

SECOND AMENDMENT to PUBLIC-PRIVATE PARTNERSHIP AGREEMENT
PURPLE LINE PROJECT

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

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

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

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

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

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

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

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

"7.16 Replacement DB Selection Period.

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

7.16.1 Suspension of Certain Obligations; Effect of AA Agreement

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

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

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

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

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

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

7.16.2 Interim Construction Costs

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

7.16.3 Replacement DB Selection Process

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

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

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

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

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

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

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

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

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

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

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

7.16.4 Termination

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

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

7.16.5 Retainage

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

7.16.6 Warranties

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

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

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

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

"Assigned Key Contracts" means, collectively, the Assigned O&M Contract, the

Consulting Services Agreement and the Assigned LRV Supply Contract.

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

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

"Bonds" has the meaning given to such term in the Settlement Agreement.

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

"Interim Construction Costs" has the meaning given to such term in the Settlement Agreement.

"Majority Holders" has the meaning given to such term in the Settlement Agreement.

"New Financing Transactions" has the meaning given to such term in the Settlement Agreement.

"Replacement DB Contract" has the meaning given to such term in Section 7.16.3.3.

"Replacement DB Contractor" has the meaning given to such term in Section 7.16.

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

"Replacement DB Selection Process" has the meaning given to such term in Section 7.16.

"Second Amendment Effective Date" means December ____, 2020.

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

"Settlement Agreement" means that certain Settlement Agreement and Mutual Release, dated as of December ____, 2020, by and between Owner and

Concessionaire.

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

"Subsequent P3 Amendments" has the meaning given to such term in the Settlement Agreement.

"Termination Payment" has the meaning given to such term in Section 7.16.4.

"Termination Trigger Date" has the meaning given to such term in Section 7.16.4.

"Trustee" has the meaning given to such term in the Settlement Agreement.

3.3 Amendments to Exhibit 13B.

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

6. Termination Pursuant to Section 7.16.4 of the Agreement

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

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

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

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

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

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

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

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

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

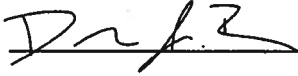
8. Effect of Amendment. The Contract Documents, except as amended by this Second Amendment, remain in full force and effect in accordance with each of their respective terms.

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

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

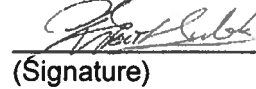
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WITNESS:



Doran J. Bosso

PURPLE LINE TRANSIT PARTNERS LLC


(Signature)

Peter van der Waart van Gulik
(Printed Name)

Chief Executive Officer
(Title)

WITNESS:

Loretta H. Shields

Loretta H. Shields

MARYLAND TRANSIT ADMINISTRATION

K. Quinn, Jr. Digitally signed by
Kevin B. Quinn, Jr.
Date: 2020.12.17

(Signature)

Kevin B. Quinn, Jr.

(Printed Name)

Administrator

(Title)

MARYLAND DEPARTMENT OF
TRANSPORTATION

Gregory Slater

(Signature)

Gregory Slater

(Printed Name)

Secretary

(Title)

Approved as to Form and Legal Sufficiency:

Julia Sweeney

Assistant Attorney General

Annex 1 to Second Amendment

ATTACHMENT 2 TO EXHIBIT 13B

REPLACEMENT DB SELECTION PROCESS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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