document
26	Bid Info\NEPA Docs	Concurrence of Administrative Re-evaluations of the Environmental Impact.pdf	PDF
27	Bid Info\Opex Costs	I75 Final Maintenance Model_081718.xlsx	Excel Document
28	Bid Info\Opex Costs	I75 Final Renewals Model_081718.xlsx	Excel Document
29	Bid Info\Opex Costs	I75 Final SPV_Budget Model_081718.xlsx	Excel Document
30	Bid Info\Opex Costs\Superceded	I-75 OpEx Budget_071318.xlsx	Excel Document
31	Bid Info\Opex Costs\Superceded	I-75 Renewal Pricing_LTA_07202018.xlsx	Excel Document
32	Bid Info\Opex Costs\Superceded	I-75 Renewal Pricing_LTA_07172018.xlsx	Excel Document
33	Bid Info\Reference Design	Segment 3 Tunnel Plans.pdf	PDF
34	Bid Info\Reference Design	Design and Construction Limits.pdf	PDF
35	Bid Info\Reference Design	I-75 DBFM Segment 3 Parcel Acquisition Map.pdf	PDF
36	Bid Info\Reference Design	Segment 3 Roadway Plans.pdf	PDF
37	Bid Info\Reference Design\Structure As-Builts	6310S06.pdf	PDF
38	Bid Info\Reference Design\Structure As-Builts	63174 - P01.pdf	PDF
39	Bid Info\Reference Design\Structure As-Builts	63174 - P02.pdf	PDF
40	Bid Info\Reference Design\Structure As-Builts	63174 - P03.pdf	PDF
41	Bid Info\Reference Design\Structure As-Builts	63174 - P04.pdf	PDF
42	Bid Info\Reference Design\Structure As-Builts	63174 - P06.pdf	PDF
43	Bid Info\Reference Design\Structure As-Builts	63174 - P05.pdf	PDF
44	Bid Info\Reference Design\Structure As-Builts	63174 - S01 11083.pdf	PDF
45	Bid Info\Reference Design\Structure As-Builts	63174 - S03 MM 5BR-9A.pdf	PDF
46	Bid Info\Reference Design\Structure As-Builts	63174 - B02.pdf	PDF

Index	Path	FileName	Туре
47	Bid Info\Reference Design\Structure As-Builts	63174 - S01.pdf	PDF
48	Bid Info\Reference Design\Structure As-Builts	63174 - S04 MM 5BR-9A.pdf	PDF
49	Bid Info\Reference Design\Structure As-Builts	63174 - S02.pdf	PDF
50	Bid Info\Reference Design\Structure As-Builts	63174 - S03.pdf	PDF
51	Bid Info\Reference Design\Structure As-Builts	63174 - S04.pdf	PDF
52	Bid Info\Reference Design\Structure As-Builts	63174 - S01 38801.pdf	PDF
53	Bid Info\Reference Design\Structure As-Builts	63174 - S25 29796.pdf	PDF
54	Bid Info\Reference Design\Structure As-Builts	63174 - S22.pdf	PDF
55	Bid Info\Reference Design\Structure As-Builts	63174 - S27 MM 5BR-9A.pdf	PDF
56	Bid Info\Reference Design\Structure As-Builts	63174 - S23.pdf	PDF
57	Bid Info\Reference Design\Structure As-Builts	63174 - S24.pdf	PDF
58	Bid Info\Reference Design\Structure As-Builts	63174 - S27.pdf	PDF
59	Bid Info\Reference Design\Structure As-Builts	63174 - S26.pdf	PDF
60	Bid Info\Reference Design\Structure As-Builts	63174 - S30.pdf	PDF
61	Bid Info\Reference Design\Structure As-Builts	63174 - S25.pdf	PDF
62	Bid Info\Reference Design\Structure As-Builts	63174 - S28.pdf	PDF
63	Bid Info\Reference Design\Structure As-Builts	63174 - S31.pdf	PDF
64	Bid Info\Reference Design\Structure As-Builts	S05_63103_1987.pdf	PDF
65	Bid Info\Reference Design\Structure As-Builts	63174- 48404.pdf	PDF
66	Bid Info\Reference Design\Structure As-Builts	S05_63103_1970.pdf	PDF
67	Bid Info\RFQ	OCP_I-75 Segment 3 DBFM Project_Volumes A-E.pdf	PDF
68	Bid Info\RFQ	OCP_I-75 Segment 3 DBFM Project_Volume F.pdf	PDF
69	Bid Info\Schedule	MOT_I-75 DBFM Segment Main Staging Exhibits_071318.pdf	PDF

Index	Path	FileName	Туре
70	Bid Info\Schedule	TBM Schedule.pdf	PDF
71	Bid Info\Schedule	LTA Segment 3 Aug Sub Comp.pdf	PDF
72	Bid Info\Schedule\Superceded	LTA Segment 3 5 year schedule.pdf	PDF
73	Bid Info\Schedule\Superceded	LTA Segment 3 4 year schedule.pdf	PDF
74	Bid Info\Updates\ITP	MDOT I-75 (Segment 3) ITP Forms Final RFP (March 30, 2018).docx	Word Document
75	Bid Info\Updates\ITP	MDOT I-75 (Segment 3) ITP (Comparison Industry Review Draft vs. Final RFP.pdf	PDF
76	Bid Info\Updates\ITP	MDOT I-75 (Segment 3) Combined ITP Final RFP (March 30, 2018).PDF	PDF
77	Bid Info\Updates\ITP	MDOT I-75 (Segment 3) ITP Exhibits Final RFP (March 30, 2018).DOCX	Word Document
78	Bid Info\Updates\ITP	MDOT I-75 (Segment 3) ITP Exhibits (Comparison Industry Review Draft vs Final).pdf	PDF
79	Bid Info\Updates\ITP	MDOT I-75 (Segment 3) ITP Final RFP (March 30, 2018).DOCX	Word Document
80	Bid Info\Updates\ITP	MDOT I-75 (Segment 3) ITP Forms (Comparison Industry Review Draft vs. Final).pdf	PDF
81	Bid Info\Updates\PA	I-75 DBFM PA Schedule 4 (Payment Mechanism) (Final RFP 3.30.18).docx	Word Document
82	Bid Info\Updates\PA	I-75 DBFM Project Agreement (Final RFP 3.30.18).DOCX	Word Document
83	Bid Info\Updates\PA	I-75 DBFM PA Schedule 4 (Payment Mechanism) (Final RFP 3.30.18_Comparison.pdf	PDF
84	Bid Info\Updates\PA	I-75 DBFM Project Agreement (Final RFP 3.30.18_Comparison) (1).pdf	PDF
85	Bid Info\Updates\PA	I-75 Project Agreement Schedules (Final RFP 3.30.18).DOCX	Word Document
86	Bid Info\Updates\PA	I-75 DBFM Project Agreement Schedules (Final RFP 3.30.18_Comparison).pdf	PDF
87	Bid Info\Updates\PA	MDOT I-75 DBFM Project Agreement and Schedules (excluding Schedule 17) Final RFP (March 30, 2018).pdf	PDF
88	Bid Info\Updates\PABS Allocation	PAB Allocation Approval Letter I-75 Modernization (Segment 3)signed (1).pdf	PDF
89	Bid Info\Updates\PABS Allocation	PAB Allocation Approval Letter I-75 Modernization (Segment 3)signed.pdf	PDF
90	Bid Info\Updates\Tech	Exhibit 24-A_ II- Interim Maintenance Performance Measurements (1).docx	Word Document
91	Bid Info\Updates\Tech	Exhibit 24-A Long Term Maintenance Performance Measurements (1).docx	Word Document
92	Bid Info\Updates\Tech	Article 24 - Maintenance Requirements (1).docx	Word Document

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95	Bid Info\Updates\Tech\Maintenance	Schedule17_FinalRFP_MDOT_TechnicalRequirements(for_printing).pdf	PDF
96	Bid Info\Updates\UPdates	MDOT I-75 DBFM Segment 3 Paymech update note 5.4.18_All Bidders.pdf	PDF
97	Bid Info\Updates\UPdates	MDOT I-75 DBFM Segment Insurance update cover note All_Bidders.pdf	PDF
98	Bid Info\Updates\UPdates	MDOT I-75 DBFM Segment 3 - Insurance Requirements (5-4-18) All_Bidders.pdf	PDF
99	Contract Docs\DB Contract\Superceded\	TOR_DOCUMENTS-#3799772-v8-I-75Design-Build_Contract_Part_2.DOCX	Word Document
100	Contract Docs\DB Contract\Superceded\	TOR_DOCUMENTS-#3818057-v7-I-75DBC_Attachment_1_(FULL)Definitions.DOCX	Word Document
101	Contract Docs\DB Contract\Superceded\	TOR_DOCUMENTS-#3802325-v8-I-75Design-Build_Contract_Part_1.DOC	Word Document
102	Contract Docs\DB Contract\Superceded\	DBC Part 2 blacklined to PA.docx	Word Document
103	Contract Docs\DB Contract\v9\	TOR_DOCUMENTS-#3799772-v9-l-75Design-Build_Contract_Part_2.DOCX	Word Document
104	Contract Docs\DB Contract\v9\	TOR_DOCUMENTS-#3802325-v9-l-75Design-Build_Contract_Part_1.DOC	Word Document
105	Contract Docs\DB Contract\v9\	TOR_DOCUMENTS-#3799772-v9-I-75Design-Build_Contract_Part_1 BL To V8.pdf	PDF
106	Contract Docs\DB Contract\v9\	TOR_DOCUMENTS-#3799772-v9-I-75Design-Build_Contract_Part_1 BL To V8.pdf.docx	Word Document
107	Contract Docs\Superceded\PA Addendum 2\Instructions to Proposers	MDOT I-75 (Segment 3) ITP Exhibits Addendum 2 (July 13, 2018).docx	Word Document
108	Contract Docs\Superceded\PA Addendum 2\Instructions to Proposers	MDOT I-75 (Segment 3) ITP Forms Addendum 2 (July 13 2018)_Compare.pdf	PDF
109	Contract Docs\Superceded\PA Addendum 2\Instructions to Proposers	MDOT I-75 (Segment 3) ITP Forms Addendum 2 (July 13 2018).docx	Word Document
110	Contract Docs\Superceded\PA Addendum 2\Instructions to Proposers	MDOT I-75 (Segment 3) ITP Addendum 2 (July 13, 2018).docx	Word Document
111	Contract Docs\Superceded\PA Addendum 2\Instructions to Proposers	MDOT I-75 (Segment 3) ITP Exhibits Addendum 2 compare with Addendum 1 (July 13 2018).pdf	PDF
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129	Contract Docs\Addendum 3\	MDOT I-75 (Segment 3) Project Agreement Schedules (Comparison Addendum 2 vs Addendum 3).pdf	PDF
130	Contract Docs\Addendum 3\	MDOT I-75 (Segment 3) Project Agreement Schedules Addendum 3 (August 7, 2018).docx	Word Document
131	Contract Docs\Addendum 3\	MDOT_175 Final RFP Bidder QA MAtrix Addendum 3 release.pdf	PDF
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133	Contract Docs\Addendum 3\	Article 24 - Maintenance Requirements_Addendum3.docx	Word Document
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146	Contract Docs\Superceded\PA Addendum 2\Schedule 17 Part A General Technical Requirements	Article OProject Management_Addendum2.docx	Word Document
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148	Contract Docs\Superceded\PA Addendum 2\Schedule 17 Part A General Technical Requirements	Article 04 - Project Interfaces_Addendum2.docx	Word Document
149	Contract Docs\Superceded\PA Addendum 2\Schedule 17 Part A General Technical Requirements	Article 05 - Utilities_Addendum2.docx	Word Document
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164	Contract Docs\Superceded\PA Addendum 2\Schedule 17 Part A General Technical Requirements	Schedule17_Addendum2_Compare(25May2018-11Jul2018)_ADD2.pdf	PDF
165	Contract Docs\Superceded\PA Addendum 2\Schedule 17 Part A General Technical Requirements	Article 19 - Environmental_Addendum2.docx	Word Document
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176	Contract Docs\Superceded	MDOT I-75 (Segment 3) Combined ITP Final RFP (March 30, 2018).PDF	PDF
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182	Contract Docs\Superceded\Project Agreement - Addendum 1\Project Agreement - Addendum 1	MDOT I-75 Segment 3 Project Agreement Schedules Addendum 1 (May 25, 2018).docx	Word Document
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184	Contract Docs\Superceded\Project Agreement - Addendum 1\Project Agreement - Addendum 1	MDOT I-75 Segment 3 Project Agreement (Comparison Final RFP vs Addendum).pdf	PDF



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186	Contract Docs\PA Executed	MDOT I-75 (Segment 3) Project Agreement Schedule 4 (Comparison 10-1-18 Conformed vs 10-8-18 Execution Drafts).pdf	PDF
187	Contract Docs\PA Executed	MDOT I-75 (Segment 3) Project Agreement Schedule 4 Execution Version (October 8, 2018).docx	Word Document
188	Contract Docs\PA Executed	MDOT I-75 (Segment 3) Project Agreement Schedules (Comparison 10-1-18 Conformed vs 10-8-18 Execution Drafts).pdf	PDF
189	Contract Docs\PA Executed	MDOT I-75 (Segment 3) Project Agreement Schedules Execution Version (October 8, 2018) (1).docx	Word Document
190	Contract Docs\PA Executed	MDOT I-75 (Segment 3) Project Agreement Schedules Execution Version (October 8, 2018).docx	Word Document
191	Contract Docs\PA Executed	MDOT I-75 (Segment 3) Project Agreement (Comparison 10-1-18 Conformed vs 10-8-18 Execution Drafts).pdf	PDF
192	Contract Docs\PA Executed	MDOT I-75 (Segment 3) Project Agreement and Schedules excl. Schedule 17 Execution Version (10.8.18).pdf	PDF
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197	Contract Docs\DB Contract\Executed	Blackline of v12 compared with TOR_DOCUMENTS-#3799772-v13-I-75Design-Build_Contract_Part_2.pdf	PDF
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204		TOR DOCUMENTS-#3863342-v4-I-75 - DBC Attachment 25 - Term Sheet Extracts.docx	Word Document
205	Contract Docs\DB Contract\Executed	TOR DOCUMENTS-#3872986-v1-I-75 - DBC Attachment 23 - Developer Requirements.DOCX	Word Document
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209	· · ·	Blackline of v2 compared with TOR DOCUMENTS-#3883393-v4-I-75 - DBC Attachment 7 - D&C Performance Security.	
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211	· · ·	Blackline of v4 compared with TOR DOCUMENTS-#3872315-v5-I-75 - DBC Attachment 22 - Form of DB Lenders .pdf	-
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225		Article 16 - Signing, Pavement Marking, Signalization and Freeway Lighting Executed.docx	Word Document
220		Article 10 - Signing, ravenent Harking, Signalization and Reeway Lighting_Executed.docx	Word Document
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232	Contract Docs\TRs Executed\	Article 22 - Pump Station_Executed.docx	Word Document
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APPENDIX H-1

FORM OF MDOT CONTINUING DISCLOSURE CERTIFICATE

CONTINUING DISCLOSURE CERTIFICATE OF THE STATE OF MICHIGAN

Michigan Strategic Fund Limited Obligation Revenue Bonds (I-75 Improvement Project), Series 2018

This Continuing Disclosure Certificate (the "*Disclosure Certificate*") is executed and delivered on November 20, 2018 by the State of Michigan, acting by and through the Michigan Department of Transportation (the "*State*") and the Michigan Department of Treasury in connection with the issuance by the Michigan Strategic Fund (the "*Issuer*") of its Limited Obligation Revenue Bonds (I-75 Improvement Project), Series 2018 (the "*Bonds*"). The Bonds are being issued pursuant to the Indenture (as defined below).

The State hereby covenants and agrees as follows:

Section 1. <u>Definitions</u>. In addition to the definitions set forth in the Indenture or Collateral Agency Agreement, which applies to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms have the following meanings:

"Annual Report" means any Annual Report provided by the State pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

"*Beneficial Owner*" means any person that (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

"Borrower" means Oakland Corridor Partners LLC.

"Collateral Agency Agreement" shall mean that certain Collateral Agency Agreement, dated as of November 20, 2018 between the Borrower and U.S. Bank National Association, as collateral agent and securities intermediary, as it may be amended or supplemented from time to time.

"Dissemination Agent" means the State, or any successor Dissemination Agent designated in writing by the State and which has filed with the State a written acceptance of such designation.

"EMMA System" means the MSRB's Electronic Municipal Market Access system, or such other electronic system designated by the MSRB. As of the date of this Disclosure Certificate, the EMMA Internet Web site address is <u>http://www.emma.msrb.org</u>

"Fiscal Year" means the one-year period ending on September 30 of each year.

"GASB" means the Governmental Accounting Standards Board.

"*Indenture*" means that certain Indenture of Trust, dated as of November 1, 2018, between the Issuer and the Trustee, as it may be amended or supplemented from time to time.

"Loan Agreement' means that certain Senior Loan Agreement, dated as of November 20, 2018, between the Issuer and the Borrower, as it may be amended or supplemented from time to time.

"*MSRB*" means the Municipal Securities Rulemaking Board or any successor thereto. As of the date of this Disclosure Certificate, the address and telephone and telecopy numbers of the MSRB are as follows:

Municipal Securities Rulemaking Board 1900 Duke Street, Suite 600 Alexandria, Virginia 22314 Tel: (703) 797-6600 Fax: (703) 797-6700 "Official Statement" means the final official statement of the Issuer relating to the Bonds.

"Owner" means a registered owner of Bonds.

"*Participating Underwriter*" means any of the original underwriters of the Bonds required to comply with the Rule in connection with offering the Bonds.

"*Rule*" means Rule 15c2-12 adopted by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time.

"SEC" means the Securities and Exchange Commission.

"Securities Counsel" shall mean legal counsel expert in federal securities law.

"Trustee" means U.S. Bank National Association, in its capacity as trustee under the Indenture and any successors or assigns.

Section 2. <u>Purpose of this Disclosure Certificate</u>. This Disclosure Certificate is being executed and delivered by the State for the benefit of the Owners and Beneficial Owners of the Bonds and in order to assist the Participating Underwriters in complying with paragraph (b)(5) of the Rule.

Section 3. <u>Provision of Annual Reports</u>.

(a) Each year, the State Treasurer on behalf of the State shall provide, or have the Dissemination Agent provide, not later than 7 months following the end of each Fiscal Year, commencing with the report for Fiscal Year ending September 30, 2018, in an electronic format, an Annual Report relating to the immediately preceding Fiscal Year that is consistent with the requirements of Section 4 of this Disclosure Certificate, which Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Certificate; provided that any audited financial statements may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date.

(b) If in any year, the State does not provide the Annual Report by the time specified above, the State must deliver a notice to the State Treasurer, or the Dissemination Agent if other than the State, in substantially the form attached as Exhibit A hereto.

(c) If the State's fiscal year changes, the State Treasurer, on behalf of the State, shall send a notice of the change to the MSRB. If the change will result in the State's fiscal year ending on a date later than the ending date prior to the change, the State shall provide notice of the change to the MSRB on or prior to the deadline for filing the Annual Report in effect when the State operated under its prior fiscal year. Such notice may be provided the MSRB along with the Annual Report, provided that it is filed at or prior to the deadline described above.

Section 4. <u>Content of Annual Reports</u>. The Annual Report shall contain or incorporate by reference the following:

(a) Audited financial statements of the State prepared pursuant to accounting and reporting policies conforming in all material respects to generally accepted accounting principles as applicable to governments with such changes as may be required from time to time by State law. If, however, the audited financial statements of the State are not available by the deadline for filing the Annual Report, they shall be provided when and if available, and unaudited financial statements shall be included in the Annual Report.

(b) Information in form and substance similar to the information set forth in the following portions of the Official Statement for the most recently completed Fiscal Year:

1. Tables 1 through 4 under the caption "SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2018 BONDS – Sources of Payment Generally" in the Official Statement; and 2. Tables 1 through 4 set forth in APPENDIX M – "EXCERPTED FINANCIAL STATEMENTS (EXCLUDING NOTES TO FINANCIAL STATEMENTS) – STATE TRUNK LINE FUND AND MICHIGAN TRANSPORTATION FUND" in the Official Statement.

Any or all of the items listed above may be incorporated by reference to other documents, including official statements of debt issues of the State or related public entities, which previously have been provided to the MSRB or filed with the SEC. If the document incorporated by reference is a final official statement, it need only be available from the MSRB. The State shall clearly identify each document so incorporated by reference.

In the event that information necessary to prepare the tables listed above becomes unavailable due to changes in accounting practices, legislative changes or organizational changes, the State must state in its Annual Report that such table will no longer be included in the Annual Report and the reason therefore and the State must provide comparable information if available.

Section 5. <u>Termination of Obligation</u>. The State's obligations under this Disclosure Certificate will terminate upon the maturity, legal defeasance, prior redemption or payment in full of all of the Bonds. This Disclosure Certificate, or any provision hereof, shall be null and void in the event that the State (i) receives an opinion of Securities Counsel, addressed to the State, to the effect that those portions of the Rule, which require such provisions of this Disclosure Certificate, do not or no longer apply to the Bonds, whether because such portions of the Rule are invalid, have been repealed, amended or modified, or are otherwise deemed to be inapplicable to the Bonds, as shall be specified in such opinion, and (ii) delivers notice to such effect to the MSRB.

Section 6. <u>Amendment; Waiver</u>. Notwithstanding any other provision of this Disclosure Certificate, this Disclosure Certificate may be amended, if the State receives an opinion of independent legal counsel to the effect that:

(a) the amendment is made in connection with a change in circumstances that arises from a change in legal requirements, a change in law or a change in the types of activities in which the State is engaged;

(b) this Disclosure Certificate, as amended, would have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) the amendment does not materially impair the interests of the Owners or has been approved by a vote of Owners pursuant to the terms of the Indenture for amendments to the Indenture.

If the amendment results in a change to the annual financial information required to be included in the Annual Report pursuant to this Disclosure Certificate, the first Annual Report that contains the amended operating data or financial information shall explain, in narrative form, the reasons for the amendment and the impact of such change in the type of operating data or financial information being provided. Further, if the annual financial information required to be provided in the Annual Report can no longer be generated because the operations to which it related have been materially changed or discontinued, a statement to that effect shall be included in the first Annual Report that does not include such information.

Section 7. <u>Additional Information</u>. Nothing in this Disclosure Certificate will be deemed to prevent the State from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report, in addition to that which is required by this Disclosure Certificate. If the State chooses to include any information in any Annual Report or notice in addition to that which is specifically required by this Disclosure Certificate, the State will not thereby have any obligation under this Disclosure Certificate to update such information or include it in any future Annual Report.

Section 8. <u>Failure to Comply</u>. In the event of a failure of the State or the Dissemination Agent (if other than the State) to comply with any provision of this Disclosure Certificate, any Owner or Beneficial Owner may bring an action to obtain specific performance of the obligations of the State or the Dissemination Agent (if other than the State) under this Disclosure Certificate, but no person or entity shall be entitled to recover monetary damages hereunder under any circumstances, and any failure to comply with the obligations under this Disclosure Certificate shall not constitute a default with respect to the Bonds, the Indenture, the Loan Agreement, the Collateral Agency Agreement or any other Financing Document or the Security Documents. Notwithstanding the foregoing, if the alleged failure of the State to comply with this Disclosure Certificate is the inadequacy of the information disclosed pursuant to this Disclosure Certificate, then the Owners of not less than a majority of the aggregate principal amount of the then Outstanding Bonds must take the actions described above, before the State shall be compelled to perform with respect to the adequacy of information disclosed pursuant to this Disclosure Certificate.

Section 9. <u>Beneficiaries</u>. This Disclosure Certificate will inure solely to the benefit of the State, the Dissemination Agent and the Owners and Beneficial Owners from time to time of the Bonds, and will create no rights in any other person or entity. This Disclosure Certificate is not intended to create any monetary rights on behalf of any person or entity based upon the Rule.

Section 10. <u>Notices</u>. Any notices or communications to State may be given as follows:

Michigan Department of Transportation Attn: Patrick McCarthy E-mail: mccarthyp@michigan.gov Facsimile: 517-335-0669

Section 11. <u>Partial Invalidity</u>. If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the State is contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof will be null and void and will be deemed separable from the remaining agreements and covenants or portions thereof and will in no way affect the validity hereof, and the Beneficial Owners of the Bonds will retain all the benefits afforded to them under this Disclosure Certificate. The State hereby declares that it would have executed and delivered this Disclosure Certificate and each and every other article, section, paragraph, subdivision, sentence, clause and phrase of this Disclosure Certificate irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases of this Disclosure Certificate or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

Section 12. <u>Governing Law</u>. This Disclosure Certificate shall be construed and interpreted in accordance with the laws of the State, and any suits and actions arising out of this Disclosure Certificate shall be instituted in a court of competent jurisdiction in the State. Notwithstanding the foregoing, to the extent this Disclosure Certificate addresses matters of federal securities laws, including the Rule, this Disclosure Certificate shall be construed and interpreted in accordance with such federal securities laws and official interpretations thereof.

Section 13. <u>Dissemination Agent</u>. The State Treasurer on behalf of the State, from time to time, may appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Certificate.

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Certificate on the date and year first above written.

STATE OF MICHIGAN

By: _____ Name: Title:

MICHIGAN DEPARTMENT OF TREASURY

By:			
Name:			
Title:			

EXHIBIT A

NOTICE TO THE MSRB OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer:	Michigan Strategic Fund
Name of Bond Issue:	Michigan Strategic Fund Limited Obligation Revenue Bonds (I-75 Improvement Project), Series 2018 (the "Bonds").
Date of Issuance:	November 20, 2018
CUSIP:	594698

NOTICE IS HEREBY GIVEN that the State has not provided an Annual Report with respect to the above referenced Bonds as required by Section 3 of the Continuing Disclosure Certificate, dated November 20, 2018, executed by the State for the benefit of the Owners and Beneficial Owners of the above referenced Bonds. The State anticipates that the Annual Report will be filed by ______, 20__.

Dated: _____

STATE OF MICHIGAN

By: ______Name: ______Title:

APPENDIX H-2

FORM OF COMPANY CONTINUING DISCLOSURE AGREEMENT

\$610,300,000 MICHIGAN STRATEGIC FUND TAX-EXEMPT PRIVATE ACTIVITY BONDS, SERIES 2018 (OAKLAND CORRIDOR PARTNERS LLC – BORROWER) (MDOT I-75 (SEGMENT 3) MODERNIZATION PROJECT)

CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the "*Agreement*") dated November 20, 2018 is executed and delivered by OAKLAND CORRIDOR PARTNERS LLC (the "*Borrower*") and U.S. Bank National Association, as trustee under the Indenture referred to below (the "*Trustee*"), in connection with the issuance by the Michigan Strategic Fund, a public body corporate and politic of the State of Michigan (the "*Issuer*"), of its Limited Obligation Revenue Bonds (I-75 Improvement Project), Series 2018 (Oakland Corridor Partners LLC – Borrower) (collectively, the "*Series 2018 Bonds*"), in the aggregate principal amount of \$610,300,000. The Series 2018 Bonds are being issued pursuant to the Indenture (as defined below). The proceeds of the Series 2018 Bonds are being loaned to the Borrower pursuant to the Senior Loan Agreement (as defined below) for the purpose of paying a portion of the costs of the Project (as defined below) which is being undertaken pursuant to the Project Agreement (as defined below).

In consideration of the mutual promises and agreements made herein, the receipt and sufficiency of which consideration is hereby mutually acknowledged, the parties hereto agree as follows:

Section 1. <u>**Purpose of the Agreement**</u>. This Agreement is being executed and delivered by the Borrower and the Trustee for the benefit of the Beneficial Owners (as defined below) and in order to assist the Underwriters (as defined below) in complying with paragraph (b)(5) of the Rule (as defined below).

Section 2. <u>Definitions</u>. All capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to them in the Indenture or the Collateral Agency Agreement. In addition, the following capitalized terms as used in this Agreement shall have the following meanings:

"Annual Report" shall mean, collectively, the filings described in Section 3(a) hereof.

"Audited Financial Statements" shall mean the annual financial statements of the Borrower, audited by an independent firm of certified public accountants in accordance with GAAP, IFRS or such other accounting principles as the Borrower may be required to employ from time to time or as it may otherwise elect, provided that such election does not cause a violation of the Rule.

"Beneficial Owner" shall have the meaning given in the Indenture.

"Collateral Agency Agreement" shall mean that certain Collateral Agency Agreement, dated November 20, 2018 (as amended, supplemented and restated from time to time) by and among, inter alia, the Borrower and U.S. Bank National Association, as collateral agent, as it may be amended or supplemented from time to time.

"Commission" shall mean the United States Securities and Exchange Commission, or any successor body thereto.

"Dissemination Agent" means the Trustee or any successor Dissemination Agent designated in writing by the Borrower and which has filed with the Borrower a written acceptance of such designation,

"*EMMA*" shall mean the Electronic Municipal Market Access system and the EMMA Continuing Disclosure Service of MSRB, or any successor thereto approved by the Commission, as a repository for municipal continuing disclosure information pursuant to the Rule.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"GAAP" shall mean generally accepted accounting principles as defined by the American Institute of Certified Public Accountants or such other nationally recognized professional body, in effect from time to time in the United States of America.

"*Indenture*" shall mean that certain Indenture of Trust, dated as of November 1, 2018, between the Issuer and the Trustee, as it may be amended or supplemented from time to time.

"*IFRS*" shall mean the International Financial Reporting Standards as in effect from time to time promulgated by the International Accounting Standards Board of the IFRS Foundation or any successor board or agency as endorsed by the European Union.

"Listed Events" shall mean any of the events referenced in Section 4 of this Agreement.

"*MDOT*" shall mean the Michigan Department of Transportation.

"*MSRB*" shall mean the Municipal Securities Rulemaking Board, or any successor thereto. On July 1, 2009, the MSRB became the sole repository to which the Borrower must electronically submit annual and quarterly reports pursuant to Section 3 hereof and notices of Listed Events pursuant to Section 4 hereof. Reference is made to Securities and Exchange Commission Release No. 34-59062, December 5, 2008 (the "*Release*") relating to EMMA, which became effective on July 1, 2009. To the extent applicable to this Agreement, the Borrower shall comply with the Release, as amended or supplemented from time to time.

"Person" means any natural person, firm, corporation, partnership, limited liability company, state, political subdivision of any state, other public body or other organization or association.

"Project" shall have the meaning assigned to it in the Project Agreement.

"*Project Agreement*" shall mean that certain Design-Build-Finance-Maintain Agreement, dated as of October 12, 2018, between the State of Michigan, acting by and through the Michigan Department of Transportation and the Borrower, as may be amended or supplemented from time to time.

"*Rule*" shall mean Rule 15c2-12 adopted by the Commission under the Exchange Act, as the same may be amended from time to time.

"Senior Loan Agreement" shall mean that certain Senior Loan Agreement, dated as of November 20, 2018, by and between the Issuer and the Borrower, as it may be amended or supplemented from time to time.

"*Trustee*" shall mean U.S. Bank National Association, in its capacity as trustee under the Indenture, and any successors or assigns.

"Underwriters" shall mean Merrill Lynch, Pierce, Fenner & Smith Incorporated and Wells Fargo Bank, N.A.

Section 3. <u>Provision of Annual Reports, Quarterly Reports and Monthly Reports</u>.

(a) The Borrower shall, or shall cause the Dissemination Agent to, file with the MSRB:

(1) Audited Financial Statements within one hundred and twenty (120) days after the end of each fiscal year of the Borrower, together with an unqualified audit opinion thereon;

(2) unaudited financial statements for Borrower within forty-five (45) days after the end of each fiscal quarter of Borrower; and

(3) an annual operating budget (together with a certificate of an authorized officer of the Borrower that such budget is consistent with, and not in excess of 115% of, the Project budget set forth in the Base Case Model (as such Base Case Model may be amended from time to time with the approval of the Lenders' Technical Advisor) and has been prepared in good faith and are based upon reasonable assumptions) in each case in the form of an extract of the Base Case Model or any other form reasonably acceptable to the Majority Holders not later than fifteen (15) days prior to the commencement of each calendar year, in case of clauses (1) and (2), prepared in accordance with GAAP or IFRS (except as approved by the auditor or the responsible officer, as the case may be, and disclosed therein) and delivered

together with certificates from a responsible officer of the Borrower certifying to its knowledge that there is no Default or Event of Default;

(b) From the commencement of D&C Work to the Substantial Completion Date, the Borrower shall, or cause the Dissemination Agent to, file with the MSRB:

(1) Within five (5) days of delivery to Department, a copy of the periodic report required to be submitted to the Department pursuant to Section 3.3.2.4 of Schedule 17 (Technical Requirements) to the Project Agreement (the "Periodic MDOT Report"); and

(2) within thirty (30) days after the end of each month, to the extent such information is not provided in the Periodic MDOT Report furnished to MDOT described in clause (1), a construction progress report, providing (A) an assessment of the overall construction progress of D&C Work since the date of the last report (or, with respect to the first such report, the Closing Date) and setting forth a reasonable estimate as to the completion date for the applicable D&C Work, and (B) a reasonably detailed description of any material delays encountered or anticipated in connection with such D&C Work, and a reasonably detailed description of the proposed course of action with respect to such delay.

(c) From and after the Substantial Completion Date, the Borrower shall, or shall cause the Dissemination Agent to, file with the MSRB the following additional information:

(1) within five (5) days of delivery to Department, a copy of the quarterly and annual maintenance report required to be submitted to MDOT pursuant to Section 24.5.8 of Schedule 17 (Technical Requirements) to the Project Agreement; and

(2) within thirty (30) days after the end of each fiscal quarter, to the extent such information is not provided in the quarterly and annual maintenance reports furnished to MDOT described in clause (1) above, an operating report setting forth:

(A) the operating data for the Project for the previous quarter, including total Project Revenues, total Maintenance Expenditures and total Renewal Expenditures incurred; and

(B) the variances for such period between the actual Project Revenues, actual Maintenance Expenditures and actual Renewal Expenditures incurred, and the projected Project Revenues, budgeted Maintenance Expenditures and budgeted Renewal Expenditures, together with a brief narrative explanation of the reasons for any such variance of ten percent (10%) or more.

(d) The Borrower shall, or cause the Dissemination Agent to, file with the MSRB the following notices and information:

(1) details of litigation in respect of Borrower, pending or threatened in writing, by or before any arbitrator or Governmental Authority in which the amount involved exceeds \$5,000,000 and not covered by insurance or a remedy requested in the litigation is the stoppage or delay of the Project;

(2) details of any penalties or damages due from the Borrower under any Material Project Contract in excess of \$5 million in the aggregate,

(3) details of any event of default or "Default" as defined in, or any material breach (in each case by Borrower) under, any Material Project Contract and copies of all written notices of default or termination of any such Material Project Contracts delivered to the Borrower;

(4) notice of any material insurance claims or loss or damage to the Project for which the aggregate cost of repair or restoration is expected to be in excess of \$1 million or any series of losses or damage to the Collateral (whether or not related) during any 12 month period in excess of \$5 million;

(5) notice of any claim by Borrower under the Project Agreement in respect of the occurrence of a Delay Event or Relief Event;

(6) notice of the imposition of Deductions (as defined in the Project Agreement) in any single calendar month in excess of 30,000, together with confirmation of the aggregate amount of Deductions imposed by MDOT under the Project Agreement since the date of execution of the Project Agreement;

(7) notice of the filing or commencement by any Governmental Authority of any Taking of the Project or any material portion thereof;

(8) notice of any dispute under Schedule 15 of the Project Agreement or under any other Material Project Contract, which, if adversely determined, would reasonably be expected to result in a Material Adverse Effect;

(9) notice of any exercise by MDOT of its right to set off in excess of \$1 million pursuant to Section 19.3.1 of the Project Agreement that could reasonably be expected to result in a Material Adverse Effect;

(10) notice of any exercise by MDOT of its step-in rights pursuant to Section 20.1 of the Project Agreement;

(11) notice of any material amendment of, supplement to or other modification of any Material Project Contract;

(12) notice of any event of force majeure (howsoever defined) under a Material Project Contract or any other event entitling a party thereto to suspend performance of any material obligation thereunder;

(13) notice of the occurrence of any ERISA Event;

(14) notice of the Borrower's auditors resignation or the Borrower electing to change auditors;

(15) notice of any event of default by a counterparty under any Material Project Contract not remedied within the applicable cure period (if any), including a MDOT Default, and the action the Borrower is taking or proposing to take with respect to the same;

(16) notice of any Default or Event of Default and the action the Borrower is taking or proposing to take to remedy the same;

(17) within ten (10) Business Days after receipt by the Borrower of a written request therefor from the Trustee, a copy of the Substantial Completion Certificate;

(18) copies of any reports or ratings on the Series 2018 Bonds or, if applicable, any Additional Parity Bonds, from any Nationally Recognized Rating Agency rating the Series 2018 Bonds or such Additional Parity Bonds; and

(19) notice of the occurrence of any other event or condition that would reasonably be expected to have a Material Adverse Effect.

(e) If the Borrower changes its fiscal year, it will notify the MSRB, the Dissemination Agent and the Trustee of the change (and the date of the new fiscal year end) prior to the next date by which the Borrower otherwise would be required to provide financial information and operating data pursuant to this Agreement.

(f) Financial information and operating data to be provided pursuant to Section 3 of this Agreement may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document) publicly filed with the MSRB or the SEC. The Borrower or the Dissemination Agent (at the direction of the Borrower), as applicable, shall clearly identify each such other document so incorporated by reference.

(g) If the Borrower is unable to provide or cause to be provided the information required in this Section 3 by the applicable specified dates, the Borrower shall (or shall cause the Dissemination Agent to), in a timely manner on or before the specified dates, send a notice in substantially the form attached as Exhibit A to the MSRB.

Section 4. <u>Reporting of Material Events</u>. The Borrower shall give, or cause to be given, notice to the MSRB in a timely manner not in excess of ten (10) Business Days after the occurrence of the event, notice of the occurrence of any of the events referred to at paragraph (b)(5)(C) of the Rule, which as at the date of this Agreement consist of the following events with respect to the Series 2018 Bonds (or, in the case of paragraphs (13) or (14) below, the Borrower):

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults, if material;
- (iii) any unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) unscheduled draws on credit facilities reflecting financial difficulties;
- (v) substitution of credit or liquidity providers or their failure to perform;
- (vi) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701- TEB) or other material notices or determinations with respect to the tax status of the Series 2018 Bonds, or other material events affecting the tax status of the Series 2018 Bonds;
- (vii) modifications to rights of the holders of the Series 2018 Bonds, if material;
- (viii) bond calls, if material, and tender offers;
- (ix) defeasances;
- (x) release, substitution, or sale of property securing repayment of the Series 2018 Bonds, if material;
- (xi) rating changes;
- (xii) bankruptcy, insolvency, receivership or similar event of the Borrower;
- (xiii) the consummation of a merger, consolidation, or acquisition involving the Borrower or the sale of all or substantially all of the assets of the Borrower, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- (xiv) appointment of a successor or additional trustee or the change of name of a trustee, if material;

For the purposes of the event identified in paragraph (12) of this Section 4, the event is considered to occur when any of the following occur: The appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person.

Section 5. <u>Dissemination Agent</u>. The Borrower may from time to time appoint or engage a dissemination agent to assist it in carrying out its obligations under this Agreement and may discharge any such dissemination agent with or without appointing a successor dissemination agent. The Borrower has appointed the Trustee as the initial dissemination agent. If the Borrower appoints a successor dissemination agent, the Borrower shall forthwith give notice thereof to MSRB, but in no event, no later than thirty (30) days after the appointment of such new dissemination agent. It is understood and agreed that any information that any dissemination agent appointed by the Borrower may be instructed to file with MSRB, except as may be otherwise expressly provided for herein, shall be prepared and provided to it by the Borrower. Any dissemination agent shall not be responsible in any manner for the content of any notice or report prepared by the Borrower.

Section 6. <u>Termination of Reporting Obligation</u>. The Borrower's obligations under this Agreement shall terminate upon the defeasance, prior redemption or payment in full of all of the Series 2018 Bonds. The Borrower shall file (or cause to be filed) with the MSRB a written notice that its obligations under this Agreement have terminated. If obligations of the Borrower under this Agreement are assumed in full by some other entity, such entity shall be responsible for compliance with this Agreement in the same manner as if it were the Borrower and the Borrower shall have no further responsibility hereunder. The Borrower will only be obligated to perform the covenants specified in this Agreement for so long as it remains an "obligated person" with respect to the Series 2018 Bonds within the meaning of the Rule.

Section 7. <u>Amendment; Waiver</u>. The provisions of this Agreement may be amended by the Borrower, and any provision of this Agreement may be waived, from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Borrower, but only if (1) the provisions of this Agreement, as so amended or waived, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment as well as such changed circumstances, and (2) either (a) the holders of a majority in aggregate principal amount of the Outstanding Bonds consent to such amendment or waiver or (b) a person that is unaffiliated with the Borrower (such as nationally recognized co-bond counsel) determines that such amendment or waiver will not materially impair the interests of the holders and beneficial owners of the Bonds. If the Borrower so amends the provisions of Section 3, the Borrower shall include with any amended financial information or operating data next provided in accordance with Section 3 an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

Section 8. <u>Additional Information</u>. Nothing in this Agreement shall be deemed to prevent the Borrower from disseminating any other information, using the means of dissemination set forth in this Agreement or any other means of communication, or including any other information in any Annual Report, quarterly disclosure or monthly disclosure or notice of occurrence of a Listed Event, in addition to that which is required by this Agreement. If the Borrower chooses to include any information in any Annual Report, quarterly disclosure or monthly disclosure or notice of occurrence of a Listed Event, in addition to that which is specifically required by this Agreement, the Borrower shall have no obligation under this Agreement to update such information or to include it in any future Annual Report, quarterly disclosure or monthly disclosure or notice of a Listed Event.

Section 9. <u>Default</u>. In the event of the failure by the Borrower to comply with any provision of this Agreement, the Trustee may (and, at the request of the Beneficial Owners of at least 25% aggregate principal amount of outstanding Series 2018 Bonds, shall) and any Beneficial Owner may take such actions as may be

necessary and appropriate, including seeking a mandate or specific performance by court order, to cause the Borrower to comply with its obligations under this Agreement.

Section 10. <u>Beneficiaries</u>. This Agreement shall inure solely to the benefit of the Borrower, the Trustee, the Underwriters and the Beneficial Owners, and shall create no rights in any other Person.

Section 11. <u>Submission of Documents to the MSRB through EMMA</u>. Unless otherwise required by law, all documents provided to the MSRB pursuant to this Agreement shall be provided to the MSRB in an electronic format and shall be accompanied by identifying information, in each case as prescribed by the MSRB. As of the date of this Agreement, the MSRB has established EMMA as its continuing disclosure service for purposes of the Rule, and unless otherwise prescribed by the MSRB, all documents provided to the MSRB in compliance with Section 4 shall be submitted through EMMA in the format prescribed by the MSRB.</u>

Section 12. <u>Counterparts</u>. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13. <u>Governing Law</u>. This Agreement shall be governed by and construed in accordance with the laws of the State of New York and the Rule.

Section 14. <u>Notices</u>. Unless otherwise provided herein, all notices, certificates, requests or other communications hereunder shall be given by telephone and promptly confirmed in writing and shall be deemed given when given by telephone or addressed as follows:

Borrower:	Oakland Corridor Partners LLC 780 Third Avenue, 11 th Floor New York, NY 10017 Attention: David Wylie Email: David.Wylie@laing.com Telephone: (212) 468-5682
with a copy to:	Davies Ward Phillips & Vineberg LLP 40th Floor, 155 Wellington Street W. Toronto, ON M5V 3J7 Attention: Gregory G. Southam Email: gsoutham@dwpv.com Telephone: (416) 367-6986 Facsimile: (416) 863-0871
Trustee:	U.S. Bank National Association 101 S. Washington Square, Suite 520 Lansing, MI 48933 Attention: Global Corporate Trust Services – MDOT I-75 Email: Teresa.Walter@usbank.com Telephone: (517) 371-8059 Facsimile: (517) 372-0175

Each of the above parties may, by written notice given hereunder to the others, designate any further or different addresses to which subsequent notices, certificates, requests, or other communications shall be sent. In addition, the parties hereto may agree to any other means by which subsequent notices, certificates, requests or other communications may be sent.

[signatures on the following page]

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

OAKLAND CORRIDOR PARTNERS LLC,

as Borrower

By:

Name: Title:

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By:

Name: Title:

EXHIBIT A

NOTICE TO MSRB OF FAILURE TO FILE ANNUAL FINANCIAL INFORMATION

Name of Obligated Person: Oakland Corridor Partners LLC

Name of Bond Issue: Michigan Strategic Fund Tax-Exempt Private Activity Bonds, Series 2018 (Oakland Corridor Partners LLC – Borrower) (MDOT I-75 (Segment 3) Modernization Project) (the "*Series 2018 Bonds*").

Issued on [____], 20[__] NOTICE IS HEREBY GIVEN that Oakland Corridor Partners LLC has not provided its [audited financial statements] [information required by Section 3(a)(iii) with respect to the abovenamed Series 2018 Bonds as required by that certain Continuing Disclosure Agreement dated November 20, 2018 (the "*Agreement*") of Oakland Corridor Partners LLC. Oakland Corridor Partners LLC represented that [audited financial statements] [information required by Section 3(a)(iii) of the Agreement will be filed by [date].

Date:_____

[[DISSEMINATION AGENT], as dissemination agent [OR] [OAKLAND CORRIDOR PARTNERS LLC], as obligated party]

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APPENDIX I BOOK-ENTRY SYSTEM

The information in this section concerning DTC (as defined below) and DTC's book-entry-only system has been obtained from DTC, and the Company, the Issuer, MDOT and the Underwriters take no responsibility for the accuracy thereof.

The Depository Trust Company ("DTC"), New York, New York, will act as securities depository for the Series 2018 Bonds. The Series 2018 Bonds will be issued as fully-registered bonds registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered bond certificate will be issued for each maturity of the Series 2018 Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC. If however, the aggregate principal amount of any maturity of the Series 2018 Bonds exceeds \$500 million, one Series 2018 Bond of such maturity will be issued with respect to each \$500 million of principal amount, and an additional Series 2018 Bond will be issued with respect to any remaining principal amount of such maturity.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended (the "1934 Act"). DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation ("NSCC") and Fixed Income Clearing Corporation ("FICC"), all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has a Standard & Poor's rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission (the "SEC"). More information about DTC can be found at www.dtcc.com. Please note that this website address is included herein as an active textual reference only, and the information contained on (or accessed through) this website is not incorporated herein and should not be construed as part of this Official Statement.

Purchases of the Series 2018 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2018 Bonds on DTC's records. The ownership interest of each actual purchaser of each Series 2018 Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2018 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 2018 Bonds, except in the event that use of the book-entry system for the Series 2018 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2018 Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. or such other name as may be requested by an authorized representative of DTC. The deposit of Series 2018 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2018 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 2018 Bonds are credited, which may or may not be the Beneficial

Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Series 2018 Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Series 2018 Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Series 2018 Bond documents. For example, Beneficial Owners of Series 2018 Bonds may wish to ascertain that the nominee holding the Series 2018 Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the Trustee and request that copies of the notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Series 2018 Bonds are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Series 2018 Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the County as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Series 2018 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, principal and interest payments on the Series 2018 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the County or the Trustee, on the payable date in accordance with their respective holdings shown on DTC's records. Payment by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the County or the Trustee, as applicable, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and principal and interest payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the County, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of DTC.

DTC may discontinue providing its services as securities depository with respect to the Series 2018 Bonds at any time by giving reasonable notice to the Issuer or the Trustee. Under such circumstances, in the event that a successor securities depository is not obtained, certificates for the Series 2018 Bonds are required to be printed and delivered to the Beneficial Owners.

The Issuer may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, certificates for the Series 2018 Bonds are required to be printed and delivered.

THE INFORMATION PROVIDED ABOVE HAS BEEN PROVIDED BY DTC. NO REPRESENTATION IS MADE BY THE ISSUER, THE COMPANY, MDOT OR THE UNDERWRITERS AS TO THE ACCURACY OR ADEQUACY OF SUCH INFORMATION PROVIDED BY DTC OR AS TO THE ABSENCE OF MATERIAL ADVERSE CHANGES IN SUCH INFORMATION SUBSEQUENT TO THE DATE HEREOF.

APPENDIX J-1 Form of Approving Opinion of Bond Counsel

November 20, 2018

Michigan Strategic Fund Lansing, Michigan

Re: \$610,300,000 Michigan Strategic Fund Limited Obligation Revenue Bonds (I-75 Improvement Project), Series 2018

As bond counsel to the Michigan Strategic Fund (the "Issuer"), we submit this opinion in connection with the issuance by the Issuer of its \$610,300,000 Limited Obligation Revenue Bonds (I-75 Improvement Project), Series 2018 (the "Bonds"). In such capacity, we have examined the transcript of proceedings relating to the issuance of the Bonds and such other proceedings, certifications and documents, and such matters of law, as we have deemed necessary to render this opinion. Terms capitalized but not defined shall have the meanings as set forth in the Indenture (as defined below).

The Bonds are issued pursuant to Act 270, Public Acts of Michigan, 1984, as amended (the "Act"), a bond authorizing resolution adopted by the Issuer on October 23, 2018 (the "Resolution"), and a Trust Indenture, dated as of November 1, 2018 (the "Indenture"), between the Issuer and U.S. National Bank Association, as trustee (the "Trustee"), for the purpose of making a loan pursuant to a Senior Loan Agreement dated November 20, 2018 (the "Loan Agreement") to Oakland Corridor Partners LLC, a Delaware limited liability company (the "Company") to be used, together with other available funds of the Company, to pay a portion the costs of the Project and to pay costs incidental to the issuance of the Bonds, all as more particularly described in the Indenture. The Project is being developed pursuant to the Project Agreement under which the State, acting by and through MDOT, has granted to Company an exclusive concession to, and the Company has agreed to design, construct and finance the Project and to maintain the portion of the Project located within the Maintenance Limits in return for payments by MDOT to the Company primarily in the form of Milestone Payments and Availability Payments. The funds for payment of the Availability Payments, Milestone Payments and other amounts due to the Company under the Project Agreement are subject to the availability of funds appropriated by the Legislature of the State. The scheduled payment of principal and interest with respect to the Bonds maturing on June 30, 2035, December 31, 2038 and June 30, 2048 (in the principal amount of \$70,000,000 and having a rate of 4,500%) when due will be guaranteed under an insurance policy to be issued concurrently with the delivery of the Bonds by Assured Guaranty Municipal Corp. Pursuant to the Indenture, and subject to the Collateral Agency Agreement the Issuer has pledged to the Trustee the Trust Estate as security for the Bonds and has assigned its rights (except for Reserved Rights) to the Trust Estate to the Trustee.

In rendering this opinion we have, with your approval, relied upon the opinions of even date herewith of the Attorney General of the State of Michigan, counsel to the Issuer and MDOT, and Counsel to the Company as to the due authorization, execution and delivery by MDOT and the Company, respectively, of the Project Agreement and as to the validity and enforceability of the Project Agreement.

As to questions of fact material to our opinion, we have relied upon representations of the Issuer, MDOT and the Company contained in the Indenture and the Project Agreement, and the certified proceedings and other certifications of public officials and others furnished to us.

Based upon the foregoing, we are of opinion that:

1. The Issuer is a public body corporate and politic validly existing under the laws of the State of Michigan with the power to enter into the Indenture and to issue the Bonds.

2. The Resolution has been duly adopted by the Issuer and is in full force and effect. The Indenture has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery thereof by the parties thereto other than the Issuer (as to which no opinion is expressed), is a valid and legally binding agreement of the Issuer enforceable in accordance with its terms.

3. The Indenture pledges to the Trustee the Trust Estate (which excludes the Reserved Rights) and pursuant to the Act, the lien of such pledge is valid and binding as against parties having claims of any kind in tort, contract or otherwise against the Issuer, irrespective of whether such parties have notice.

4. The Bonds have been duly authorized and executed in accordance with the Act and the Indenture and are valid and legally binding limited obligations of the Issuer, payable solely from the Trust Estate. The Bonds and the interest thereon do not constitute a debt or obligation of the Issuer, the State, MDOT or a general obligation of the Issuer, the State, or MDOT within the meaning of the provisions of the Constitution or statutes of the State, and shall never constitute nor give rise to a charge against the general credit or taxing powers of or general funds of the Issuer, the State, or MDOT, but shall be a limited obligation of the Issuer payable solely and only from the Trust Estate. The Issuer has no taxing power.

5. Interest on the Bonds is excluded from gross income for federal income tax purposes, except for interest on any Bond during any period while it is held by a "substantial user" of the Project or a "related person" as those terms are used in Section 147(a) of the Internal Revenue Code of 1986, as amended (the "Code"). However, such interest is an item of tax preference for purposes of the alternative minimum tax imposed on individuals and, for tax years beginning before January 1, 2018, imposed on corporations. The opinion set forth above is subject to the condition that the Issuer and the Company comply with all requirements of the Code, that must be satisfied subsequent to the issuance of the Bonds in order that interest thereon be (or continue to be) excludable from gross income for federal income tax purposes. These requirements may include rebating certain earnings to the United States. Failure to comply with such requirements could cause the interest on the Bonds to be included in gross income retroactive to the date of issuance of the Bonds. The Company, on behalf of itself and the Issuer, has covenanted to comply with all such requirements.

6. The Bonds, the interest on the Bonds, and their transfer are exempt from all taxation provided by the laws of the State of Michigan, except for estate, gift and inheritance taxes and except for taxes on gains realized from the sale, payment or other disposition thereof.

Except as stated in paragraphs 5 and 6 above, we express no opinion regarding any other federal or state tax consequences arising with respect to the Bonds and the interest thereon.

The foregoing opinions are qualified to the extent that the enforceability of the rights and remedies set forth in the Indenture, the Collateral Agency Agreement, the Project Agreement and the Bonds may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or hereafter enacted, and by the application of general principles of equity, including those relating to equitable subordination, and their enforcement may be subject to the exercise of judicial discretion in appropriate cases.

This opinion is given as of the date hereof, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur.

Very truly yours,

DYKEMA GOSSETT PLLC

By:____

APPENDIX J-2 Form of Approving Opinion of Attorney General

November 20, 2018

Michigan Strategic Fund Department of Talent and Economic Development Lansing, Michigan 48909

In my capacity as Attorney General of the State of Michigan, I have caused to be examined a closing transcript and, in particular, the following documents relating to the issuance by the Michigan Strategic Fund (the "Issuer") of bonds designated MICHIGAN STRATEGIC FUND LIMITED OBLIGATION REVENUE BONDS (I-75 IMPROVEMENT PROJECT), SERIES 2018 in the aggregate principal amount of \$610,300,000 (the "Bonds"):

(1) the Michigan Strategic Fund Act, 1984 PA 270, as amended (the "Act"), which created the Issuer and empowers it to issue revenue bonds;

(2) a certified copy of the resolution adopted by the Issuer on October 23, 2018, authorizing the issuance of the Bonds (the "Resolution");

(3) an executed counterpart of the bond indenture of trust dated as of November 1, 2018 (the "Indenture"), entered into between the Issuer and U.S. Bank National Association, as bond trustee (the "Trustee");

(4) an executed counterpart of the senior loan agreement dated as of November 20, 2018 (the "Loan Agreement"), entered into between the Issuer and Oakland Corridor Partners LLC, a Delaware limited liability company (the "Borrower");

(5) an executed counterpart of the bond purchase agreement dated November 15, 2018 (the "Purchase Agreement"), entered into by and among the Issuer, the Borrower, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Wells Fargo Bank, N.A. (the "Underwriters"); and

(6) one Bond, as executed, or a specimen thereof. The proceeds of the Bonds are to be loaned to the Borrower to pay a portion of the costs of the Project and to pay costs incidental to the issuance of the Bonds, all as more particularly described in the Indenture. Terms capitalized but not defined herein shall have the meanings as set forth in the Indenture.

The Project is being developed pursuant to the Project Agreement under which the State, acting by and through MDOT, has granted to the Borrower an exclusive concession to, and the Borrower has agreed to design, construct and finance the Project and to maintain the portion of the Project located within the Maintenance Limits in return for payments by MDOT to the Borrower primarily in the form of Milestone Payments and Availability Payments. The funds for payment of the Availability Payments, Milestone Payments and other amounts due to the Borrower under the Project Agreement are subject to the availability of funds appropriated by the Legislature of the State.

By the terms of the Loan Agreement, the Borrower has contracted to make repayments of the loan at times and in amounts sufficient to enable the Issuer to pay the principal of, premium, if any, and interest on the Bonds in accordance with their terms. Pursuant to the Indenture, the loan repayments to the Issuer from the Borrower and certain rights of the Issuer (to the extent specified in the Indenture) have been assigned by the Issuer to the Trustee as security for the Bonds.

In rendering this opinion, I have relied upon the opinions, dated today, of Davies Ward Phillips & Vineberg LLP and Honigman Miller Schwartz and Cohn LLP, each counsel for the Borrower, to the effect that the Loan Agreement and the Purchase Agreement are the valid and binding obligations of the Borrower and as to other matters set forth in the opinion. I have assumed the due authorization, execution, and delivery by, and the binding effect upon and the enforceability against, the Trustee of the Indenture and the Underwriters of the Purchase Agreement. I have also assumed the accuracy of and relied upon the information and representations contained in the Loan Agreement and the certificates of the Borrower (including specifically the Borrower's Non-Arbitrage and Tax Compliance Certificate dated as of the date hereof) and I have made no independent investigation of the accuracy of the information and representations contained therein.

Based on the foregoing, I am of the opinion that, under existing law as presently interpreted:

1. The Issuer is a public body corporate and politic of the State of Michigan duly organized and validly existing under the Constitution and the laws of the State of Michigan, including particularly the Act.

2. The Issuer has the power under the laws of the State of Michigan to adopt the Resolution. The Resolution has been duly adopted by the Issuer and is in full force and effect in the form adopted.

3. The Issuer has the power under the laws of the State of Michigan to enter into the Indenture and the Loan Agreement. The Indenture and the Loan Agreement have been duly authorized, executed, and delivered by the Issuer and constitute valid and binding agreements of the Issuer enforceable in accordance with their terms.

4. The Bonds have been duly authorized, executed, and delivered by the Issuer and, when duly authenticated, will constitute valid and binding limited obligations of the Issuer enforceable in accordance with their terms and the terms of the Indenture.

5. The Bonds are limited obligations of the Issuer. The Bonds, including the interest thereon, are not general obligations of the Issuer, MDOT or the State of Michigan and do not constitute obligations, debts, or liabilities of the Issuer, MDOT or the State of Michigan and do not constitute a charge against the general credit of the Issuer, MDOT or the State of Michigan or a charge against the credit or taxing power of the State of Michigan. The Issuer has no taxing power.

6. Under existing law, interest on the Bonds is excluded from gross income for federal income tax purposes except for interest on any Bond during any period while it is held by a "substantial user" of the Project or a "related person" as those terms are used in Section 147(a) of the Internal Revenue Code of 1986, as amended (the "Code"). However, such interest is an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and, for tax years beginning prior to January 1, 2018, imposed on corporations. My opinion is subject to the condition that the Borrower and the Issuer comply with all requirements of applicable federal income tax law that must be satisfied subsequent to the issuance of the Bonds in order that interest thereon be, or continue to be, excluded from gross income for federal income tax purposes. These requirements may include rebating certain earnings to the United States. The Borrower has covenanted for itself and on behalf of the Issuer to comply with each such requirement. Failure to comply with certain of those requirements could cause the interest on the Bonds to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Bonds. I express no opinion regarding other federal tax consequences arising with respect to the Bonds.

7. The Bonds and interest thereon are exempt from all taxation by the State of Michigan or any of its political subdivisions, except for estate, gift and inheritance taxes and taxes on gains realized from the sale, payment or other disposition thereof.

Enforceability of the Bonds, the Indenture, the Loan Agreement, and the Purchase Agreement may be subject to bankruptcy, insolvency, reorganization, moratorium, and other laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and their enforcement may be subject to the exercise of judicial discretion including the application of general principles of equity.

I express no opinion on the investment quality of the Bonds or whether the facts, figures, or financial information or other statements made respecting the Borrower contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make those statements, in light of the circumstances under which they were made, not misleading.

Sincerely,

BILL SCHUETTE Attorney General

Assistant Attorney General

APPENDIX K

SPECIMEN MUNICIPAL BOND INSURANCE POLICY

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MUNICIPAL BOND INSURANCE POLICY

ISSUER:

BONDS: \$ in aggregate principal amount of



ASSURED GUARANTY MUNICIPAL CORP. ("AGM"), for consideration received, hereby UNCONDITIONALLY AND IRREVOCABLY agrees to pay to the trustee (the "Trustee") or paying agent (the "Paying Agent") (as set forth in the documentation providing for the issuance of and securing the Bonds) for the Bonds, for the benefit of the Owners or, at the election of AGM, directly to each Owner, subject only to the terms of this Policy (which includes each endorsement hereto), that portion of the principal of and interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer.

On the later of the day on which such principal and interest becomes Due for Payment or the Business Day next following the Business Day on which AGM shall have received Notice of Nonpayment, AGM will disburse to or for the benefit of each Owner of a Bond the face amount of principal of and interest on the Bond that is then Due for Payment but is then unpaid by reason of Nonpayment by the Issuer, but only upon receipt by AGM, in a form reasonably satisfactory to it, of (a) evidence of the Owner's right to receive payment of the principal or interest then Due for Payment and (b) evidence, including any appropriate instruments of assignment, that all of the Owner's rights with respect to payment of such principal or interest ball thereupon vest in AGM. A Notice of Nonpayment will be deemed received on a given Business Day if it is received prior to 1:00 p.m. (New York time) on such Business Day; otherwise, it will be deemed received on the next Business Day. If any Notice of Nonpayment received by AGM is incomplete, it shall be deemed not to have been received by AGM for purposes of the preceding sentence and AGM shall promptly so advise the Trustee, Paying Agent or Owner, as appropriate, who may submit an amended Notice of Nonpayment. Upon disbursement in respect of a Bond, AGM shall become the owner of the Bond and shall be fully subrogated to the rights of the Owner's right to receive payments under the Bond, to the extent of any payment by AGM hereunder. Payment by AGM to the Trustee or Paying Agent for the benefit of the Owner's right to receive payments under the Bond, to the extent of any payment by AGM hereunder. Payment by AGM to the Trustee or Paying Agent for the benefit of the Owner's right to receive payments under the Bond, to the extent of any payment by AGM hereunder. Payment by AGM to the Trustee or Paying Agent for the benefit of the Owner's shall, to the extent thereof, discharge the obligation of AGM under this Policy.

Except to the extent expressly modified by an endorsement hereto, the following terms shall have the meanings specified for all purposes of this Policy. "Business Day" means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in the State of New York or the Insurer's Fiscal Agent are authorized or required by law or executive order to remain closed. "Due for Payment" means (a) when referring to the principal of a Bond, payable on the stated maturity date thereof or the date on which the same shall have been duly called for mandatory sinking fund redemption and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by mandatory sinking fund redemption), acceleration or other advancement of maturity unless AGM shall elect, in its sole discretion, to pay such principal due upon such acceleration together with any accrued interest to the date of acceleration and (b) when referring to interest on a Bond, payable on the stated date for payment of interest. "Nonpayment" means, in respect of a Bond, the failure of the Issuer to have provided sufficient funds to the Trustee or, if there is no Trustee, to the Paying Agent for payment in full of all principal and interest that is Due for Payment on such Bond. "Nonpayment" shall also include, in respect of a Bond, any payment of principal or interest that is Due for Payment made to an Owner by or on behalf of the Issuer which from has been recovered such Owner pursuant to the

Page 2 of 2 Policy No. -N

United States Bankruptcy Code by a trustee in bankruptcy in accordance with a final, nonappealable order of a court having competent jurisdiction. "Notice" means telephonic or telecopied notice, subsequently confirmed in a signed writing, or written notice by registered or certified mail, from an Owner, the Trustee or the Paying Agent to AGM which notice shall specify (a) the person or entity making the claim, (b) the Policy Number, (c) the claimed amount and (d) the date such claimed amount became Due for Payment. "Owner" means, in respect of a Bond, the person or entity who, at the time of Nonpayment, is entitled under the terms of such Bond to payment thereof, except that "Owner" shall not include the Issuer or any person or entity whose direct or indirect obligation constitutes the underlying security for the Bonds.

AGM may appoint a fiscal agent (the "Insurer's Fiscal Agent") for purposes of this Policy by giving written notice to the Trustee and the Paying Agent specifying the name and notice address of the Insurer's Fiscal Agent. From and after the date of receipt of such notice by the Trustee and the Paying Agent, (a) copies of all notices required to be delivered to AGM pursuant to this Policy shall be simultaneously delivered to the Insurer's Fiscal Agent and to AGM and shall not be deemed received until received by both and (b) all payments required to be made by AGM under this Policy may be made directly by AGM or by the Insurer's Fiscal Agent on behalf of AGM. The Insurer's Fiscal Agent is the agent of AGM only and the Insurer's Fiscal Agent shall in no event be liable to any Owner for any act of the Insurer's Fiscal Agent or any failure of AGM to deposit or cause to be deposited sufficient funds to make payments due under this Policy.

To the fullest extent permitted by applicable law, AGM agrees not to assert, and hereby waives, only for the benefit of each Owner, all rights (whether by counterclaim, setoff or otherwise) and defenses (including, without limitation, the defense of fraud), whether acquired by subrogation, assignment or otherwise, to the extent that such rights and defenses may be available to AGM to avoid payment of its obligations under this Policy in accordance with the express provisions of this Policy.

This Policy sets forth in full the undertaking of AGM, and shall not be modified, altered or affected by any other agreement or instrument, including any modification or amendment thereto. Except to the extent expressly modified by an endorsement hereto, (a) any premium paid in respect of this Policy is nonrefundable for any reason whatsoever, including payment, or provision being made for payment, of the Bonds prior to maturity and (b) this Policy may not be canceled or revoked. THIS POLICY IS NOT COVERED BY THE PROPERTY/CASUALTY INSURANCE SECURITY FUND SPECIFIED IN ARTICLE 76 OF THE NEW YORK INSURANCE LAW.

In witness whereof, ASSURED GUARANTY MUNICIPAL CORP. has caused this Policy to be executed on its behalf by its Authorized Officer.



ASSURED GUARANTY MUNICIPAL CORP.

By _

Authorized Officer

A subsidiary of Assured Guaranty Municipal Holdings Inc. 1633 Broadway, New York, N.Y. 10019 (212) 974-0100

Form 500NY (5/90)

APPENDIX L – SUMMARY OF CERTAIN PROVISIONS OF THE MICHIGAN CONSTITUTION AND ACT 51

The following is a summary of certain provisions of the Michigan Constitution of 1963 and Act 51. This summary does not purport to be a complete statement of all provisions thereof, and reference is made thereto for a complete statement of the provisions thereof.

Transportation Tax Provisions of the Michigan Constitution

Section 9 of Article IX of the Michigan Constitution provides as follows:

All specific taxes, except general sales and use taxes and regulatory fees, imposed directly or indirectly on fuels sold or used to propel motor vehicles upon highways and to propel aircraft and on registered motor vehicles and aircraft shall, after the payment of necessary collection expenses, be used exclusively for transportation purposes as set forth in this section.

Not less than 90 percent of the specific taxes, except general sales and use taxes and regulatory fees, imposed directly or indirectly on fuels sold or used to propel motor vehicles upon highways and on registered motor vehicles shall, after the payment of necessary collection expenses, be used exclusively for the transportation purposes of planning, administering, constructing, reconstructing, financing, and maintaining state, county, city, and village roads, streets, and bridges designed primarily for the use of motor vehicles using tires, and reasonable appurtenances to those state, county, city and village roads, streets and bridges.

The balance, if any, of the specific taxes, except general sales and use taxes and regulatory fees, imposed directly or indirectly on fuels sold or used to propel motor vehicles upon highways and on registered motor vehicles, after the payment of necessary collection expenses; 100 percent of the specific taxes, except general sales and use taxes and regulatory fees, imposed directly or indirectly on fuels sold or used to propel aircraft and on registered aircraft, after the payment of necessary collection expenses; and not more than 25 percent of the general sales taxes, imposed directly or indirectly on fuels sold to propel motor vehicles upon highways, on the sale of motor vehicles, and on the sale of the parts and accessories of motor vehicles, after the payment of necessary collection expenses; shall be used exclusively for the transportation purposes of comprehensive transportation purposes as defined by law.

The legislature may authorize the incurrence of indebtedness and the issuance of obligations pledging the taxes allocated or authorized to be allocated by this section, which obligations shall not be construed to be evidence of State indebtedness under this constitution.

Act 51

Allocation of Tax and Fee Proceeds

Act 51 provides for the distribution of funds received by the State for transportation purposes. Section 10 of Act 51 requires that all moneys received and collected under: (a) Act 150, Public Acts of Michigan, 1927, as amended, being gasoline, diesel fuel and liquified petroleum gas taxes, except a license fee provided in that act; (b) Sections 801 to 810 of Act 300, Public Acts of Michigan, 1949, as amended (Registration Taxes, title fees, special registration taxes and transfer fees) except a truck safety fund fee; and (c) Act 254, Public

Acts of Michigan, 1933, as amended (taxes on trailers and common carriers) be deposited into the State Treasury to the credit of the MTF. Except for investment income or profit from investing moneys of the MTF which are deposited therein, no other moneys from any source are deposited into the MTF.

Before distributions are made from the MTF pursuant to the formula outlined below, the following distributions must be made: (a) payment of the amounts appropriated by the legislature for the necessary expenses incurred in the collection and administration of the transportation taxes and enforcement of certain statutes; and (b) payment of amounts equal to 2.0% of the net gasoline tax (excluding aircraft gasoline taxes), which are credited to the Recreational Improvement Fund and used to improve recreational facilities.

Subsequent to these initial distributions, moneys remaining in the MTF are apportioned and appropriated each fiscal year (except as otherwise provided) as follows:

(a) Not more than \$3,000,000.00 as may be annually appropriated each fiscal year to the state trunk line fund for subsequent deposit in the rail grade crossing account.

(b) Not more than \$3,000,000.00 as may be annually appropriated each fiscal year to the state trunk line fund for subsequent deposit in the grade crossing surface account.

(c) Not more than \$3,000,000.00 each year to the local bridge fund established in subsection (4) for the purpose of payment of the principal, interest, and redemption premium on any notes or bonds issued by the state transportation commission under former section 11b or subsection (9).

(d) Except as otherwise provided in this subdivision and subject to section 11h, \$2,000,000.00 each year of the revenue from 3 cents of the tax levied under section 8(1)(a) of the motor fuel tax act, 2000 PA 403, MCL 207.1008, to the local agency wetland mitigation bank fund created in section 11h.

(e) Except as otherwise provided in this subdivision, \$5,000,000.00 each year of the revenue from 3 cents of the tax levied under section 8(1)(a) of the motor fuel tax act, 2000 PA 403, MCL 207.1008, to the movable bridge fund created in section 11g, with the remainder to the state trunk line fund, county road commissions, and cities and villages in the percentages provided in subdivision (l). The department shall annually adjust the amount allocated under this subdivision by an amount equal to the annual increase in the Detroit consumer price index for the preceding year.

(f) One-half of the revenue from 1 cent of the tax levied under section 8(1)(a) of the motor fuel tax act, 2000 PA 403, MCL 207.1008, to the state trunk line fund for the repair of state bridges under section 11, and 1/2 of the revenue from 1 cent of the tax levied under section 8(1)(a) of the motor fuel tax act, 2000 PA 403, MCL 207.1008, to the local bridge fund created in subsection (4) for distribution only to cities, villages, and county road commissions.

(g) \$50,000,000.00 to the state trunk line fund for debt service costs on state of Michigan projects.

(h) Ten percent to the comprehensive transportation fund for the purposes described in section 10e.

(i) \$5,000,000.00 to the local bridge fund established in subsection (4) for distribution only to the local bridge advisory board, the regional bridge councils, cities, villages, and county road commissions.

(j) \$36,775,000.00 to the state trunk line fund for subsequent deposit in the transportation economic development fund, with first priority for allocation to debt service on bonds issued to fund transportation economic development fund projects. In addition, \$3,500,000.00 is appropriated from the Michigan transportation fund to the state trunk line fund for subsequent deposit in the transportation economic development fund to be used for economic development road projects in any of the targeted industries described in section 9(1)(a) of 1987 PA 231, MCL 247.909.

(k) Not less than \$33,000,000.00 as may be annually appropriated each fiscal year to the local program fund created in section 11e.

(1) The balance of the Michigan Transportation Fund as follows, after deduction of the amounts appropriated in subparagraphs (a) through (i) and former Section 11b of Act 51:

- (i) 39.1% to the State Trunk Line Fund for purposes described in Section 11 of Act 51.
- (ii) 39.1% to the county road commissions or departments of the State.
- (iii) 21.8% to the cities and villages of the State.

Use of Specific Taxes and Limitations

Section 11 of Act 51 provides that money deposited in the State Trunk Line Fund is appropriated for the following purposes in the following order of priority:

(a) For the payment, but only from money restricted as to use by Section 9 of Article IX of the Michigan Constitution, of bonds, notes, or other obligations issued under Section 18b of Act 51 for Highway, Street and Road Purposes and which have pledged for their payment money deposited in the State Trunk Line Fund and the payment of contributions of the Commission to be made pursuant to contracts entered into under Section 18d of Act 51 which contributions are pledged to the payment of principal and interest on bonds issued under the authorization of Section 18d of Act 51. A sufficient portion of the Fund is irrevocably appropriated to pay, when due, the principal and interest on bonds or notes issued under Section 18b of Act 51 for Highway, Street and Road Purposes, and which have pledged for their payment money deposited in the State Trunk Line Fund and to pay the annual contributions of the Commission as are pledged for the payment of bonds issued pursuant to contracts authorized by Section 18d of Act 51. (Section 11 of Act 51 also identifies payments for contracts and bonds which have now been fully paid and with respect to which the statutory authority to issue obligations has been repealed. Thus, currently, under Section 11 the payment of principal and interest on bonds issued under Section 18d of Act 51 and contract obligations issued under Section 18d of Act 51 and contract obligations issued under Section 18d of Act 51 and contract obligations issued under Section 18d of Act 51 and contract obligations issued under Section 18d of Act 51 and contract obligations issued under Section 18d of Act 51 and contract obligations issued under Section 18d of Act 51 have first priority for payments from the State Trunk Line Fund.)

(b) For the transfer of funds appropriated pursuant to Section 10(1)(h) of Act 51 to the Transportation Economic Development Fund, but the transfer shall be reduced each fiscal year by the amount of debt service to be paid in that year from the State Trunk Line Fund for bonds, notes, or other obligations issued to fund projects of the Transportation Economic Development Fund, which amount shall be certified by MDOT.

(c) For the transfer of funds appropriated pursuant to Section 10(1)(a) of Act 51 to the Railroad Grade Crossing Account in the State Trunk Line Fund for expenditure to meet the cost, in whole or in part, of providing for the improvement, installation, and retirement of new or existing safety devices at railroad grade crossings on public roads and streets subject to the procedures set forth on Act 51.

(d) For the transfer of money appropriated under section 10(1)(b) to the grade crossing surface account in the state trunk line fund for expenditure for rail grade crossing surface improvement purposes at rail grade crossings on public roads and streets under the jurisdiction of counties, cities, or villages.

(e) For the total operating expenses of the State Trunk Line Fund for each fiscal year as appropriated by the legislature.

(f) For the preservation and maintenance of the State Trunk Line highways and bridges.

(g) For the opening, widening, improving, construction and reconstruction of state trunk line highways and bridges, including the acquisition of necessary rights of way and the work incidental to that opening, widening, improving, construction or reconstruction. Those sums in the State Trunk Line Fund not otherwise appropriated, distributed, determined or set aside by law shall be used for the construction or reconstruction of the national system of interstate and defense highways, referred to in Act 51 as "the interstate highway system" to the extent necessary to match federal aid funds as the federal aid funds become available for that purpose; and, for the construction and reconstruction of the State Trunk Line system.

(h) MDOT may enter into agreements with county road commissions or departments and with cities and villages to perform work on a highway, road or street. MDOT also may contract with a county road commission or department, city and village to advance money to a county road commission or department, city and village to pay their costs of improving railroad grade crossings on the terms and conditions agreed to in the contract. A contract may be executed before or after the Commission or department, city or village by the contract shall be executed before the advancement of any money to a county road commission or department, city or village by the commission and shall provide for the full reimbursement of any advancement by a county road commission or department, city or village to MDOT, with interest, within 15 years after advancement, from any available revenue sources of the county road commission or department, city or village or, if provided in the contract, by deduction from the periodic disbursements of any money returned by the State to the county road commission or department, city or village.

(i) For providing inventories of supplies and materials required for the activities of MDOT.

Issuance of Bonds and Notes

The State may borrow money and issue bonds or notes pursuant to Section 18b of Act 51 for the following transportation purposes:

(a) To pay all or any portion of, or to make loans, grants, or contract payments to pay all or any portion of any capital costs for the purposes described in Section 9 of Article IX of the Michigan Constitution, including the funding of State Trunk Line Fund projects and Transportation Economic Development Fund projects.

(b) To pay the principal or the principal and interest on notes issued for transportation purposes and if the Commission considers refunding to be expedient, to refund bonds payable from moneys in the State Trunk Line Fund or the Comprehensive Transportation Fund or received or to be received from the MTF regardless of when the refunded bonds were issued, by the issuance of new bonds, whether or not the bonds to be refunded have matured or are subject to prior redemption or are to be paid, redeemed, or surrendered at the time of issuance of the refunding bonds; and to issue new bonds partly to refund bonds or pay notes then outstanding and partly for any other transportation purpose authorized by Act 51.

(c) To pay all costs relating to the issuance of bonds permitted by Section 18b of Act 51 including funding debt service reserves.

In addition, Act 51 permits issuance by the State of notes payable from moneys deposited in the State Trunk Line Fund subject to the same limitations on the amount that may be issued as are applicable to the issuance of bonds. The State may issue notes in anticipation of the issuance of bonds, and in anticipation of grants which, to the extent they do not pledge the deposits in the State Trunk Line Fund, are not subject to the debt service limitations described below. Any bonds to be issued to pay such notes would, however, be subject to such limitations.

Bonds or notes issued for highway, bridge, street and road purposes under Section 18b can be issued only after authorization by resolution of the Commission, which (except with respect to grant or bond anticipation bonds or notes not secured by a pledge of monies in the State Trunk Line Fund) shall contain, among other items, an irrevocable pledge providing for the payment of all or part of the principal and interest on such bonds from money restricted as to use by Section 9 of Article IX of the Michigan Constitution and which is deposited or to be deposited in the State Trunk Line Fund.

Section 18d of Act 51 also permits the Commission to enter into contracts with county road commissions or departments, cities or villages providing for the construction or reconstruction of highways, including limited access highways, under the jurisdiction and control of one of the contracting parties. Under Section 18d, the Commission is authorized to issue bonds payable from an irrevocable pledge of the receipts by each of the contracting parties of funds allocated and distributed to it from the Transportation Fund. As

described above, any contractual obligation of the State under Section 18d is to be paid as a first priority from the funds deposited in the State Trunk Line Fund, on a parity basis with all other Section 18d contract obligations of the State, and on a parity basis with the obligations of the State to pay debt service on bond and notes issued under Section 18b for Highway Street and Road Purposes and payable from money deposited to the State Trunk Line Fund. The obligation of the State to pay debt service on bonds issued under Section 18d is limited to the amount of the State's contractual obligation, with the balance of the debt service to be paid from the funds pledged by the other contracting parties.

The State may issue bonds or notes under Section 18b for highway, bridge, street and road purposes and payable from money deposited to the State Trunk Line Fund, or enter into contractual obligations under Section 18d only to the extent that the maximum annual debt service on bonds or notes issued under Section 18b for highway, bridge, street and road purposes together with the amounts contractually pledged by the State for debt service on bonds issued under Section 18d (excluding bonds which have been refunded or for the refunding of which refunding bonds have been sold, and excluding debt service not payable from the State Trunk Line Fund) does not exceed 50% of the total amount of money constitutionally restricted to use for transportation purposes and deposited in the State Trunk Line Fund during the State fiscal year (October 1 to September 30) immediately preceding the issuance of the bonds or notes.

Act 51 allows the State to utilize techniques such as grant anticipation notes and variable rate demand bonds in its transportation financing program. If such bonds or notes are subject to payment or purchase on demand or prior to maturity at the option of the holder, and the obligation of the State to make payment or effect purchases on demand or prior to maturity, at the option of the holder is limited to the proceeds of one or more additional security devices (such as letters of credit or bond purchase agreements) and is not payable from constitutionally restricted funds deposited in the State Trunk Line Fund, then, for purposes of computing maximum annual principal and interest requirements as described in the preceding paragraph, the principal and interest on the bonds or notes subject to payment or purchase on demand or prior redemption at the option of the holder shall be disregarded and the maximum annual principal and interest requirements of the proceeds of the additional security device shall be substituted therefor.

Section 181 of Act 51 also permits the borrowing of funds in anticipation of the receipt of federal aid under any appropriate federal funding source, under a resolution consistent with the requirements of Section 18b of Act 51.

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APPENDIX M

EXCERPTED FINANCIAL STATEMENTS (EXCLUDING NOTES TO FINANCIAL STATEMENTS)

STATE TRUNK LINE FUND

AND

MICHIGAN TRANSPORTATION FUND

The information included herein relates to the years ended September 30, 2013 through 2017. Complete financial statements of all of the State's funds, as included in the State of Michigan Comprehensive Annual Financial Report prepared by the State's Department of Technology, Management and Budget, are available upon request from the Department of Technology, Management and Budget, Office of Financial Management, State of Michigan, Lansing, Michigan 48909, and may also be found by clicking on the "Financial Reports" button at *www.michigan.gov/budget*, and has been filed with the MSRB.

STATE OF MICHIGAN STATE TRUNK LINE FUND BALANCE SHEET SEPTEMBER 30, 2013, 2014, 2015, 2016, and 2017 (In Thousands)⁽¹⁾

	2013	2014	2015	2016	2017	
ASSETS						
Cash	\$ 80	\$ 91	\$ 53	\$ 69	\$ 173	
Equity in common cash	770,891	848,564	882,224	900,319	832,746	
Amounts due from other funds	10,620	6,290	7,269	2,955	12,807	
Amounts due from component units	2,468	1,777	4,154	1,124	2,708	
Amounts due from federal agencies	124,090	140,461	148,679	106,471	124,216	
Amounts due from local units	38,151	40,486	45,998	59,268	59,749	
Inventories	9,150	7,685	13,549	12,219	10,308	
Land contracts outstanding	33	58	28	-	-	
Other assets	3,141	3,341	6,749	17,537	38,908	
Total Assets	\$ 958,622	\$1,048,754	\$ 1,108,703	\$1,099,963	\$ 1,081,613	
LIABILITIES						
Warrants outstanding	\$ 1,019	\$ 4,252	\$ 1,828	\$ 4,349	\$ 5,039	
Accounts payable and other liabilities	164,933	184,772	191,206	156,528	162,665	
Amounts due to other funds	3,177	4,008	4,149	4,668	4,715	
Unearned revenue ⁽²⁾	4,521	2,596	3,673	5,441	5,513	
Total Liabilities	173,650	195,628	200,856	170,986	177,931	
DEFERRED INFLOWS OF						
RESOURCES ⁽²⁾	455	150	534	488		
FUND BALANCES						
Nonspendable	9,150	7,685	13,549	12,219	10,308	
Restricted	775,368	845,291	893,765	916,270	893,373	
Total Fund Balances	784,517	852,976	907,314	928,490	903,682	
	/64,31/	832,970	907,514	926,490	905,082	
Total Liabilities, Deferred Inflows						
of Resources, and Fund Balances	\$ 958,622	\$1,048,754	\$ 1,108,703	\$1,099,963	\$ 1,081,613	

(1) Totals may not add due to rounding.

(2) Unearned Revenue and Deferred Inflows of Resources were added to the balance sheet for fiscal year 2014 -2017 and restated for fiscal year 2013 as a result of implementing Governmental Accounting Standards Board (GASB) Statements No. 63 and 65.

STATE OF MICHIGAN STATE TRUNK LINE FUND STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES FISCAL YEARS ENDED SEPTEMBER 30, 2013, 2014, 2015, 2016, and 2017

	2013	2014	2015	2016	2017
REVENUES					
From taxes	\$ 100,000	\$ -	\$ -	\$ -	\$ -
From federal agencies	710,050	818,219	853,689	783,776	733,195
From local agencies	18,550	10,518	14,519	20,411	13,254
From licenses and permits	17,169	16,518	16,796	17,802	9,808
Miscellaneous	49,520	46,268	55,147	83,846	155,952
Total Revenues	895,289	891,522	912,210		
EXPENDITURES					
Current: Transportation	603,665	660,071	673,437	694,014	664,899
Capital Outlay	775,828	889,858	864,929	859,675	1,143,790
Capital lease payments	633	791	644	605	588
Total Expenditures	1,380,126	1,550,719	1,539,010	1,554,295	1,809,277
Excess of Revenues Over (Under)					
Expenditures	(484,837)	(659,198)	(598,861)	(648,459)	(897,066)
OTHER FINANCING SOURCES (USES)					
Capital Lease Acquisitions Proceeds from sale of capital	1,061	475	-	898	7
assets	1,075	1,820	2,242	501	1,107
Premium on bonds issued	-	-	-	23	-
Operating transfers in	818,310	950,012	870,265	883,606	1,090,297
Operating transfers out	(220,315)	(224,650)	(219,309)	(215,394)	(219,151)
Total Other Financing Sources (Uses)	600,131	727,657	653,198	669,634	872,259
Excess of Revenues and Other Sources Over (Under					
Expenditures and Other Uses	115,294	68,459	54,337	21,176	(24,808)
Fund Balances – October 1	669,223	784,517	852,976	907,313	928,489
Fund Balances – September 30	\$ 784,517	\$ 852,976	\$ 907,313	\$ 928,489	\$ 903,682

(In Thousands)⁽¹⁾

(1) Totals may not add due to rounding.

STATE OF MICHIGAN MICHIGAN TRANSPORTATION FUND BALANCE SHEET SEPTEMBER 30, 2013, 2014, 2015, 2016, and 2017 (In Thousands)⁽¹⁾

	 2013	 2014	 2015	 2016		2017
ASSETS						
Equity in common cash Taxes, interest, and penalties	\$ 109,071	\$ 107,270	\$ 102,186	\$ 93,437	\$	36,178
receivable	96,485	97,817	107,520	98,707		139,199
Amounts due from other funds	-	-	-	-		-
Other assets	 17	 4	 24	 14		6
Total Assets	\$ 205,572	\$ 205,092	\$ 209,731	\$ 192,157	\$	175,383
LIABILITIES						
Warrants outstanding	\$ 666	\$ 3,854	\$ 482	\$ 880	\$	5,404
Accounts payable and other						
liabilities	180,221	182,133	188,902	182,345		144,951
Amounts due to other funds	13637	8,078	9,335	3,795		16,446
Unearned revenue(2)	 8,500	 -	 -	 1		-
Total Liabilities	 203,024	 194,065	 198,719	 187,022		166,801
DEFERRED INFLOWS OF						
RESOURCES(2)	 2,547	 11,027	 11,011	 5,136	<u> </u>	8,582
FUND BALANCES						
Restricted	 -	 -	 -	 -		-
Total Fund Balances	-	-	-	-		-
Total Liabilities, Deferred Inflows of Resources, and Fund						
Balances	\$ 205,572	\$ 205,092	\$ 209,731	\$ 192,157	\$	175,383

(1) Totals may not add due to rounding.

(2) Unearned Revenue and Deferred Inflows of Resources were added to the balance sheet for fiscal year 2014 -2017 and restated for fiscal year 2013 as a result of implementing Governmental Accounting Standards Board (GASB) Statements No. 63 and 65.

STATE OF MICHIGAN MICHIGAN TRANSPORTATION FUND STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES FISCAL YEARS ENDED SEPTEMBER 30, 2013, 2014, 2015, 2016, and 2017 (In Thousands)⁽¹⁾

	2013	2014	2015	2016	2017
REVENUES					
Taxes	\$ 1,857,467	\$ 1,899,391	\$ 1,981,939	\$ 2,029,277	\$ 2,569,442
From licenses and permits	32,346	33,658	34,935	36,643	40,718
Miscellaneous	4,387	4,379	4,561	4,981	6,042
Total Revenues	1,894,200	1,937,427	2,021,435	2,070,901	2,616,202
EXPENDITURES					
Current:					
Transportation	922,909	945,334	986,695	1,009,601	1,299,620
Total Expenditures	922,909	945,334	986,695	1,009,601	1,299,620
Excess of Revenues over					
(under) Expenditures	971,290	992,093	1,034,740	1,061,300	1,316,581
OTHER FINANCING SOURCES (USES)					
Transfers from other funds	479	477	740	1,427	1,436
Transfers to other funds	(971,769)	(992,570)	(1,035,479)	(1,062,727)	(1,318,018)
Total Other Financing Sources (Uses)	(971,290)	(992,093)	(1,034,740)	(1,061,300)	(1,316,581)
Excess of Revenues and Other Sources over (under)					
Expenditures and Other Uses	-	-	-	-	-
Fund Balances - October 1					
Fund Balances - September 30	\$ -	\$ -	\$ -	\$ -	\$ -

(1) Totals may not add due to rounding.

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