

**PROJECT AGREEMENT**

**FOR**

**GORDIE HOWE INTERNATIONAL BRIDGE**

**BETWEEN**

**WINDSOR-DETROIT BRIDGE AUTHORITY**

**AND**

**BRIDGING NORTH AMERICA GENERAL PARTNERSHIP**

**SEPTEMBER 28, 2018**

**THIS DOCUMENT CONTAINS A SECURITY REQUIREMENT**

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- Schedule 1 Definitions and Interpretation
- Schedule 2 Closing Deliveries and Ownership Information
- Schedule 3 Key Individuals
- Schedule 4 Lands and Site
- Schedule 5 Definition Drawings
- Schedule 6 Project Management - Part 1 (General)
- Schedule 6 Project Management - Part 2 (Review Procedure)
- Schedule 7 Quality Management - Part 1 (General)
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- Schedule 8 Records and Mandatory Reports
- Schedule 9 Project Schedule
- Schedule 10 Design and Construction Specifications - Part 1 (General)
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- Schedule 10 Design and Construction Specifications - Part 14 (Signing and Pavement Marking)
- Schedule 10 Design and Construction Specifications - Part 15 (Traffic Management - Construction)
- Schedule 10 Design and Construction Specifications - Part 16 (Lighting)
- Schedule 10 Design and Construction Specifications - Part 17 (Visual Quality)

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- Schedule 10 Design and Construction Specifications - Part 18 (Landscape Architecture and Urban Design)
- Schedule 10 Design and Construction Specifications - Part 19 (Traffic Management - Deductions)
- Schedule 10 Design and Construction Specifications - Part 20 (Bridges)
- Schedule 10 Design and Construction Specifications - Part 21 (The Bridge)
- Schedule 10 Design and Construction Specifications - Part 22 (Tolling Infrastructure)
- Schedule 10 Design and Construction Specifications - Part 23 (Intelligent Transportation System)
- Schedule 10 Design and Construction Specifications - Part 24 (Power Distribution)
- Schedule 10 Design and Construction Specifications - Part 25 (Commissioning)
- Schedule 11 Operations, Maintenance and Rehabilitation
- Schedule 12 Operational Traffic Management
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- Schedule 15 Michigan Interchange Design and Construction Specifications - Part 1 (Geotechnical)
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- Schedule 15 Michigan Interchange Design and Construction Specifications - Part 7 (Signing, Pavement Marking, Signalization and Lighting)
- Schedule 15 Michigan Interchange Design and Construction Specifications - Part 8 (Maintenance of Traffic)
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- Schedule 15 Michigan Interchange Design and Construction Specifications - Part 10 (Sidewalk Facilities)
- Schedule 15 Michigan Interchange Design and Construction Specifications - Part 11 (Railroad)
- Schedule 16 Environmental
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- Schedule 18 Communications Protocol
- Schedule 19 Material Agreements
- Schedule 20 WDBA Early Works
- Schedule 21 Certification Procedure
- Schedule 22 Change Procedure
- Schedule 23 Dispute Resolution Procedure
- Schedule 24 Financial Model
- Schedule 25 Payment Mechanism (OMR)
- Schedule 26 Construction Period Payments
- Schedule 27 Compensation on Termination
- Schedule 28 Refinancing
- Schedule 29 Insurance Requirements
- Schedule 30 Form of Lenders' Direct Agreement
- Schedule 31 Form of Prime Contractor Direct Agreement
- Schedule 32 Form of Independent Certifier Agreement
- Schedule 33 Insurance Trust Agreement
- Schedule 34 Proposal
- Schedule 35 Land Restrictions
- Schedule 36 Community Benefits
- Schedule 37 Sustainability
- Schedule 38 Energy Management
- Schedule 39 Form of Custody Agreement
- Schedule 40 Certain US Requirements
- Schedule 41 Payment and Performance Support
- Schedule 42 LSI Equipment
- Schedule 43 Canadian Roads
  - Part 1 Canadian Perimeter Access Road Maintenance and Handover
  - Part 2 Sandwich Street South of Ojibway Reconstruction
  - Part 3 Sandwich Street Improvements

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**BETWEEN:**

**WINDSOR-DETROIT BRIDGE AUTHORITY**, a  
corporation incorporated pursuant to the *International  
Bridges and Tunnels Act* (Canada)

(“WDBA”)

- and -

**BRIDGING NORTH AMERICA GENERAL PARTNERSHIP**

(“Project Co”)

**RECITALS**

- A. WDBA wishes to procure a new international crossing between Windsor, Ontario and Detroit, Michigan which includes the following components:
- (a) the Bridge;
  - (b) the Canadian POE;
  - (c) the US POE; and
  - (d) the Michigan Interchange.
- B. Pursuant to a request for proposals for the Project dated November 10, 2016, as amended, WDBA has selected Project Co to design, build and finance the Facility and to operate, maintain and perform lifecycle rehabilitation for the Main Bridge, the Bridge Approaches, the Canadian POE, the US POE and the Tolling Infrastructure and to perform the Tolling Operations.
- C. The construction of the Facility is expected by WDBA to have a positive impact on the economies of Canada, the United States, Ontario and Michigan by improving the movement of people, goods and services in a safe and efficient manner across the Canada/United States border at Detroit and Windsor.
- D. Public ownership and control of the Facility will be preserved.
- E. With a view to ensuring that both parties are able to properly and effectively discharge their respective duties, functions and responsibilities under Applicable Law, it is the intent that WDBA and Project Co work collaboratively, responsibly and cooperatively throughout the Term.
- F. The rights and obligations between the parties with respect to the Facility and the Project will be governed by the terms and conditions set out in this Agreement, and those agreements which are schedules to this Agreement, which are to be executed by the parties to such agreements on Financial Close.
- G. WDBA has been designated as the ‘operator’ of the Bridge under the *Bridge to Strengthen Trade Act* (Canada).

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**IN CONSIDERATION** of the mutual covenants contained in this Agreement and of other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the parties, the parties agree as follows.

## PART A

### PRELIMINARY MATTERS AND GENERAL PROJECT TERMS

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

This Agreement shall be interpreted and construed in accordance with the provisions set out in Schedule 1 [*Definitions and Interpretation*] and unless indicated otherwise, all capitalized terms in this Agreement shall have the meaning set out in such Schedule.

##### 1.2 Schedules

This Agreement is comprised of the body of this agreement and each schedule to it and any appendices to each such schedule. Each such schedule is listed in this Section 1.2.

Schedule 1	Definitions and Interpretation
Schedule 2	Closing Deliveries and Ownership Information
Schedule 3	Key Individuals
Schedule 4	Lands and Site
Schedule 5	Definition Drawings
Schedule 6	Project Management - Part 1 (General)
Schedule 6	Project Management - Part 2 (Review Procedure)
Schedule 7	Quality Management - Part 1 (General)
Schedule 7	Quality Management - Part 2 (Non-Compliance)
Schedule 8	Records and Mandatory Reports
Schedule 9	Project Schedule
Schedule 10	Design and Construction Specifications - Part 1 (General)
Schedule 10	Design and Construction Specifications - Part 2 (Standards and Specifications)
Schedule 10	Design and Construction Specifications - Part 3 (Spatial Information)
Schedule 10	Design and Construction Specifications - Part 4 (Geotechnical)
Schedule 10	Design and Construction Specifications - Part 5 (Security)
Schedule 10	Design and Construction Specifications - Part 6 (Traffic Analysis)

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Schedule 10	Design and Construction Specifications - Part 7 (Site Civil)
Schedule 10	Design and Construction Specifications - Part 8 (Buildings - Canadian POE)
Schedule 10	Design and Construction Specifications - Part 9 (Buildings - US POE)
Schedule 10	Design and Construction Specifications - Part 10 (Roadways)
Schedule 10	Design and Construction Specifications - Part 11 (Roadway Structures - Miscellaneous)
Schedule 10	Design and Construction Specifications - Part 12 (Drainage and Stormwater Management)
Schedule 10	Design and Construction Specifications - Part 13 (Non-Motorized Facilities)
Schedule 10	Design and Construction Specifications - Part 14 (Signing and Pavement Marking)
Schedule 10	Design and Construction Specifications - Part 15 (Traffic Management - Construction)
Schedule 10	Design and Construction Specifications - Part 16 (Lighting)
Schedule 10	Design and Construction Specifications - Part 17 (Visual Quality)
Schedule 10	Design and Construction Specifications - Part 18 (Landscape Architecture and Urban Design)
Schedule 10	Design and Construction Specifications - Part 19 (Traffic Management - Deductions)
Schedule 10	Design and Construction Specifications - Part 20 (Bridges)
Schedule 10	Design and Construction Specifications - Part 21 (The Bridge)
Schedule 10	Design and Construction Specifications - Part 22 (Tolling Infrastructure)
Schedule 10	Design and Construction Specifications - Part 23 (Intelligent Transportation System)
Schedule 10	Design and Construction Specifications - Part 24 (Power Distribution)
Schedule 10	Design and Construction Specifications - Part 25 (Commissioning)
Schedule 11	Operations, Maintenance and Rehabilitation
Schedule 12	Operational Traffic Management
Schedule 13	Tolling Operations
Schedule 14	Handback
Schedule 15	Michigan Interchange Design and Construction Specifications - Part 1

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	(Geotechnical)
Schedule 15	Michigan Interchange Design and Construction Specifications - Part 2 (Land Surveying)
Schedule 15	Michigan Interchange Design and Construction Specifications - Part 3 (Roadway and Grading)
Schedule 15	Michigan Interchange Design and Construction Specifications - Part 4 (Drainage)
Schedule 15	Michigan Interchange Design and Construction Specifications - Part 5 (Structures)
Schedule 15	Michigan Interchange Design and Construction Specifications - Part 6 (Landscaping)
Schedule 15	Michigan Interchange Design and Construction Specifications - Part 7 (Signing, Pavement Marking, Signalization and Lighting)
Schedule 15	Michigan Interchange Design and Construction Specifications - Part 8 (Maintenance of Traffic)
Schedule 15	Michigan Interchange Design and Construction Specifications - Part 9 (Project Maintenance)
Schedule 15	Michigan Interchange Design and Construction Specifications - Part 10 (Sidewalk Facilities)
Schedule 15	Michigan Interchange Design and Construction Specifications - Part 11 (Railroad)
Schedule 16	Environmental
Schedule 17	Utilities Requirements
Schedule 18	Communications Protocol
Schedule 19	Material Agreements
Schedule 20	WDBA Early Works
Schedule 21	Certification Procedure
Schedule 22	Change Procedure
Schedule 23	Dispute Resolution Procedure
Schedule 24	Financial Model
Schedule 25	Payment Mechanism (OMR)
Schedule 26	Construction Period Payments

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Schedule 27	Compensation on Termination
Schedule 28	Refinancing
Schedule 29	Insurance Requirements
Schedule 30	Form of Lenders' Direct Agreement
Schedule 31	Form of Prime Contractor Direct Agreement
Schedule 32	Form of Independent Certifier Agreement
Schedule 33	Insurance Trust Agreement
Schedule 34	Proposal
Schedule 35	Land Restrictions
Schedule 36	Community Benefits
Schedule 37	Sustainability
Schedule 38	Energy Management
Schedule 39	Form of Custody Agreement
Schedule 40	Certain US Requirements
Schedule 41	Payment and Performance Support
Schedule 42	LSI Equipment
Schedule 43	Canadian Roads  Part 1 Canadian Perimeter Access Road Maintenance and Handover Part 2 Sandwich Street South of Ojibway - Reconstruction Part 3 Sandwich Street Improvements

### 1.3 Conflict of Terms

- (a) In the event of any ambiguity, conflict or inconsistency between or among any of the provisions of this Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:
- (i) the provisions of any amendment to this Agreement made by the parties in writing shall govern and take precedence over, but only over, the specific provisions of this Agreement expressly amended thereby;
  - (ii) the provisions of any WDBA Change or Project Co Change made pursuant to Schedule 22 [*Change Procedure*] shall govern and take precedence over, but only over, the specific provisions of this Agreement expressly changed by such WDBA Change or Project Co Change;

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- (iii) a term or provision contained in the Proposal Extracts shall govern and take precedence over any term or provision of the Proposal dealing with the same matter; and
  - (iv) subject to Section 1.3(f), any provision establishing a higher or more stringent standard of safety, security, reliability, durability, quality, design, performance or service shall take precedence over a provision establishing a lower standard of safety, security, reliability, durability, quality, design, performance or service.
- (b) If after the Reference Date, a higher or more stringent Standard becomes applicable to the Project Work and either Project Co or WDBA becomes aware of such higher or more stringent Standard, then either may give a Notice to the other of such higher or more stringent Standard. WDBA may then, at its option, require Project Co to comply with such higher or more stringent Standard as a WDBA Change.
- (c) Subject to Section 1.3(a), if the ambiguity, conflict or inconsistency:
  - (i) is between a provision of general application and a provision that applies only to a specific part of the Project Work, the provision that applies to the specific part of the Project Work shall govern for that specific part of the Project Work;
  - (ii) is between a provision which deals with the same fact, circumstance, matter or thing, the provision which deals with that fact, circumstance, matter or thing in a more detailed or specific way shall govern; and
  - (iii) is between the provisions of the Technical Requirements and any Standards referenced in the Technical Requirements, the Technical Requirements shall prevail, unless WDBA otherwise determines by giving a Notice to Project Co, with respect to any particular ambiguity, conflict or inconsistency.
- (d) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.3, then Project Co or WDBA, shall immediately give a Notice to the WDBA Representative. The WDBA Representative shall, within 10 Business Days after such Notice, make a determination of which provision governs and shall give a Notice of such determination to Project Co. WDBA and Project Co shall comply with the determination of the WDBA Representative pursuant to Section 1.3(d), provided that if Project Co disputes the decision of the WDBA Representative then, notwithstanding the provisions of Section 1.8, such Dispute may be referred for resolution in accordance with Schedule 23 [*Dispute Resolution Procedure*] and until the resolution of such Dispute, the parties shall continue to comply with the decision of the WDBA Representative.
- (e) Project Co acknowledges and agrees that the Proposal and the Proposal Extracts form part of this Agreement. If the Proposal or the Proposal Extracts include statements, terms, concepts or designs that can reasonably be interpreted as offering to provide higher quality items or a higher level or standard of DB Work, Interim OM Work or OMR Work more favourable to WDBA than otherwise required by the other Project Documents or to perform services or meet standards in addition to or better than those otherwise required, then Project Co's obligations hereunder shall include compliance with all such statements, terms, concepts and designs as set out in the Proposal or the Proposal Extracts and such higher level or standard of DB Work, Interim OM Work or OMR Work, but always in a manner that does not adversely impact any other provision or requirement of this Agreement or result in increased costs or expenses to WDBA, unless WDBA otherwise agrees.

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- (f) Nothing in this Agreement is intended to require the application of the Law of the US or Michigan in Canada, or the Law of Canada or the Province of Ontario in the US. With respect to the Bridge, the Standard which is the highest or most stringent shall apply to all Project Work which relates to the Bridge, so that there will be uniformity of design, construction, operation, maintenance, life cycle replacement and rehabilitation for the whole of the Bridge, provided that such higher or more stringent Standard does not conflict with and is not inconsistent with any other Standard in which case such conflict or inconsistency shall be resolved in accordance with Section 1.3(d), subject to the requirements of this Agreement to comply with FAER.
- (g) Unless expressly provided, nothing in this Agreement is intended to require the application of the Law of any jurisdiction in Canada that is not Applicable Law by reason of the federal Applicable Law of Canada and the status of WDBA and the Project under the federal Law of Canada.

#### 1.4 Conflict Among Agreements

In the event of any ambiguity, conflict or inconsistency between the rights of the Lenders' Agent under the Lenders' Direct Agreement, and the rights of WDBA or Project Co under this Agreement, the rights of the Lenders' Agent shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

#### 1.5 Third Party Relief

- (a) This Agreement contains a number of provisions pursuant to which Project Co makes or undertakes, representations, warranties, covenants, obligations or indemnities in favour of one or more WDBA Parties and WDBA Persons, who are not parties to this Agreement. WDBA agrees that it accepts each representation, warranty, covenant, obligation and indemnity of Project Co on behalf of (i) a WDBA Person, and (ii) a WDBA Party (collectively "**Third Parties**"). Accordingly:
  - (i) Project Co acknowledges and agrees that any covenant, right, remedy, benefit or indemnity conferred on or expressed to be for the benefit of a Third Party by this Agreement may be enforced by WDBA for and on behalf of such a Third Party. In any proceedings by WDBA to enforce such covenant, right, remedy or indemnity for the benefit of a Third Party it shall not be a defence to Project Co that WDBA has not suffered any damage, loss, injury or other detriment or that WDBA has no rights or standing to enforce same for the benefit of a Third Party;
  - (ii) Project Co shall comply with any judgment, order or decree of a Governmental Authority or an award made pursuant to the Dispute Resolution Procedure in favour of WDBA on behalf of such Third Party;
  - (iii) no provision of this Project Agreement creates any obligation or liability on the part of any Third Party to Project Co, or any obligation or liability of Project Co to any such Third Party; and
  - (iv) no Third Party shall have the right or standing to commence proceedings in respect of any of the rights and obligations created by this Agreement.
- (b) The parties acknowledge that Project Co will share with the Prime Contractors, who will in turn share with other Subcontractors, in accordance with the Prime Contracts, certain benefits to Project Co derived from the rights of Project Co under, and subject to the obligations and limitations under, this Agreement, including rights of Project Co under

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Section 43 (*Supervening Events*) (such rights, as qualified by such obligations and limitations, are in this Section 1.5(b) collectively called “**Project Co’s Rights**”). Accordingly:

- (i) any circumstance affecting a Prime Contractor or other Subcontractor which, if such circumstance had affected Project Co directly would have given rise to a Claim by Project Co pursuant to Project Co’s Rights will, for the purpose of this Agreement, be deemed to be a circumstance affecting Project Co in respect of which Project Co may claim under and subject to Project Co’s Rights; and
- (ii) amounts claimed by the Prime Contractor or other Subcontractor against Project Co in respect of any circumstance referred to in Section 1.5(b)(i) may be claimed by Project Co against WDBA under and subject to Project Co’s Rights, but whether or not WDBA is liable for such amounts, will be determined under this Agreement as if the circumstance had affected Project Co directly,

provided that:

- (iii) all such Claims will be made and administered by or through Project Co and no Prime Contractor or other Subcontractor will have any rights against WDBA, including under this Section 1.5(b);
- (iv) in no event will the liability of WDBA under this Section 1.5(b) be greater than it would have been if Project Co, after giving effect to Section 1.5(b)(i), had been directly affected by the circumstance referred to in Section 1.5(b)(i); and
- (v) in no event will WDBA be liable under this Section 1.5(b) for any Claims, Losses or other compensation that WDBA would not have been liable for if Project Co, after giving effect to Section 1.5(b)(i), had been directly affected by the circumstance referred to in Section 1.5(b)(i).

#### **1.6 No Fettering of the Rights of WDBA or a WDBA Party, WDBA Person or Governmental Authority**

Nothing in this Agreement shall fetter or otherwise interfere with or limit the rights, powers and authority of WDBA, a WDBA Party, a WDBA Person, to the extent that each is authorized to so act in its capacity as a Governmental Authority, or any other Governmental Authority, to (i) enact, amend, repeal or replace any Laws; (ii) exercise or refrain from exercising any discretion conferred under any Laws; or (iii) administer, apply, comply with and enforce any Laws. Except as expressly provided for in this Agreement including Section 42 (*Change in Law*), at no time and in no way shall the exercise of any of such rights, powers or authority entitle Project Co to make any Claim or receive any compensation or other relief whatsoever for any resulting effect, consequence or damage.

#### **1.7 Exercise of Discretion by WDBA**

- (a) Except as otherwise required by Applicable Law or as otherwise set out in this Agreement, when WDBA has,
  - (i) the choice to take or not take an action including to give or grant an agreement, approval, confirmation, acceptance, waiver, permission or consent,

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- (ii) the right or obligation to make an election, determination, designation, rejection, requirement or stipulation, to reserve a right, to make a request, to exercise an option, to make a decision, or
- (iii) the right to consider or to come to a judgment, view or an opinion,

with respect to any matter under this Agreement, it means that WDBA has the sole, subjective, absolute and unfettered discretion with respect to the matter in question, with no requirement to act reasonably or to provide reasons, unless there is a specific requirement in this Agreement for WDBA (i) to act reasonably or (ii) to not act unreasonably, with respect to such matter. In the exercise of any such unfettered discretion pursuant to this Agreement, WDBA shall act in good faith but shall be entitled to have regard solely to what it considers to be in its own best interests and where relevant, in the best interests of any affected WDBA Party or WDBA Person.

- (b) When the exercise of WDBA's discretion is subject to an 'acting reasonably' standard, WDBA shall without limitation be deemed to be acting reasonably if the exercise of such discretion is consistent with (i) the obligations of WDBA under the Crossing Agreement, (ii) compliance by WDBA with the lawful requirements of any Material Agreement, or (iii) compliance by WDBA with the requirements of any applicable Governmental Authority (other than WDBA) or any Applicable Law.
- (c) If the exercise of a discretion or the making of a decision by WDBA under this Agreement would otherwise constitute in fact a WDBA Change, then the provisions of Schedule 22 [*Change Procedure*] shall apply.

### **1.8 Exercise of Discretion**

No decision made by WDBA with respect to any matter relating to (i) FAER, (ii) the Integrity Provisions, (iii) Ineligible Persons, (iv) an Emergency, (v) Restricted Persons, (vi) the requirements of any applicable Governmental Authority (other than WDBA), (vii) the Security Requirements, or (viii) any Technical Requirements or other matters specifically relating to the security of the Project is subject to dispute by Project Co pursuant to Schedule 23 [*Dispute Resolution Procedure*], except as provided in Section 1.3(d) (*Conflict of Terms*) and subject always to Section 1.7(c).

### **1.9 Interpretation and Application of Technical Requirement**

Notwithstanding Section 1.7(a) and subject to Section 1.7(c) and Section 1.8, except as otherwise required by Applicable Law or as otherwise set out in this Agreement, WDBA shall act reasonably with respect to any decision of WDBA relating to the interpretation and application of the Technical Requirements.

### **1.10 Consistency with Crossing Agreement**

This Agreement and each provision of this Agreement will be interpreted, and any ambiguity or question of interpretation that arises will be resolved in the manner which is, consistent with the provisions and objectives of the Crossing Agreement and the security interests of Canada and the US.

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## 2. GENERAL PROJECT TERMS

### 2.1 Scope of Agreement

Subject to and in accordance with the provisions of this Agreement, Project Co shall carry out all Project Work during the Term and perform and observe all of its other obligations under this Agreement in accordance with Good Industry Practice and Applicable Law and obtain sufficient financing to enable it to carry out, perform and observe such Project Work and other obligations. All of these obligations shall be carried out at Project Co's own cost and risk, without recourse to WDBA, a WDBA Party, a WDBA Person or public funds, except as expressly provided otherwise in this Agreement. This Agreement contains security requirements as more particularly described in Section 56.3(*Security Requirements*).

### 2.2 Term

This Agreement shall become effective as of Financial Close (the "**Effective Time**") and, unless terminated earlier as expressly provided in this Agreement, shall expire and terminate on the Expiry Date.

### 2.3 Financial Close

Financial Close must occur on or after 9:00 am and on or before 3:00 pm on September 28, 2018 and shall take place at the offices of Fasken Martineau DuMoulin, 333 Bay Street, Toronto Ontario, M5H 2T6, Suite #2400. This Agreement and each Project Document shall not have legal effect until they are delivered at the Effective Time, except to the extent otherwise agreed by the parties in respect of any particular Project Document, notwithstanding that they may have been executed and put in escrow prior to the Effective Time.

### 2.4 Assumption of Risks and Responsibilities

Except to the extent that WDBA, any WDBA Person or any WDBA Party is responsible therefor pursuant to any express provision of this Agreement, all risks, costs and expenses in relation to the performance by Project Co of its obligations under this Agreement are allocated to and accepted by Project Co as its entire and exclusive responsibility. As amongst the parties, Project Co shall be solely responsible for the selection, pricing and performance of all its Subcontractors, and for their acts, defaults, omissions, breaches, negligence and other faults as if such acts, defaults, omissions, breaches, negligence and other faults were those of Project Co.

### 2.5 Crossing Agreement

- (a) Project Co acknowledges that it has reviewed a copy of the Crossing Agreement. The parties acknowledge that the Crossing Agreement requires that the provisions contained in this Section 2.5(a) (the "**CA Provisions**") be included in this Agreement. The CA Provisions are the following:
- (i) this Agreement shall be consistent with Applicable Law (for the purposes of this Section 2.5, the term "**Applicable Law**" has the meaning defined in the Crossing Agreement) and the Crossing Agreement;
  - (ii) Michigan is not liable, either directly or indirectly, under this Agreement;
  - (iii) the intent of this Agreement is to provide for the efficient, safe and financeable construction and operation of the International Crossing;

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- (iv) there will be no discrimination on the basis of nationality as between Canada and the United States;
- (v) to the extent control of the International Crossing is granted to Project Co, such control shall revert from Project Co to WDBA on the Termination Date;
- (vi) ownership of the Michigan Crossing and the Michigan Interchange is vested in Michigan and the ownership of the Canadian Crossing is vested in Canada;
- (vii) Project Co shall cooperate with all appropriate public agencies on all matters concerning the security of the International Crossing or disaster recovery for the International Crossing;
- (viii) Project Co shall submit to all appropriate public agencies written plans for the security of the International Crossing and disaster recovery for the International Crossing;
- (ix) Project Co shall maintain the International Crossing in accordance with the standards specified in this Agreement;
- (x) Michigan, MDOT, MSF, or any political subdivision of Michigan, and the International Authority are not liable for the acts or omissions of Project Co;
- (xi) Project Co shall provide to WDBA sufficient security to fulfill the purposes of payment and performance bonds, which may include payment or performance bonds, a letter of credit, parent corporation guarantees or other security from Project Co or from persons other than Project Co so long as the purposes of payment and performance bonds are fulfilled;
- (xii) WDBA shall transmit a copy of this Project Agreement to the parties (as such term is defined in the Crossing Agreement), excluding any trade secrets, proprietary commercial or financial information, or other confidential information exempted from disclosure in accordance with the RFP, this Agreement or Applicable Law;
- (xiii) Michigan, MDOT, MSF and any political subdivision of Michigan are not liable for the acts or omissions of the International Authority or WDBA in connection with this Agreement;
- (xiv) the Michigan Crossing and the Michigan Interchange must comply with the mitigation and enhancement measures included in the Green Sheet of the Final Environmental Impact Assessment as contained in the Record of Decision for the Michigan Interchange and the Michigan Crossing;
- (xv) Project Co is not authorized to condemn property in Michigan;
- (xvi) Project Co is not authorized to levy taxes;
- (xvii) Project Co shall comply with the Federal Aid Eligibility Requirements and provisions for the enforcement of those requirements, each as specifically set out in this Agreement which is in accordance with Article IX, Section 5 of the Crossing Agreement;

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- (xviii) the public shall not be deprived of the use and benefit of the International Crossing except as necessary to implement tolls, user fees or other charges authorized or permitted by Applicable Law, this Agreement (to the extent not prohibited by such Applicable Law) and the Crossing Agreement, to regulate the level or character of permissible uses of the International Crossing to ensure safe and efficient operation of the International Crossing, to address issues of public safety or security, or to maintain, repair, or improve the International Crossing;
  - (xix) nothing in this Agreement prohibits MDOT, any public agency in Michigan, or a private entity in Michigan, from researching, planning, procuring, designing, financing, constructing, maintaining, operating, improving, or repairing a transportation project or facility in Michigan that is included in MDOT's long-range plan in effect on the date that proposals were submitted pursuant to the RFP;
  - (xx) nothing in this Agreement prohibits a private entity in Michigan from researching, planning, procuring, designing, financing, constructing, maintaining, operating, improving, or repairing a transportation project or facility in Michigan that is otherwise authorized by the Law of Michigan; and
  - (xxi) nothing in this Agreement obligates Michigan, any of its political subdivisions, MDOT, MSF or an agency or authority of Michigan, to use Michigan state funds to make any payment to Project Co or any third party.
- (b) Project Co shall comply with those CA Provisions which impose an obligation on Project Co.
  - (c) Project Co shall assist and cooperate with WDBA in connection with WDBA fulfilling its obligations under the Crossing Agreement, including providing information requested by and certifying such information to WDBA in connection with (i) WDBA's reporting and certification obligations pursuant to Article VI, Section 5 of the Crossing Agreement and (ii) information requested by MDOT to enable MDOT to perform oversight as set out in Article IX, Section 5(a)(iv) of the Crossing Agreement and as necessary to demonstrate compliance with Article IX, Section 5(b) of the Crossing Agreement. Project Co shall not be required to perform directly for or on behalf of WDBA or any WDBA Party, any obligation of WDBA or of a WDBA Party under the Crossing Agreement, that it is not otherwise expressly obligated to perform under the terms of this Agreement, unless WDBA issues a WDBA Change pursuant to the provisions of Schedule 22 [*Change Procedure*].
  - (d) WDBA acknowledges that the Performance and Payment Support as described in Schedule 41 [*Payment and Performance Support*] is sufficient for the purposes of Section 2.5(a)(xi).

## 2.6 Bridge to Strengthen Trade Act (Canada)

Canada has passed the *Bridge to Strengthen Trade Act*, which came into force in December 2012. Under the *Bridge to Strengthen Trade Act*, the *Fisheries Act*, the *Navigable Waters Protection Act*, the *Species at Risk Act*, Section 6 of the *International Bridges and Tunnels Act*, and the *Port Authorities Operations Regulations*, do not apply to construction of the Project and the *Canadian Environmental Assessment Act, 2012* does not apply to the Project, other than with respect to its expansion, decommissioning or abandonment. The *Bridge to Strengthen Trade Act* provides that no construction of those parts of the Facility located in Canada shall take place until consultations with the Minister having authority under the *Bridge to Strengthen Trade Act*, the Canadian Minister of the Environment and the Windsor Port Authority, as applicable, have taken

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place and plans have been filed with the Minister having authority under the *Bridge to Strengthen Trade Act* to set out the measures to be taken to mitigate the impact of such construction. Project Co shall complete the preparation of such plans, shall present them to WDBA for review, approval and filing, and shall cooperate with WDBA to complete the consultations required by the *Bridge to Strengthen Trade Act* as soon as practicable following the Commencement Date. No plan shall be filed with the Minister having authority under the *Bridge to Strengthen Trade Act* and no amendments to any such plan shall be made without WDBA's consent, acting reasonably. Once such plans have been filed, Project Co shall implement and comply with such plans. If Project Co wishes to amend any such plan, it shall comply with the *Bridge to Strengthen Trade Act*. Any amendments requested by WDBA to a filed plan (other than any plan filed pursuant to any requirement of the WDBA Early Works or the Project Co Early Work Agreement) shall constitute a WDBA Change, except to the extent that such amendment results from a Non-Excusable Event of Project Co, the implementation of the Technical Requirements or Project Co's Proposal or Proposal Extracts, in which case Project Co shall not be entitled to any compensation or relief. Project Co confirms that it has reviewed the provisions of the *Bridge to Strengthen Trade Act* to ensure that it fully understands its obligations under such Act.

## 2.7 Financial Administration Act

Project Co confirms that it has reviewed and understands the provisions of the *Financial Administration Act*, RSC 1985, c. F-11 and its application to WDBA. [REDACTED]

## 2.8 Business Opportunities

- (a) Project Co acknowledges that WDBA reserves the right to all commercial and other opportunities in relation to the Project or any portion of the Site, including any duty-free opportunities and the erection of billboards and other forms of advertising (collectively, the "**Business Opportunities**"). WDBA may, from time to time, develop or permit the development of such Business Opportunities and may elect to grant rights in the Business Opportunities to Project Co, subject to obtaining all required Permits and Governmental Authority approvals. To the extent that the development of a Business Opportunity interferes with Project Co's access rights hereunder or with Project Co's ability to perform the Project Work, such development shall constitute a Compensation Event, unless it is the subject of a WDBA Change.
- (b) To encourage the development of Business Opportunities, Project Co may, from time to time, propose Business Opportunities for WDBA's consideration. All such proposals shall describe the Business Opportunity in full with the expected financial and other advantages to WDBA and to Project Co, respectively. Acceptance of any such proposal shall be at the discretion of WDBA and shall be subject to such terms and conditions as WDBA may require. Any use of the Site by third parties in relation to the implementation of Business Opportunities shall be governed by Section 5.4(c) (*Site Use and Administrative Services*).
- (c) Notwithstanding that Project Co has proposed a Business Opportunity to WDBA for its consideration, Project Co acknowledges that WDBA reserves the right to proceed with such Business Opportunity or any similar Business Opportunity with Project Co or with any third party, and may initiate a separate procurement process for the development of any Business Opportunity.
- (d) If WDBA accepts a Business Opportunity proposal presented by Project Co, the carrying out of the Business Opportunity shall become part of the Project Work and shall be a Change implemented in accordance with the Change Procedure.

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- (e) Subject to Section 2.8(a) and Section 2.8(d), Project Co shall not be entitled to receive any payment or compensation from WDBA on the basis that Project Co proposed a Business Opportunity to WDBA, even if WDBA proceeds with such Business Opportunity or any similar Business Opportunity with Project Co or any third party.

## 2.9 Project's Name

All rights to the name "**Gordie Howe International Bridge**" are vested in Canada. Project Co has no rights to name any Component or part of any Component nor does it have any rights to the names given to a Component or any part of a Component.

## 2.10 International Bridges and Tunnels Act and Regulations

- (a) Project Co acknowledges that after Substantial Completion, the Bridge and related facilities in Canada will be subject to the *International Bridges and Tunnel Act* ("**IBTA**") and the regulations under such Act. WDBA has been designated by the Minister as the 'operator' of the Bridge under the *Bridge to Strengthen Trade Act*. Project Co confirms that it has carefully reviewed the provisions of the *International Bridges and Tunnels Act* and the regulations made thereunder. Notwithstanding any other provision of this Agreement, Project Co shall carry out its obligations under this Agreement in compliance with IBTA and the regulations thereunder, including performing all obligations of an owner or operator under IBTA except to the extent that only a Governmental Authority such as WDBA may do so. Project Co shall perform all required inspections and generate all required reports for submission by WDBA to the Minister. Project Co shall deliver a draft of any report WDBA is required to submit to the Minister pursuant to IBTA 45 days prior to when WDBA is required to submit such report to the Minister. Project Co shall cooperate fully with WDBA's performance of its obligations under IBTA and the regulations thereunder. Such inspections and reports shall not contain any false or misleading information.
- (b) Any amendment to IBTA or the regulations thereunder, any new regulations made under IBTA and any Ministerial orders or directions made under IBTA or the regulations thereunder which impose additional material obligations or liabilities on Project Co which are greater than those in effect on the Reference Date, shall constitute a Discriminatory Change in Law or a Works Change in Law, as applicable, except as provided in the exceptions set out in the definition of Discriminatory Change in Law or Works Change in Law, as applicable.

## 2.11 Material Agreements

- (a) Project Co has reviewed each Material Agreement in Schedule 19 [*Material Agreements*] as of the Reference Date and agrees that it shall observe and perform the covenants and obligations thereunder of WDBA, or any Michigan Party where WDBA is not a party, except to the extent (i) such obligations are only capable at law of being performed by WDBA or a Michigan Party, or (ii) Schedule 19 [*Material Agreements*] provides, or WDBA informs Project Co in writing, that WDBA or a Michigan Party shall perform such obligation or obligations.
- (b) The obligations of Project Co pursuant to Section 2.11(a) are limited to the provisions of the Material Agreements as they exist on the Reference Date. Project Co shall have no liability with respect to any obligation of WDBA under a Material Agreement which is in default on the date when Project Co must perform an obligation under such Material Agreement.

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- (c) During the Term, WDBA may enter into other agreements with third parties and request that Project Co comply with the requirements and obligations of WDBA thereunder. If WDBA makes such a request,
  - (i) such agreement will become a Material Agreement for all purposes of this Agreement; and
  - (ii) WDBA shall issue a WDBA Change and the relevant provisions of Schedule 22 [*Change Procedure*] shall apply.
- (d) WDBA shall notify Project Co of (i) any amendment to a Material Agreement, to the extent WDBA requires Project Co to comply with the requirements and obligations of WDBA under such amendment and (ii) any breach by a party to a Material Agreement of which WDBA becomes aware, if such amendment or breach will adversely affect Project Co's ability to perform the Project Work in accordance with the terms of this Agreement, will result in a delay in the performance of the Project Work, or will result in increased costs to Project Co in performing the Project Work, except in each case, to the extent caused or contributed to by a Non-Excusable Event of Project Co. In such event, WDBA shall issue a request for a WDBA Change and the provisions of Schedule 22 [*Change Procedure*] shall apply.

## **2.12 Purpose of WDBA Consent**

Notwithstanding any other provision of this Agreement, when this Agreement references the consent or approval of WDBA or a WDBA Person, on documents prepared or required by Applicable Law to be prepared by licensed parties of Project Co or Project Co Persons such as architects, designers or professional engineers, any consent or approval by WDBA (i) is given as a consent or agreement that the documents appear to conform to the Technical Requirements for its intended use for the Project, notwithstanding that some or all parties working on behalf of WDBA or a WDBA Person may also be licensed architects or professional engineers and (ii) is delivered as persons who are not performing licensed activities, and, consequently, all such responsibility and liability to comply with the Project Documents, including the Project Requirements shall remain with Project Co.

## **2.13 Reputational Risk**

Project Co shall not, and it shall ensure that each Prime Contractor, each Equity Member and each Related Owner of any of them do not, become an Ineligible Person during the Term.

## **2.14 Signs**

Project Co will not, nor shall it suffer or permit any Project Co Person to, erect, any hoarding or display, permit or suffer to be displayed any sign, picture, advertisement, notice, lettering or decoration on the interior or exterior of any portion of the Lands or the Project Infrastructure that WDBA determines to be contrary to the public interest or prejudicial to the integrity or reputation of WDBA or a WDBA Party or is not permitted by Applicable Law.

## **2.15 Canadian Federal Identity Program**

Project Co acknowledges that the Lands and Project Infrastructure located in Canada are owned by Her Majesty the Queen in Right of Canada, as represented by the Minister of Infrastructure, Communities and Intergovernmental Affairs. Project Co shall erect appropriate signs on the Lands in Canada to recognize such ownership

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- (a) Project Co shall maintain and demonstrate, the role of Her Majesty through the use of appropriate Canadian identity symbols on the Lands and Project Infrastructure in Canada, including Canadian flags and signage in both official languages of Canada, and shall comply with the Treasury Board Secretariat's Federal Identity Program Manual as amended from time to time.
- (b) Project Co shall display the Canadian flag in prominent locations on the Lands and Project Infrastructure in Canada and shall comply with the "**General Federal Rules**" for flying and displaying the Canadian flag, as amended from time to time and as interpreted and directed by Canada.

### 2.16 Foreign Dignitaries

- (a) Project Co shall co-operate with WDBA to coordinate the necessary arrangements concerning the use of the Lands and Project Infrastructure in Canada during any state visit by foreign dignitaries to the Lands and Project Infrastructure.
- (b) Project Co shall co-operate with WDBA to coordinate the necessary arrangements to provide, on a timely basis to the appropriate representatives of visiting foreign dignitaries, detailed and relevant information on access to the Lands and the Project Infrastructure, security passes, security searches or screening on the Lands and the Project Infrastructure and arrivals and departures from either Canadian or US POE as applicable.
- (c) Should any such co-operation be required from Project Co, it shall be a Compensation Event.

## 3. PROJECT DOCUMENTATION

### 3.1 Closing Deliveries

On or before the Effective Time, each of Project Co and WDBA executed and delivered or caused to be executed and delivered this Agreement, the other Project Documents to which they are a party and all other documents described in Schedule 2 [*Closing Deliveries and Ownership Information*].

### 3.2 Use of Prime Contractors and Subcontractors

WDBA acknowledges that Project Co will carry out and provide the Project Work by (i) contracting such obligations to Prime Contractors who in turn may contract all or part of their obligations under any Prime Contract to one or more Subcontractors or (ii) by contracting out certain obligations directly to Subcontractors. Notwithstanding the use of Prime Contractors or Subcontractors, Project Co:

- (a) shall not be relieved or excused from any of its obligations or liabilities under this Agreement; and
- (b) shall remain liable as principal to WDBA for the due observance and performance of all the covenants, obligations, agreements and conditions of this Agreement that are to be observed and performed by Project Co.

Project Co shall not retain a person to perform any Project Work having a value in excess of **\$(REDACTED)**, if at the time such person is retained, such person and WDBA are involved in a dispute which is unrelated to the Project Work, without WDBA's prior consent. WDBA may, through a WDBA Change, require Project Co to terminate any Subcontractor (other than the

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Construction Contractor and the OMR Contractor) who (i) is a party to a Material Subcontract for the performance of Project Work having a value in excess of \$[REDACTED], and (ii) is involved in a dispute with WDBA which is unrelated to the Project Work. WDBA shall notify Project Co of any such person or Subcontractor.

### 3.3 Compliance with Project Documents

- (a) Project Co shall observe and perform and shall ensure that its Prime Contractors observe and perform their respective obligations under all of the provisions of each of the Project Documents to which they are a party. Project Co shall also use all reasonable efforts to ensure that each Contracting Affiliate observes and performs its obligations under all of the provisions of each of the Project Documents to which such Contracting Affiliate is a party, so as to ensure that the other parties to such Project Document shall not be entitled to terminate such Project Document. In the event that Project Co receives a notice of default under any of the Project Documents, it shall promptly, and, in any event, no later than 2 Business Days after receipt thereof, deliver a copy of such notice of default to WDBA.
- (b) Project Co shall ensure that each Prime Contractor and each other Subcontractor complies with all applicable requirements of FAER and the requirements of Section 4.1 (*Compliance with Federal Aid Eligibility Requirements under the Crossing Agreement*) and Section 4.2 (*Additional Requirements*).

### 3.4 Amendments/Termination of Project Documents

- (a) Except as otherwise specifically permitted in this Agreement and then, only in accordance with the terms hereof and subject to Section 3.4(b), Project Co shall not (and, with respect to Project Documents to which a Prime Contractor is a party, shall ensure that such Prime Contractor does not), without the prior written consent of WDBA:
  - (i) terminate or permit the termination of all or part of any Project Document, except, in the case of the termination of a Project Document (other than the Lending Agreements), where such termination is to cure a Project Co Event of Default (provided that reasonable alternative measures would not prevent or cure such Project Co Event of Default), in which case the relevant terms of this Agreement shall govern the replacement of such Project Document, to the extent applicable;
  - (ii) make or agree to or suffer or permit any material amendment to any Project Document;
  - (iii) fail to observe and perform its obligations or waive or allow to lapse any rights it may have under any Project Document or fail to exercise such rights, except where it does not have the effect of:
    - (A) increasing the liability or the obligations of WDBA, whether actual or potential; or
    - (B) materially and adversely affecting Project Co's ability to perform the Project Work and to carry out its obligations under the relevant Project Document;
  - (iv) enter into, or permit the entering into, of any new Project Document or any agreement replacing all or part of any of a Project Document or conflicting with

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any such Project Document, except in the circumstances referenced in Section 3.4(a)(i); or

- (v) terminate and replace, or suffer or permit the termination and replacement of, any persons engaged in the fulfillment of DBE goals under the Special DBE Provision attached to Schedule 40 [*Certain US Requirements*].

For the purposes of this Section 3.4(a), WDBA shall act reasonably in providing consent with respect to Project Documents to which it is not a party, other than with respect to any provisions relating to termination of a Project Document.

- (b) Section 3.4(a) does not apply to Subcontracts except for Prime Contracts. Project Co shall keep a list of all Subcontracts (other than the Prime Contracts) entered into with respect to the Project and shall keep such list up-to-date. A copy of such list together with a description of the material terms of each Subcontract on such list shall be provided to WDBA on the Commencement Date. Particulars of each new Subcontract entered into after the Commencement Date shall be provided to WDBA within 10 Business Days after such Subcontract is entered into. WDBA shall review each Subcontract on the list as it may be updated from time to time and shall notify Project Co as to which of such Subcontracts it considers to be material (a "**Material Subcontract**"). A copy of each Material Subcontract shall be provided to WDBA within 10 Business Days of such Notice. If there is a material amendment to, or waiver of a material term of, or a termination of, any such Material Subcontract, Project Co shall give WDBA a Notice of any such amendment, waiver or termination to WDBA along with a copy of such revised Material Subcontract within 10 Business Days after the date of such amendment, waiver or termination.
- (c) Project Co may enter into, terminate, amend, waive rights under or exercise rights under any Lending Agreement without the prior written consent of WDBA if:
  - (i) such action is a Permitted Borrowing; or
  - (ii) such action is a Qualifying Refinancing which is performed, carried out and implemented in accordance with the provisions of Schedule 28 [*Refinancing*].
- (d) Notwithstanding any other provision of this Agreement, Project Co may enter into Hedging Agreements after Financial Close with the consent of WDBA, which shall not be unreasonably withheld by WDBA if the proposed Hedging Agreement, in WDBA's opinion, provides an acceptable hedge for the underlying exposure, is in conformity with other Project Documents, is properly and legally documented, and there is no additional cost to WDBA except to the extent provided under Schedule 27 [*Compensation on Termination*].
- (e) Notwithstanding any other provision of this Agreement, no amendment to or waiver or exercise of a right under any Lending Agreement shall have the effect of increasing WDBA's liability on any early termination of this Agreement unless:
  - (i) Project Co has obtained the prior consent of WDBA;
  - (ii) it is a Permitted Borrowing; or
  - (iii) it is a Refinancing referred to in paragraph (a) of the definition of "Exempt Refinancing".
- (f) If, as may be permitted by this Agreement or as may otherwise be authorized by WDBA:

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- (i) any Project Document is terminated or amended;
- (ii) Project Co or any Contracting Affiliate is granted a waiver or release of any of its obligations under any Project Document; or
- (iii) any agreement is entered into which would affect the interpretation or application of any of the Project Documents,

then Project Co shall deliver to WDBA a copy of each such document in writing within 15 Business Days of becoming aware of the relevant event, certified as a true copy or accurate and complete record, as the case may be, by an officer of Project Co or by an officer of the Contracting Affiliate which is party to the relevant Project Document.

### **3.5 Agreements with Relevant Authority to Be Entered into by Project Co**

- (a) Project Co shall be responsible to negotiate and enter into all agreements required in connection with this Agreement and the performance of the Project Work with any Relevant Authority, except for those which this Agreement provides are the responsibility of WDBA or a WDBA Party and those agreements that have already been entered into, including the Material Agreements. If any such agreement would impose any obligation or liability upon WDBA, Project Co:
  - (i) shall first seek the consent of WDBA before entering into any such agreement (which consent shall not be unreasonably withheld or delayed by WDBA);
  - (ii) subject to the Relevant Authority consenting, shall permit WDBA to become a party to any such agreement if WDBA so requests; and
  - (iii) shall make such amendments to any such agreement with respect to the provisions creating obligations or liabilities of WDBA, as WDBA may reasonably request.

At no time and under no circumstances shall the fact that WDBA is a party to such an agreement limit or otherwise affect Project Co's rights and obligations under this Agreement or any such agreement.

- (b) If Project Co determines that it requires the assistance of WDBA or a WDBA Party in relation to the execution of an agreement with a Relevant Authority or other third party (including the provision of information by WDBA, a WDBA Party or a WDBA Person), Project Co shall request, in writing, such assistance. WDBA shall use reasonable efforts to provide such assistance or as applicable, WDBA shall request the relevant WDBA Party to provide such assistance, at the cost and expense of Project Co. If WDBA determines that it or such WDBA Party is unable to provide such assistance, WDBA shall provide a written response setting out the reasons why it, or such WDBA Party, cannot provide such assistance.

### **3.6 Licence or Qualification to do Business**

Project Co and each Subcontractor which will perform Project Work in Michigan or Ontario will be licensed and/or qualified to do business in Michigan or Ontario, as applicable, in accordance with Applicable Law at all times when performing Project Work.

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### **3.7 Project Co Early Work Agreement**

- (a) All activities carried out or obligations incurred pursuant to the Project Co Early Work Agreement shall be deemed to have been undertaken by Project Co as Project Work notwithstanding the fact that the Project Co Early Work Agreement may have been executed by a Contracting Affiliate and not directly by Project Co. Project Co accepts and assumes the risk, responsibility and liability for such activities in accordance with the terms of this Agreement including any NCRs and applicable deductions pursuant to Section 7.2 of the Project Co Early Work Agreement.
- (b) Neither Project Co nor any Contracting Affiliate which may have been the signatory to the Project Co Early Work Agreement, nor WDBA shall be entitled to make any Claim against each other or against any Project Co Person or WDBA Person under or in connection with the Project Co Early Work Agreement (whether for loss, damage, extensions of time, payment or any other benefit) unless such Claim is permitted under this Agreement or is for the payment of amounts in respect of the performance of Project Co Early Work that would have been payable by WDBA but for the termination of the Project Co Early Work Agreement as a result of Financial Close. Project Co shall have all such Claims brought by Project Co under this Agreement and shall ensure that any Contracting Affiliate which may have been a signatory to the Project Co Early Work Agreement complies with this Section 3.7(b). Any Disputes under the Project Co Early Work Agreement which were submitted to the dispute resolution procedure under that agreement shall continue their resolution under the Dispute Resolution Procedure.
- (c) Any dispute in connection with or arising out of the Project Co Early Work Agreement existing at the Commencement Date shall, unless otherwise agreed in writing between the parties, be resolved in accordance with the Dispute Resolution Procedure.
- (d) If any of the Fixed Amount as defined in the Project Co Early Work Agreement remains unpaid as of the Commencement Date, WDBA accepts and assumes the obligation to pay such unpaid portion of the Fixed Amount as payment for and in respect of Project Work first completed under this Agreement until such unpaid portion is fully paid, without duplication.

## **4. CERTAIN US REQUIREMENTS**

### **4.1 Compliance with Federal Aid Eligibility Requirements under the Crossing Agreement**

Project Co shall perform all of WDBA's obligations under the Crossing Agreement relating to compliance with Federal Aid Eligibility Requirements applicable to Federal Aid Highway Project Activities performed by or on behalf of Project Co, except to the extent (i) such obligations are only capable at law of being performed by WDBA or (ii) WDBA informs Project Co in writing that WDBA shall perform such obligation or obligations. The following is a summary of certain of those obligations:

- (a) Project Co shall ensure that all Federal Aid Highway Project Activities performed by or on behalf of Project Co comply with all Federal Aid Eligibility Requirements.
- (b) MDOT and FHWA will perform certain oversight activities consistent with the Stewardship and Oversight Agreement as necessary to assure compliance with Federal Aid Eligibility Requirements, including all environmental, administrative, financial, procurement and contracting process requirements, in accordance with the Crossing Agreement. Project Co shall supply all information requested by WDBA, whether before or after the date that the

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Facility is open to public traffic, necessary for MDOT and FHWA to demonstrate compliance with these oversight responsibilities.

- (c) Examples of Federal Aid Eligibility Requirements include: Equal Opportunity requirements (Title VI of the *Civil Rights Act of 1964*, as amended, including environmental justice requirements (Executive Order 12898, 59 Fed. Reg. 7.629 (Feb. 16, 1994)); limited English proficiency requirements (Executive Order 13166, 65 Fed. Reg. 50.121 (Aug. 16, 2000)); equal employment opportunity on federal and federal-aid construction contracts requirements (23 CFR Part 230, Subpart A)); requirements applicable to Disadvantaged Business Enterprises (Title 49 Code of Federal Regulations Part 26, as amended); Small Business requirements (United States Code Sections 631 et seq.); and the Davis-Bacon and Related Acts prevailing wages rates. In addition, 23 CFR Part 636 Subpart A and in particular Section 636.116, sets out certain rules with respect to organizational conflicts of interest. Other examples of Federal Aid Eligibility Requirements, including the “**Required Contract Provisions, Federal-Aid Construction Contracts, Form 1273**,” are set out in this Agreement, including Schedule 40 [*Certain US Requirements*].
- (d) There is no obligation by WDBA or Project Co to comply with Federal Aid Eligibility Requirements applicable to Federal Aid Highway Project Activities, on any portion of the Project in Canada or the US Federal Plaza Facilities, except for the additional requirements described in Section 4.2.

#### 4.2 Additional Requirements

In addition to performing WDBA's obligations under the Crossing Agreement relating to compliance with Federal Aid Eligibility Requirements, and notwithstanding the language of the Crossing Agreement and Section 4.1, Project Co must comply with the following additional requirements pursuant to this Agreement:

- (a) the Required Contract Provisions on Federal-Aid Construction Contracts contained within FHWA Form 1273 as follows:
  - (i) Section VIII (False Statements Concerning Highway Projects) and Section X (Compliance with Government-wide Suspension and Debarment Requirements) shall apply to all Facility Components and all activities and works relating to the Project, and shall be physically incorporated into each Subcontract pertaining to such Project Work;
  - (ii) Section VI (Subletting or Assigning the Contract) and Attachment A (Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts) shall not apply to any of the Facility Components; and,
  - (iii) all other sections of the FHWA Form 1273 shall apply only to Federal Aid Highway Project Activities, and shall be physically incorporated into each Subcontract pertaining to such Project Work.
- (b) Project Co shall ensure that all iron and steel used in the Federal Aid Highway Project Activities, the US Border Services Plaza, and the Canadian portion of the Bridge (not including the Canadian Bridge Approach or the Canadian POE) are produced only in the US and Canada. FHWA granted a public interest Buy America waiver which contains restrictions for the use of American and Canadian steel and iron products (See 77 Fed. Reg. 74,048). Other materials required for the construction of the Facility are not restricted as to country of origin.

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- (c) Project Co shall comply with Federal Aid Eligibility Requirements applicable to Disadvantaged Business Enterprises (Title 49 Code of Federal Regulations Part 26, as amended), as referenced in Section 4.1(c) even if such requirements may be deemed for any reason to discriminate in favour of the US over Canada. Otherwise, Project Co shall not discriminate in favour of the US over Canada or in favour of Canada over the US with respect to any products, materials, supplies, labour or services under any Federal Aid Eligibility Requirements.
- (d) Project Co shall ensure that all requirements under Section 4.1 and Section 4.2 are met until the later to occur of (i) the date that the Facility is open to transportation by the public and (ii) the date of rectification of all FAER Minor Deficiencies related to Section 4.1 and Section 4.2.

#### **4.3 National Highway System Requirements and National Bridge Inspection Standards**

- (a) The Michigan portion of the Bridge, the US Bridge Plaza and the US Bridge Approach will be designated as part of the National Highway System. The Michigan Interchange with I-75 will be designated as Interstate. During the Term, Project Co shall ensure that Facility components designated as NHS, comply with applicable US federal regulations. NHS requirements include design standards, right of way and real estate, contract administration, MDOT and FHWA oversight procedures, highway performance monitoring system reporting, national bridge inventory reporting, national performance measures data collection, and outdoor advertisement/junkyard control.
- (b) The US and Canadian portions of the Bridge shall be inspected in accordance with the US National Bridge Inspection Standards set out in 23 CFR 650 Subpart C, in addition to any Canadian Applicable Law.

#### **4.4 Specific Performance**

Notwithstanding and without limiting anything in this Agreement, Project Co acknowledges and agrees that WDBA has the right of specific performance with respect to Project Co's obligations to meet all Federal Aid Eligibility Requirements.

### **5. LANDS, SITE AND ACCESS**

#### **5.1 Lands**

- (a) Appendix 4-1 to Schedule 4 [*Lands and Site*] depicts the Site and its boundaries.
- (b) [REDACTED]
- (c) [REDACTED]

#### **5.2 Access Rights**

- (a) Project Co acknowledges that its access to and use of the Site or any part thereof granted in this Section 5 shall be subject to the Title Encumbrances set out in Schedule 35 [*Land Restrictions*]. Project Co acknowledges that it shall comply with all restrictions and conditions referred to in Schedule 35 [*Land Restrictions*].
- (b) [REDACTED]
- (c) [REDACTED]

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- (d) Project Co shall ensure that each Project Co Person shall at all times when entering the Site, act in a manner consistent with the obligations of Project Co under this Agreement.
- (e) Project Co and all Project Co Persons shall comply with the Security Requirements when on or at the Site and in the performance of the Project Work.
- (f) Subject to Section 5.5(g), WDBA and, with respect to the Bridge and the other components of the Project in the US, representatives of MDOT and FHWA, shall at any time and without prior notice, be entitled to access for inspection of the Bridge and other components of the Project in the US and the plant, equipment and products of Project Co and each Subcontractor whether located on the Site or any other location off-Site used in the performance of the Project Work. MDOT has agreed with WDBA that it will communicate directly with WDBA unless it is necessary for MDOT to communicate directly with Project Co for the purpose of coordinating with them or carrying out MDOT's responsibilities as a Governmental Authority. With respect to the US Federal Plaza Facilities, MDOT and FHWA access will be limited to determining compliance with Federal Aid Eligibility Requirements.
- (g) In accordance with this Section 5.2, WDBA shall provide access to Lands that form the Site to Project Co for no cash consideration. In exchange for receiving access to the Lands that form the Site, Project Co shall provide to WDBA the Design Work and the Construction Work in accordance with this Agreement.
- (h) **[REDACTED]**

### **5.3 Project Infrastructure Located Off-Site**

- (a) **[REDACTED]**
- (b) **[REDACTED]**

### **5.4 Site Use and Administrative Services**

- (a) Project Co shall not make any use of the Site or any Infrastructure on the Site other than for the purposes of carrying out the Project Work in accordance with this Agreement. Without limiting the generality of the foregoing, except as permitted by Section 2.8 (*Business Opportunities*) or Section 5.4(c), Project Co shall not allow or authorize any person to use or occupy, all or any part of the Site or any Infrastructure other than for the purpose of carrying out the Project Work, except for Relevant Authorities or their representatives who must access the Site for the purpose of carrying out Governmental Activities.
- (b) WDBA and each WDBA Party shall have the right to grant rights, leases, permits or other rights of access or use to any third party, including Utility Suppliers, in respect of Lands located within the Site or any Infrastructure thereon. To the extent that any such right granted by WDBA or a WDBA Party materially adversely interferes with Project Co's rights to use the Site or with Project Co's ability to perform the Project Work, such interference shall constitute a Compensation Event, except if the interference results from (i) Utility Work performed for the purposes of the Project Work or (ii) compliance with the requirements of any Material Agreement.
- (c) Throughout the Term but subject to Section 5.4(b) and Section 5.5, Project Co shall be responsible for providing coordination, management and all required administration services in connection with the negotiation of, development of and entering into of, any

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rights, leases, permits or other rights of access or use to any third party, including Utility Suppliers, authorizing such third party's use or occupancy of any portion of the Lands within the Site, or any Infrastructure thereon, as required to support the Project Work. All such rights, leases, permits or other rights of access or use over the Lands shall be subject to WDBA's prior written approval.

### 5.5 Rights of Use Granted to Project Co

- (a) The rights of use of the Site granted in this Section 5 are not exclusive and are subject to compliance by Project Co and all Project Co Persons with the requirements of this Agreement, including the rights and requirements set out in this Section 5.5.
- (b) Subject to Section 5.4(b), WDBA, a WDBA Party and any person authorized by WDBA or a WDBA Party may have access to the Site and the Facility without the prior consent of Project Co, including for the purposes of carrying out the Governmental Activities and Project Co shall not and shall require that Project Co Persons shall not, except as permitted under this Agreement, disrupt the performance of Governmental Activities.
- (c) WDBA may from time to time use or develop (including by way of subdivision), or permit the use or development of, or dispose of, portions of the Site, provided that to the extent such use, development or disposition materially adversely interferes with Project Co's rights hereunder or materially adversely interferes with Project Co's ability to perform the Project Work, such use, development or disposition shall, subject to and in accordance with Schedule 22 [*Change Procedure*], result in a WDBA Change.
- (d) Subject to the security and safety requirements set out in this Agreement, from and after the Substantial Completion Date, the public shall have rights of public passage or access over any part of the Site or any Infrastructure on the Site and all rights over public lands, except that Project Co may restrict public access to certain portions or areas of the Site as are reasonably necessary to carry out Project Work and for health, safety and security reasons.
- (e) Subject to the security and safety requirements set out in this Agreement, from and after the Substantial Completion Date, the public shall have the right to use any public roads within the Site when they are not under Permitted Closures.
- (f) In addition, the rights of Project Co and Project Co Persons to access and use the Site are subject to:
  - (i) the Title Encumbrances, restrictions and conditions listed in Schedule 35 [*Land Restrictions*], affecting any portion of the Site or any Infrastructure located thereon and the rights and obligations arising thereunder;
  - (ii) the rights and conditions set out in any Permit;
  - (iii) the rights of any person responsible for maintaining public highways or other roads or railroads to have access to the Site or the Infrastructure located thereon for the execution of any work on the Site or on any Infrastructure located thereon for purposes of fulfilling any function of such person under any Applicable Law or under any relevant provisions of the Technical Requirements;
  - (iv) the rights of third parties to access and use the Site which are required for work to be performed by Utility Suppliers;

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- (v) the other rights of access provided for in this Agreement, including the rights of access of WDBA, of any WDBA Person, of the Independent Certifier and of the Handback Independent Certifier in connection with monitoring, step-in and similar matters;
  - (vi) the rights of WDBA and third parties pursuant to the terms of Material Agreements; and
  - (vii) the rights of Relevant Authorities or their representatives under Applicable Law.
- (g) This Section 5.5 shall not limit the rights and obligations of Project Co provided under Section 19 (*Health and Safety*) nor remove any requirement on persons accessing the Site pursuant to this Section to comply with customary health and safety rules established by Project Co on the same basis as they are applied to Project Co Persons accessing the Site.
- (h) Project Co acknowledges that WDBA shall have the right during the OMR Period to restrict Project Co's access to the Site periodically for public purposes. WDBA shall consult with Project Co before exercising its rights under this Section. To the extent that such right granted or exercised by WDBA or a WDBA Party interferes with Project Co's rights to use the Site or with Project Co's ability to perform the Project Work, such interference shall constitute a Compensation Event, except to the extent Project Co is required to comply with Schedule 18 [*Communications Protocol*] in connection with the exercise of any such right.

## 5.6 No Real Property Rights Granted to Project Co

The rights referred to in this Section 5 are granted to Project Co to enable it to carry out the Project Work and such rights shall not be exclusive and shall not result in any real or personal rights other than the personal rights pertaining to the completion of the Project Work. When reference is made in this Agreement to a "transfer" or a "handover" of lands or Infrastructure in favour of Project Co, it shall always be read as referring to a transfer of responsibilities and not a transfer of ownership or of rights in real or personal property.

## 5.7 Additional Lands or Access Required

Project Co shall obtain any rights of access, and any additional rights to use areas off-Site which Project Co deems useful to perform the Project Work. Such rights of access and additional rights of use of any off-Site areas are distinct from those required to be provided by WDBA pursuant to Section 5.1 and Section 5.2. Project Co shall bear all costs related to obtaining such rights of access or additional rights of use of any off-Site area and shall bear all Losses arising from the impossibility to obtain such rights.

## 5.8 Project Limits

Unless otherwise indicated in the Technical Requirements, all Project Infrastructure shall be located within the Site unless a Change was issued and accepted pursuant to Schedule 22 [*Change Procedure*].

## 5.9 Cleaning

- (a) Unless the Project Documents require a higher standard, Project Co shall at all times keep the Site and surrounding area free from accumulation of waste materials or rubbish caused by Project Co and Project Co Persons. Without limiting the foregoing sentence,

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upon Substantial Completion, Project Co shall be responsible for removing all waste materials, rubbish, tools, construction equipment, machinery and surplus materials from and about the Site. If Project Co fails to clean up the Site as provided in this Agreement, WDBA may perform such activities at Project Co's expense. Project Co shall reimburse WDBA all of its costs, including reasonable administrative and lawyers' fees, within 30 days of the invoice. If Project Co shall fail to make payment within the 30 day period, WDBA may deduct amounts owed together with interest at the Interest Rate commencing on the date the costs were incurred, from any payment then or thereafter due under this Agreement.

- (b) Unless the Project Documents require a higher standard, Project Co shall leave all constructed DB Work, any existing materials and surfaces affected by the DB Work, and each area of the Site clean to the satisfaction of WDBA. This shall include, at a minimum, the complete dusting, sweeping, vacuuming, mopping, polishing, and other activities, as necessary, to remove all dust, dirt and other construction residues, and removal of all tools and equipment, construction debris, rubbish and surplus materials.

## **6. PERMITS**

### **6.1 [REDACTED]**

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED].
- (d) [REDACTED].
- (e) [REDACTED]

### **6.2 [REDACTED]**

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]

## **7. DISCLOSED DATA**

### **7.1 Availability of Information**

As of the Commencement Date, Project Co has been provided the Disclosed Data. WDBA shall, and shall cause each WDBA Person to, make available to Project Co such additional relevant information relating to the Project which is within the possession or under the control of WDBA or such WDBA Person as part of the Background Information. WDBA shall have no obligation however to provide, or to cause a WDBA Person to provide, any information for which WDBA or a WDBA Person is bound by an obligation of confidentiality or of restricted access, or that WDBA or such WDBA Person is precluded from disclosing under any applicable Privacy Laws.

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## 7.2 General No Warranty, No Liability Principle

- (a) Except as expressly provided for in Section 7.3, WDBA makes no representation or warranty and there are no representations, warranties or conditions, express or implied, statutory or otherwise:
- (i) regarding the sufficiency, accuracy or relevancy of the Disclosed Data and fitness for the purpose for which it is intended; or
  - (ii) that the Disclosed Data represents all necessary or relevant information for purposes of the Project.

Except as expressly provided for in Section 7.3, WDBA shall have no liability or obligation to Project Co, nor shall any WDBA Party have any liability or obligation to Project Co, arising out of a fault on the part of WDBA, a WDBA Party or any WDBA Person in respect of any inaccuracy, error, insufficiency, omission, unfitness for purpose, defect or inadequacy of the Disclosed Data.

- (b) Without limiting the provisions of Section 7.3, Project Co acknowledges that it shall be deemed to have obtained, conducted or carried out during the RFP Process all such new studies and analyses as Project Co may have deemed advisable, which were within the power of Project Co to obtain, conduct or carry out, including in relation to the Parcel Project Ready Lands, and those which they were reasonably capable of conducting or carrying out in the case of Lands that are not Parcel Project Ready Lands and to have properly reviewed and examined the Disclosed Data disclosed prior to the Reference Date and any other data, information or additional material as it may have deemed necessary or useful for purposes of its Proposal and for purposes of executing and delivering this Agreement and carrying out the Project Work.
- (c) Except as expressly provided for in Sections 7.3 and 7.4, Project Co shall not be entitled to make and shall not make any Claim against WDBA, a WDBA Party any WDBA Person or any other Governmental Authority, for damages, for extensions of time or additional payments, compensation or other relief under this Agreement on any grounds whatsoever in connection with the Disclosed Data.

## 7.3 Exceptions for the Guaranteed Engineering Data

- (a) WDBA represents and warrants that the data contained in the reports included in the Guaranteed Engineering Data are accurate, provided however, that WDBA shall have no liability or obligation to Project Co for any interpretation or extrapolation thereof.
- (b) A breach of WDBA's representations and warranties in Section 7.3(a) shall constitute a Compensation Event.

## 7.4 No Liability for Background Information

Without limiting the provisions of Section 7.3, neither WDBA, nor a WDBA Party nor a WDBA Person shall be responsible or liable in any respect for any Claims or Losses whatsoever suffered by Project Co or any Project Co Person by reason of any use of information, opinions or recommendations contained in, any conclusions Project Co may draw from, or any action or forbearance in reliance on, the Background Information.

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## 8. REPRESENTATIONS AND WARRANTIES

### 8.1 Representations and Warranties of Project Co

As at Financial Close, Project Co represents and warrants to WDBA as follows and acknowledges that WDBA is relying on such representations and warranties in entering into this Agreement.

- (a) Project Co is a general partnership duly created and validly existing under the laws of Ontario. Its general partners are [REDACTED] as to a [REDACTED]% interest and [REDACTED] as to a [REDACTED]% interest. Each of Project Co and its general partners is in good standing and in compliance with the Applicable Law that governs its existence and it is not in default of its obligation to produce any declaration or report required under Applicable Law and it has full power, capacity and authority to own its property and assets, to carry on its business as it is currently being conducted and to enter into this Agreement, the other Project Documents to which it is a party and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Agreement or to such other Project Documents and to perform all its obligations thereunder.
- (b) The following persona are the Equity Members of Project Co:  

**[REDACTED]**

Each Equity Member is duly created and validly existing under the laws of its jurisdiction of incorporation. Each Equity Member is in good standing and in compliance with the Applicable Law that governs its existence and is not in default of its obligation to produce any declaration or report required under Applicable Law and has full power and authority to own its property and assets, to carry on its business as it is currently being conducted and to enter into this Agreement, the Project Documents to which it is a party and all other documents, instruments and agreements required to be executed and delivered by it pursuant to this Agreement or such other Project Documents and to perform all of its obligations thereunder.
- (c) Project Co and each Prime Contractor is licensed and/or qualified to do business in Michigan or Ontario, as applicable, in accordance with Applicable Law.
- (d) Project Co and the Project Co Persons, collectively, have extensive experience and are knowledgeable in the design, construction, operation, finance and maintenance of projects similar to the Project and have the required ability, experience, skill and capacity to perform their obligations hereunder in a timely and professional manner as set out in this Agreement.
- (e) The ownership information set out in Schedule 2 [*Closing Deliveries and Ownership Information*] is true and correct and, except as set out in such Schedule, there is no outstanding offer, agreement or other arrangement pursuant to which:
  - (i) any person is, at the Commencement Date or at any time thereafter, entitled or obligated to subscribe for or take by means of transfer or conversion of any form of investment or security, any Equity Interest in Project Co, an Equity Member or any Related Owner of any of them (including any such entitlement or obligation that may arise in the exercise of an option, warrant or right enforceable by or against Project Co, any Equity Member or such Related Owner) which would

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- affect the direct or indirect ownership or Control of Project Co or such Equity Member; or
- (ii) with respect to Project Co or any Equity Member, any alteration to the constitution, powers or the management structure may take effect.
- (f) The representations, warranties, statements and certifications made by the Preferred Proponent and its Team Members respectively in the Proponent RFP Participation Agreement, the Team Member Participation Agreements and the Proposal Agreements, remain true and accurate in all material respects, except for changes which have been notified to, and consented to by, WDBA in accordance with the terms of the RFP Process.
  - (g) The execution by Project Co and each Equity Member of all Project Documents to which they are a party and of all other documents, instruments and agreements required to be executed by any of them pursuant to such documents and the completion of the transactions contemplated herein or therein have been duly authorized by all necessary action on the part of Project Co and each Equity Member, and all Project Documents to which Project Co or any Equity Member is a party, have been duly executed by each of them and constitute legal, valid and binding obligations of Project Co and each Equity Member, enforceable in accordance with their respective terms, subject only to limitations by bankruptcy, insolvency, liquidation, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance or similar Applicable Law of general application affecting creditors' rights generally.
  - (h) The copies of the Project Documents and of the other closing documents listed in Schedule 2 [*Closing Deliveries and Ownership Information*] which Project Co has delivered to WDBA are true and complete copies of such documents, and there are no other agreements or documents in existence replacing or relating to any of the Project Documents or of the other closing documents which would materially affect the interpretation or application of any of them.
  - (i) The execution and performance by Project Co and each Equity Member of all Project Documents to which they are a party do not violate or conflict with (i) their respective constituting, formation or organizational documents, including any by-laws; (ii) any Applicable Law; or (iii) any document which is binding upon them or any of their assets to the extent that such conflict would have or be reasonably likely to have a material adverse effect on the performance by Project Co of its obligations under this Agreement or the performance by any Equity Member of its obligations under any Project Document to which it is a party.
  - (j) All required third party consents to the execution by Project Co and each Equity Member of, and performance of their obligations under, the Project Documents to which they are a party, have been received, other than the Permits and other approvals contemplated herein to be obtained after the Commencement Date.
  - (k) Since the date of the delivery of the Proposal:
    - (i) there has been no material reduction in the qualifications and expertise of Project Co or any of the Prime Contractors to perform the Project Work; and
    - (ii) there has been no material adverse change in the financial condition of Project Co, any of the Equity Members, any of the Prime Contractors or any of the Parent Entities or Guarantors.

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- (l) No event or circumstance giving rise to a Project Co Event of Default has occurred and is continuing.
- (m) Except as otherwise disclosed in writing to WDBA in accordance with the RFP, Project Co does not have knowledge of any fact that has materially adversely affected or, so far as it can reasonably foresee, could reasonably be expected to materially adversely affect, either the financial condition of Project Co, of any Equity Member, a Parent Entity, any Prime Contractor or a Guarantor or their ability to perform their respective obligations under this Agreement or any of the other Project Documents to which they are a party.
- (n) There are no Claims in existence, pending or, to Project Co's knowledge, threatened against or affecting it, any Equity Member, any Parent Entity, any Prime Contractor or any Guarantor which might individually or in the aggregate materially adversely affect the business, properties, or assets, or the condition, financial or otherwise, of them or impair the ability of Project Co to observe and perform its obligations under this Agreement or the ability of Project Co, any Equity Member, any Parent Entity, any Prime Contractor or any Guarantor to observe and perform their respective obligations under any of the other Project Documents to which it is a party.
- (o) Project Co is not in, and has no knowledge of, any violation or default with respect to (i) any order, writ, injunction, or decree of any Governmental Authority or arbitral body, or (ii) any document or agreement binding on Project Co, any Equity Member, any Parent Entity, any Prime Contractor, or any Guarantor or their respective assets, that could materially adversely affect the business, properties or assets, or the condition, financial or otherwise, of Project Co, any Equity Member, any Parent Entity, any Prime Contractor or any Guarantor or materially impair the ability of Project Co to perform its obligations under this Agreement, or materially impair the ability of Project Co, any Equity Member, any Parent Entity, any Prime Contractor or any Guarantor to observe and perform their respective obligations under any of the other Project Documents to which they are a party and nothing has occurred that would, with the giving of notice or lapse of time, constitute such a violation or default.
- (p) Project Co has carefully reviewed the whole of this Agreement, and all Background Information, and, to Project Co's knowledge, nothing contained herein or therein inhibits or prevents Project Co or a Prime Contractor from performing the Project Work in accordance with this Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Agreement.
- (q) Project Co and all Project Co Persons have visited or had the opportunity to visit the Parcel Project Ready Lands as of the Reference Date and have become generally familiar with local conditions under which the DB Work is to be performed, including (i) the location, condition, layout, and nature of such Lands and surrounding areas, including the condition and location of Utilities, easements and access on and to such Lands; (ii) generally prevailing climatic conditions; (iii) anticipated labour supply and costs; and (iv) availability and cost of materials, tools and equipment. No claims for additional compensation or time shall be allowed resulting from Project Co's failure to familiarize itself with the foregoing conditions.
- (r) **[REDACTED]**
- (s) Project Co was created and acts only for the sole purpose of performing the Project Work and as such, it may enter into all operations that are necessary or collateral in order to

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perform the Project Work. Project Co has not undertaken any operation nor has it assumed any obligation other than those necessary or collateral to the Project Work.

- (t) Upon Financial Close, Project Co will be able to meet its obligations as they generally become due.
- (u) Project Co is not, and each Equity Member, Prime Contractor and each Related Owner of each of them is not, an Ineligible Person within the meaning of subparagraphs (i), (ii), (iv) or, based on Project Co's reasonable view of what WDBA would consider an Ineligible Person, subparagraph (iii) of the definition of an Ineligible Person.
- (v) Project Co is a general partnership for the purpose of the *Income Tax Act* and it is and shall remain during the Term, duly registered pursuant to Section V of Part IX of the *Excise Tax Act*.
- (w) Project Co shall be a resident of Canada for purposes of the *Income Tax Act* (Canada).
- (x) Each of the Equity Members of Project Co: (i) shall be a resident of Canada for the purposes of the *Income Tax Act* (Canada); or (ii) shall be a US person (as defined in IRC section 7701) and subject to federal income tax under the US Internal Revenue Code.

## 8.2 Representations and Warranties of WDBA

As at Financial Close, WDBA represents and warrants to Project Co as follows and acknowledges that Project Co is relying on such representations and warranties in entering into this Agreement.

- (a) WDBA has been duly incorporated and is validly existing pursuant to the provisions of IBTA.
- (b) Subject to Section 8.2(f), WDBA has full power, capacity and authority to own its property and assets, to carry on its operations, to enter into this Agreement, the other Project Documents to which it is a party and all other documents, instruments and agreements required to be executed and delivered by WDBA pursuant to this Agreement or such other Project Documents and to perform all its obligations thereunder.
- (c) The execution and performance by WDBA of all Project Documents to which it is a party do not violate or conflict with (i) its constating documents; (ii) any Applicable Law; or (iii) any document which is binding upon it or any of its assets, to the extent that such conflict would have a material adverse effect on the performance by WDBA of its obligations under this Agreement or any Project Document to which it is a party.
- (d) All required third party consents to the execution by WDBA of, and performance of its obligations under, the Project Documents to which it is a party, have been received, other than any WDBA Permits and other approvals contemplated herein to be obtained after the Commencement Date.
- (e) To WDBA's knowledge, there are no Claims in existence, pending or threatened against or affecting it, which would individually or in the aggregate materially adversely affect the ability of WDBA to observe and perform its obligations under this Agreement or any of the other Project Documents to which it is a party, other than those which are in the public record on the date hereof or have been otherwise disclosed to Project Co.

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- (f) The execution and delivery by WDBA of this Agreement and the other Project Documents to which it is a party, and all other documents, instruments and agreements required to be executed by it pursuant to this Agreement or such other Project Documents, and the completion of the transactions contemplated by this Agreement and such other Project Documents, have been duly authorized by all necessary action on the part of WDBA, and this Agreement, and each other Project Document to which WDBA is a party, have been duly executed by WDBA and constitute legal, valid and binding obligations of WDBA enforceable in accordance with their respective terms, subject only to:
- (i) limitations by bankruptcy, insolvency, liquidation, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance or similar Applicable Law of general application affecting creditors' rights generally; and
  - (ii) the provisions of the *Financial Administration Act*, RSC 1985, c. F-11.
- (g) No event or circumstance giving rise to a WDBA Event of Default has occurred and is continuing.
- (h) Subject to Section 5.1 and Section 5.2 and any other provisions of this Agreement, WDBA has such sufficient rights to, on and over the Site to enable WDBA to grant to Project Co the rights contemplated in this Agreement.

### **8.3 Without Prejudice**

Any covenant, representation or warranty made or given by Project Co or WDBA, as the case may be, under any provision of this Agreement is without prejudice to or limitation to any covenant, representation or warranty made or given by Project Co or WDBA, as the case may be, under any other provision of this Agreement.

### **8.4 Survival of Representations and Warranties**

All representations and warranties made or given by Project Co or WDBA, as the case may be, under any provision of this Agreement or in any certificate or other document delivered by or on behalf of Project Co or of WDBA at the time of execution of this Agreement, unless expressly provided otherwise, are given as at the date of Financial Close, shall survive the execution of this Agreement and the other Project Documents, shall not be mitigated or affected by any investigation by or on behalf of WDBA or Project Co, as the case may be, and shall remain true and accurate as at Financial Close.

### **8.5 Covenant of Project Co**

Subject to Section 2.8 (*Business Opportunities*), Project Co covenants that, for the duration of this Agreement, it shall not undertake any operation or assume any obligation other than those necessary for, or for the purposes of, the Project Work.

## **9. REPRESENTATIVES AND KEY INDIVIDUALS**

### **9.1 WDBA Representative**

- (a) WDBA has appointed the WDBA Representative to act as its agent and represent WDBA in connection with this Agreement. WDBA shall have a WDBA Representative appointed at all times during the Term. WDBA shall appoint, upon giving a prior Notice to Project Co, a substitute WDBA Representative to serve in the place and stead of the WDBA Representative during any temporary absence of the WDBA Representative. For the

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purposes of this Agreement, a “**Temporary Absence**” means an absence of less than 30 consecutive days or 30 days in any 60 day period. The WDBA Representative shall exercise the functions and powers identified in this Agreement as functions or powers to be performed by the WDBA Representative, including to:

- (i) receive all Notices, reports and other documents to be communicated or delivered under this Agreement;
  - (ii) monitor the Project Work and the performance thereof, including with respect to Tolling Operations and the monitoring of compliance with all Applicable Law and Permits;
  - (iii) receive and review Payment Reports in accordance with Section 37;
  - (iv) visit and inspect the Site and attend site and other progress and technical meetings and receive and review minutes and reports in respect thereof;
  - (v) designate WDBA representatives to serve on the committees described in Section 10 (*Committees*);
  - (vi) receive and review all matters and documents submitted under the Review Procedure, the Certification Procedure, including matters relating to Tolling Operations or with respect to any Change;
  - (vii) receive, review, inspect and audit the Required Records;
  - (viii) receive Supervening Event Notices;
  - (ix) audit and monitor Project Co’s Quality Management System; and
  - (x) perform such other functions and powers of WDBA under this Agreement as WDBA may notify Project Co from time to time.
- (b) The WDBA Representative, except as otherwise provided in this Agreement, shall not have authority to modify or waive any provision of this Agreement, relieve Project Co of any of its obligations hereunder, authorize a Change or bind WDBA with respect to any Claim made following the occurrence of a Supervening Event.
- (c) Any act of the WDBA Representative in connection with this Agreement shall be deemed expressly authorized by WDBA, and subject to Section 9.1(b) and except as previously otherwise notified, Project Co shall not be required to determine whether any express authority has in fact been given.

## 9.2 Project Co Representative

- (a) Project Co has appointed the Project Co Representative to act as its agent and represent Project Co in connection with this Agreement. Project Co shall have a Project Co Representative appointed at all times during the Term. Project Co shall appoint a substitute Project Co Representative to serve in the place and stead of the Project Co Representative during any Temporary Absence of the Project Co Representative, provided that the substitute Project Co Representative must comply with all applicable requirements imposed pursuant to Section 57.2 (*Integrity Provisions*) and that Project Co has given prior notification thereof to WDBA.

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- (b) The Project Co Representative shall serve as the single point of contact to WDBA for all purposes under this Agreement. Subject to Section 9.2(d) and except as otherwise previously notified by Project Co to WDBA, the Project Co Representative shall have full authority to act on behalf and in the name of Project Co for all purposes of this Agreement.
- (c) Any act of the Project Co Representative in connection with this Agreement shall be deemed expressly authorized by Project Co, and subject to Section 9.2(d) and except as previously otherwise notified, WDBA shall not be required to determine whether any express authority has in fact been given.
- (d) Notwithstanding any provision to the contrary, the Project Co Representative shall not have authority to modify or waive any provision of this Agreement on behalf of Project Co.

### 9.3 Change of Representatives

- (a) WDBA may, from time to time by Notice to Project Co, change the WDBA Representative. Such change shall have effect on the later of the date such Notice was given and the date specified in such Notice. WDBA shall use reasonable efforts to give an advance Notice of any such appointment to Project Co.
- (b) Project Co may not terminate the appointment of the Project Co Representative without the prior consent of WDBA, acting reasonably, to both the termination and the appointment of the new Project Co Representative. For such purposes, Project Co shall give WDBA a Notice stating the reasons for its request. Project Co acknowledges that during the DB Period and for a period of one year following Final Completion, a request for a change based on the fact that the employer of the Project Co Representative wishes to assign the Project Co Representative to another project or mandate or wants such Project Co Representative to hold another position in an Affiliate shall not, as a matter of course, be a valid reason. Project Co shall also provide WDBA with relevant information on the proposed replacement. WDBA may accept or refuse the termination (provided that where the termination of the Project Co Representative is beyond the control of its employer, or is the subject of merit promotion, rotation or career advancement, the consent of WDBA to such termination shall not be withheld) and accept or refuse the proposed substitute candidate (provided that where the proposed substitute candidate is suitably qualified and experienced, as determined by WDBA acting reasonably, acceptance shall not be withheld).

### 9.4 Key Individuals

- (a) The Key Individuals are identified in Schedule 3 [*Key Individuals*]. Project Co shall ensure that the Key Individuals devote all the time required to properly carry out their duties and functions in their capacities indicated in Schedule 3 [*Key Individuals*] throughout the DB Period, and/or the OMR Period, as the case may be.
- (b) Project Co shall use reasonable efforts to ensure that the Key Individuals appointed for the DB Work to be carried out during the DB Period remain assigned to the relevant portion of the Project Work to which they are respectively assigned for the entire DB Period. In particular, for the duration of the DB Period, no Key Individual shall be involved in any other project on behalf of Project Co or any Project Co Person if, in the reasonable opinion of WDBA, such involvement would have a material adverse effect on the Project Work. With respect to the Key Individuals appointed for the OMR Work, Project Co shall use reasonable efforts to ensure that they remain assigned to their respective portion of the Project Work for such period as will provide continuity in the Project Work.

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- (c) If Project Co considers it necessary to replace any Key Individual, Project Co shall first give a Notice to WDBA stating the reasons for its request. WDBA shall act reasonably in considering any change request including based on the fact that the employer of the Key Individual referred to in the Notice wishes to assign that individual to another project or mandate or wants to promote such Key Individual to a more senior position in the employer or an Affiliate of the employer. Project Co shall also provide WDBA with relevant information on the proposed replacement. After giving reasonable consideration to the change request, WDBA may, acting reasonably, accept or refuse the replacement (provided that where the termination of the Key Individual is beyond the control of its employer, the consent of WDBA to such replacement shall not be withheld) and accept or refuse the proposed substitute candidate (provided that where the proposed substitute candidate is suitably qualified and experienced, such acceptance shall not be unreasonably withheld).
- (d) Project Co confirms that it has obtained all undertakings necessary from all Project Co Persons and, where applicable, any other persons who employ or retain the services of a Key Individual in order that it may comply with this Section 9.4.
- (e) Should the undertakings set out in this Section 9.4 not be satisfied, WDBA may claim liquidated damages from Project Co in the amount of \$[REDACTED] per occurrence. The parties acknowledge that in calculating such amount, they have applied the principles set out in Section 63.11 (*Liquidated Damages*). The payment of such liquidated damages shall be WDBA's sole remedy in case of breach of this Section 9.4.
- (f) During any period when any Key Individual is unable, through illness, incapacity, maternal or paternal leave or any other reason whatsoever, to perform such Key Individual's functions under this Agreement, Project Co shall perform or may, by giving a Notice to WDBA, promptly appoint an alternative Key Individual to perform the functions which would otherwise be performed by such Key Individual, provided that Project Co must seek WDBA's consent in accordance with Section 9.4(c) if such alternative Key Individual is in place for more than 180 consecutive days or 180 days in any period of 365 days.

## 9.5 Replacement of Key Individuals and Project Co Representative by WDBA

Without limiting the provisions of Section 20.1 (*Removal of Personnel*), if WDBA determines, acting reasonably, that it is in the best interests of the Project that the Project Co Representative or a Key Individual be replaced, WDBA shall notify Project Co, such notification to include an explanation of the grounds for such determination. Unless WDBA's request is referred to the Dispute Resolution Procedure, Project Co shall, within 60 days of receipt of such Notice (or such other reasonable period as the parties may agree upon) find a replacement who is at least as qualified and experienced as the Project Co Representative or the Key Individual to be replaced. WDBA may accept or refuse the proposed candidate (provided that where the proposed substitute candidate is suitably qualified and experienced, such acceptance shall not be unreasonably withheld).

## 10. COMMITTEES

### 10.1 Establishment and Members

- (a) Without affecting any provisions of the Technical Requirements regarding any special committees referred to therein, the parties shall establish the following committees:
  - (i) within 10 days following the Commencement Date, the design and build committee (the "**DB Committee**");

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- (ii) within 10 days following the Commencement Date, the Communications Committee (the "**Communications Committee**") pursuant to Schedule 18 [*Communications Protocol*];
- (iii) within 10 days following the Commencement Date, the Community Benefits Committee (the "**Community Benefits Committee**") pursuant to Schedule 36 [*Community Benefits*];
- (iv) 12 months prior to Scheduled Substantial Completion Date, the tolling committee (the "**Tolling Committee**"); and
- (v) 6 months prior to the Scheduled Canadian POE Agency Buildings Handover Date, the operation, maintenance and rehabilitation committee (the "**OMR Committee**").

For the purposes of this Section 10, any committee required to be formed pursuant to this Agreement is called a "**GHIB Committee**".

- (b) For each of the GHIB Committees, WDBA and Project Co shall each appoint 2 representatives.
- (c) Representatives of WDBA Parties shall be entitled, at WDBA's request, to attend meetings of GHIB Committees. Members of the GHIB Committees may invite, by giving a prior Notice to all members of the relevant committee, such other advisors, consultants or other participants as they may require from time to time, to attend meetings and provide briefings to the GHIB Committees.

## 10.2 Functions and Roles

- (a) The GHIB Committees are formed to assist the parties in sharing information and coordinating matters related to their subject matter.
- (b) Except as otherwise provided for the DB Committee in Schedule 9 [*Project Schedule*], the GHIB Committees shall not have authority to make any decisions but may provide non-binding recommendations.
- (c) The DB Committee shall review the DB Schedule on a monthly basis as provided in Schedule 9 [*Project Schedule*].

## 10.3 Term

Unless the parties agree otherwise, the DB Committee shall serve only until the Final Completion Date and the Tolling Committee and OMR Committee shall serve until the Termination Date.

## 10.4 Replacement of Committee Members

WDBA and Project Co shall be entitled to replace any of their representatives on a GHIB Committee by giving a Notice to the other party. WDBA and Project Co shall use commercially reasonable efforts to deliver a prior Notice of any such replacements to the other party.

## 10.5 Procedures and Practices

- (a) Each GHIB Committee may adopt such procedures and practices for the conduct of its activities as it considers appropriate from time to time.

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- (b) Once established, each GHIB Committee shall meet as required, but not more than once a week.
- (c) Any one of the members of a GHIB Committee may convene a special meeting at any time. Special meetings may be convened by giving not less than 2 Business Days' Notice to all members of such GHIB Committee, identifying the agenda items to be discussed at the special meeting, provided that, if the meeting is called by reason of an Emergency situation, it may be called at any time on such notice as may be reasonable in the circumstances.
- (d) Each GHIB Committee shall meet at such location as the members may agree upon. Meetings may be held by means of such telephonic, electronic or other communication facilities as to permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting.
- (e) One representative of WDBA and one representative of Project Co shall constitute a quorum at any meeting of a GHIB Committee.
- (f) Minutes of all meetings and recommendations of each GHIB Committee shall be recorded and maintained by Project Co. Project Co shall circulate copies of such minutes within three Business Days of the holding of the meeting or the making of the recommendation. Project Co shall maintain a complete set of all minutes of the meetings of all GHIB Committees and shall make such minutes available for inspection by WDBA at any time during regular business hours.

#### **10.6 Traffic Management Sub-Committee**

- (a) Project Co shall nominate a representative to serve as of the Commencement Date on the Traffic Management Sub-Committee.
- (b) Project Co shall be entitled to replace its representative on the Traffic Management Sub-Committee, by giving a prior Notice to WDBA.
- (c) Project Co shall comply with all of the requirements set out in Schedule 12 [*Operational Traffic Management*] and in Part 15 [*Traffic Management - Construction*] of Schedule 10 [*Design and Construction Specifications*].

#### **10.7 OMR Subcommittees**

- (a) Project Co acknowledges that WDBA, Project Co and GSA shall establish a subcommittee of the OMR Committee to be called the "US Federal Plaza OMR Committee" whose scope and function are provided in Schedule 11 [*Operations, Maintenance and Rehabilitation*].
- (b) Project Co acknowledges that WDBA, Project Co, CBSA and CFIA shall establish a subcommittee of the OMR Committee to be called the "Canadian POE OMR Committee" whose scope and function are provided in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

### **PART B**

#### **GENERAL RESPONSIBILITIES OF PROJECT CO**

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## 11. STANDARD OF PERFORMANCE AND QUALITY ASSURANCE

### 11.1 Standard of Performance

Project Co shall, and shall require its Subcontractors to, carry out and perform the Project Work in an efficient, effective, safe, and good and workmanlike manner and in accordance with Good Industry Practice and the Quality Management System and in compliance with all Permits, Applicable Law and the Project Requirements.

### 11.2 Quality Assurance

Project Co shall comply with all requirements set out in Schedule 7 [*Quality Management*]. Without limiting the generality of the foregoing, Project Co shall develop and implement a Quality Management System in accordance with the requirements set out in such Schedule and shall ensure that all Project Co Persons comply with the requirements of such Quality Management System. Throughout the Term, Project Co shall be solely responsible for all quality assurance and quality control activities for all Project Work and shall manage its own processes and shall ensure that all Project Co Persons manage their own processes.

## 12. TITLE AND RISK OF LOSS

- (a) Title to all goods, materials and equipment, as they are progressively incorporated into the relevant Project Infrastructure, shall pass to Canada with respect to all Infrastructure located in Canada (the “**Canadian Infrastructure**”) and to Michigan with respect to all Infrastructure located in the US (the “**US Infrastructure**”), except title shall pass to Detroit with respect to the US Infrastructure located on the Temporary Road Segments or the Detroit Road Segments. All Project Infrastructure, as and when constructed, shall become property of Canada with respect to the Canadian Infrastructure, and the property of Michigan with respect to the US Infrastructure, except for that US Infrastructure located on a Temporary Road Segment or a Detroit Road Segment which shall, as and when constructed, become the property of Detroit. Notwithstanding such transfer of title and subject to and in accordance with the provisions of this Agreement, Project Co shall continue to be responsible for all risks of loss and damage for all such goods, materials and equipment and for the Project Work until the Termination Date or, in the case of the Michigan Interchange, until the Michigan Interchange Handover Date; in the case of the Temporary Road Segments, until each Temporary Road Segment has been handed over to Detroit in accordance with the Jurisdictional Transfer Agreement; and in the case of the Detroit Road Segments, until completion of the applicable Project Work for each Detroit Road Segment in accordance with any Detroit Permit required for such Project Work.
- (b) Subject to and in accordance with the provisions of this Agreement, Project Co shall be responsible for all Project Infrastructure and all Infrastructure on the Site or portion of the Site and shall assume responsibility therefor and bear the risks therefor, from the date on which the rights of use of the Site or such portions of the Site, as applicable, are granted to Project Co pursuant to Section 5.2, until the Termination Date or, in the case of the Michigan Interchange, until the Michigan Interchange Handover Date; in the case of the Temporary Road Segments, until each Temporary Road Segment has been handed over to Detroit in accordance with the Jurisdictional Transfer Agreement; and in the case of the Detroit Road Segments, until completion of the applicable Project Work for each Detroit Road Segment in accordance with any Detroit Permit required for such Project Work. Project Co’s responsibility for loss or damage to any Utilities is set out in Schedule 17 [*Utilities Requirements*].

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- (c) Subject to Section 30.2, Project Co shall retain ownership of all of its personal property and equipment used in connection with the performance of the Project Work and not incorporated therein or needed for its operation and, save to the extent the loss or damage is caused by a Non-Excusable Event of WDBA, WDBA and WDBA Parties shall have no liability for any loss of or damage to such personal property or equipment.

### **13. PUBLIC USE AND POLICE PATROLLING SERVICES**

#### **13.1 Public Use**

All Project Work shall be carried out so as to comply with all lawful and other proper instructions of the Police, and subject to the security requirements set out in this Agreement, so as not to interfere unnecessarily with the convenience of the public and access to and use of any of the connecting, adjacent or other roads in the vicinity of the Site, whether such roads are under the responsibility of WDBA, or of any other Relevant Authority. Without limiting the rights and obligations of Project Co provided under Section 19 (*Health and Safety*), including its rights to request compliance with reasonable health and safety rules established by Project Co, during the Term, Project Co shall keep all Project Infrastructure in operation on the Site open for public use, subject to any temporary and permanent Permitted Closures. Except as otherwise expressly provided in this Agreement, Project Co shall not have any Claim whatsoever against WDBA, any WDBA Party, any WDBA Person, any Governmental Authority or Emergency Service Provider for or in respect of any Lane Closure or diversion, or as a result of the exercise of any other rights or powers or the discharge of any duties or functions affecting at any time all or any part of the Site or the Project Infrastructure.

#### **13.2 Police Patrolling Services**

Project Co acknowledges that during the Term, patrolling services with respect to law enforcement will be provided on the Site by the Police, without cost to Project Co and further acknowledges that in any Emergency situation, Project Co shall promptly contact the Police in accordance with the Emergency Response Plan and as provided in the Technical Requirements. Except as otherwise provided in this Section 13 and in Part 5 [*Security*] of Schedule 10 [*Design and Construction Specifications*], Project Co is responsible to seek, at its own costs, any additional services offered by the Police required for the performance of the Project Work.

### **14. COORDINATION AND COOPERATION**

#### **14.1 Other Work**

- (a) Project Co shall bear full responsibility during the Term for the coordination and planning of the Project Work with any other work performed at any time on Site. Project Co shall cooperate with the contractors performing such work and shall give them reasonable access to the Site for the purposes of their respective work. Subject to the provisions of this Agreement including Schedule 20 [*WDBA Early Works*], Project Co shall bear all risks arising from its obligation to plan and coordinate such work, including the costs inherent in any resulting delay to its Project Work or access to the Site or procurement or delivery of materials and neither WDBA nor any WDBA Party shall be liable for any such costs.
- (b) WDBA shall use reasonable efforts to cause WDBA Persons (i) to comply with the instructions of Project Co relating to Site health and safety requirements, works scheduling and insurance requirements; and, (ii) to minimize any interference with the performance of the Project Work by Project Co and any Project Co Person, to the extent such interference by such WDBA Person can be controlled by WDBA. Any such interference with the performance of or damage to the Project Work caused by a WDBA Person, other than

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with respect to WDBA Early Works or work performed in accordance with a Material Agreement disclosed to Project Co prior to the Reference Date, shall, subject to and in accordance with Section 43 (*Supervening Events*), be a Compensation Event.

#### **14.2 Coordination and No Disruption**

- (a) Subject to Sections 5.4(b) and 5.4(c), Project Co shall perform the Project Work so as to coordinate with the operations of WDBA, any WDBA Party, any WDBA Person or any Governmental Authority engaged in activities on or about the Site.
- (b) Project Co shall minimize any interference by it and any Project Co Person with the operations of WDBA, any WDBA Person, or any Governmental Authority, including the performance of Governmental Activities.

### **15. INSPECTION AND ASSESSMENT OF SITE CONDITIONS**

#### **15.1 Inspection and Assessment**

Project Co acknowledges and agrees that it has inspected and assessed, to its satisfaction:

- (a) the Parcel Project Ready Lands as of the Reference Date and their surroundings and any Infrastructure located thereon;
- (b) documents provided by WDBA related to the structural, geotechnical, geological, climatic, hydrological, ecological, environmental and general condition of the Site and its surroundings and the nature and composition of the ground and subsoil thereof and the risk of injury or damage to adjacent or neighbouring property and all occupiers of same, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution and delivery of the Project Work;
- (c) the means of communication with the various parts of and access to and through the Parcel Project Ready Lands as of the Reference Date and any accommodation it may require and the adequacy and sufficiency of the rights of access;
- (d) the precautions and times and methods of working necessary to reasonably minimize any nuisance or interference, whether on public or private property, being caused to any third parties, including the relevant Technical Requirements pertaining to the sound environment and air quality;
- (e) the possibility of interference by third parties with access to or use of the Parcel Project Ready Lands as of the Reference Date or of the Infrastructure located thereon, as provided in this Agreement, and the nature and extent of the work to be carried out by such third parties as contemplated in this Agreement;
- (f) any other contingencies, restrictions, conditions or constraints (i) in respect of the Parcel Project Ready Lands as of the Reference Date and (ii) in respect of lands other than Parcel Project Ready Lands, based on information disclosed or made available by WDBA or in public records or, if provided access to such lands, based on reasonable observations, which would or might interfere with, limit or affect the ability of Project Co to carry out the Project Work or which would affect its decision to enter into this Agreement or the terms on which it would do so; and

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- (g) subject to Section 16 (*Environmental Matters*), the presence of any Contamination on, in or under Parcel Project Ready Lands as of the Reference Date.

The acknowledgement and agreements of Project Co in this Section shall not: (i) limit the rights of Project Co to relief or compensation which may otherwise be expressly granted under this Agreement; or (ii) constitute an actionable representation, warranty or agreement by Project Co in favour of WDBA; or (iii) give rise to a right of termination on the part of WDBA. However, WDBA may rely on such acknowledgement and agreement for the purposes of defending any action brought against WDBA or any Claim by Project Co for Losses, extension of time, additional compensation or any other relief, other than relief or compensation which may otherwise be expressly granted under this Agreement.

## 15.2 Acceptance of Site Conditions and Assumption of Risks

- (a) Without limiting the general scope of Section 2.4 (*Assumption of Risks and Responsibilities*), but subject to the provisions of Section 5 (*Lands, Site and Access*), and except as otherwise provided in this Agreement, Project Co shall be responsible for any Losses or Claims which Project Co or any Project Co Person suffers or incurs, or of which Project Co or any such Project Co Person is the object, caused by a poor assessment of the conditions described in Section 15.1, provided that this Section 15.2 shall apply only as between WDBA and Project Co and shall not affect any agreement between Project Co and any Project Co Person in relation to such Losses or Claims.
- (b) Project Co acknowledges and agrees that it has investigated the Parcel Project Ready Lands and the Infrastructure located thereon as at the Reference Date, including the Disclosed Data, prior to executing this Agreement and agrees to accept such Parcel Project Ready Lands, the Infrastructure located thereon and the Site Conditions related thereto, on an “**as is**”, “**where is**” basis.
- (c) Project Co further acknowledges and agrees that, other than as referred to or contained in this Agreement, no representations or warranties have been made, nor documentation delivered to Project Co or any Project Co Person, which would indicate that Project Co would be unable to perform the Project Work in a lawful manner.

## 16. ENVIRONMENTAL MATTERS

[REDACTED]

## 17. OTHER SITE MATTERS

### 17.1 Items of Archaeological or Other Interest

- (a) Upon the discovery on the Site at any time of any aboriginal or indigenous records, antiquities, fossils, remains, mounds, earthworks, forts, burial and village sites, mines, coins, articles of value, or other archaeological property or items having archaeological, artistic, historic or monetary interest or value, Project Co shall immediately inform WDBA and, as the case may be, any other Governmental Authority having jurisdiction over such matter. Project Co shall immediately stop the performance of any Project Work in the area of the discovery until receipt of instructions from WDBA. If potential human remains are discovered, Project Co shall not photograph the potential remains under any circumstances, even to convey information to the relevant Governmental Authority. Without limiting the obligations of Project Co to comply with all Applicable Law, Project Co shall comply with the requirements of the Environmental Assessment and (with respect of the US Lands) the *National Historic Preservation Act* (“**NHPA**”) and any agreement

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executed under the NHPA that may be relevant to Project Co's activities, including the December 22, 2008 Memorandum of Agreement Between the Federal Highway Administration and the Michigan State Historic Preservation Officer Regarding the Detroit River International Crossing (Appendix A of the ROD).

- (b) All items described in Section 17.1(a) which may be found at the Site are and shall remain the sole and absolute property of the relevant Governmental Authority.
- (c) All Losses incurred by Project Co, including as a result of any delay in the performance of the Project Work resulting from compliance with Section 17.1(a) shall be borne by WDBA if performance of the Project Work is interrupted for an aggregate period of more than 7 days during the Term. Such event shall constitute a Compensation Event and the provisions of Section 43 (*Supervening Events*) shall apply.

## 17.2 Geotechnical Conditions

Subject to the provisions of Section 16 (*Environmental Matters*) and Section 7.3 (*Exceptions for the Guaranteed Engineering Data*), Project Co assumes all risks, costs and expenses arising from or relating to the geotechnical conditions of the Site, including ground and groundwater.

## 17.3 Indigenous Peoples

- (a) Upon request by WDBA, Project Co shall collaborate and assist WDBA, a WDBA Party or a WDBA Person with any communications or consultations they may engage in with indigenous communities on matters relating to the Project or to any portion of the Site or neighbouring areas, provided that if such assistance results in material costs and expenses for Project Co, such assistance shall constitute a WDBA Change.
- (b) WDBA shall be responsible for dealing with any Claim by any indigenous community against WDBA, a WDBA Person, Project Co or Project Co Person with respect to the Project or affecting the Lands or Site and any such Claim shall constitute a Compensation Event. The responsibility of WDBA shall exclude any Claims based on or arising from any Non-Excusable Event of Project Co in the course of the performance of their respective obligations under the Project Documents which relate to the Lands or the Site.
- (c) Project Co shall comply with all obligations with respect to indigenous peoples as set out in this Agreement.

## 17.4 Title Encumbrances

All Project Work carried out by or on behalf of Project Co shall be carried out in a manner which does not breach any of the provisions of the Title Encumbrances set out in Schedule 35 [*Land Restrictions*]. Subject to Section [REDACTED], if any restrictions or conditions affecting the Site, not disclosed in Schedule 35 [*Land Restrictions*] are discovered after the Reference Date or otherwise created (other than Encumbrances created by Project Co or any Project Co Person in breach of Section 4.6 of Schedule 26 [*Construction Period Payments*]), such event shall constitute a Compensation Event except if such restrictions or conditions were already otherwise disclosed in the Technical Requirements.

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## 18. PROTEST AND TRESPASS

### 18.1 Responsibility for Protesters and Trespassers

- (a) Subject to Section 18.2, the management of any Protesters or Trespassers shall be the responsibility of Project Co throughout the Term. Except as otherwise provided in this Agreement, WDBA shall not be responsible for the presence of Protesters or Trespassers on or near the US Lands which are US Parcel Project Ready or the Canadian Lands which are Canadian Parcel Project Ready, nor for any interference they may cause which may affect the Project Work. The presence of or interference by any Protesters or Trespassers on or near the US Lands which are US Parcel Project Ready or the Canadian Lands which are Canadian Parcel Project Ready shall not be a breach of the obligation of WDBA to grant access to the US Lands which are US Parcel Project Ready or the Canadian Lands which are Canadian Parcel Project Ready to Project Co pursuant to Section 5 (*Lands, Site and Access*), nor shall it be a breach of any other obligation, representation or warranty of WDBA under this Agreement.
- (b) If, at any time during the Term (to the extent such management is not otherwise the responsibility of the Police), any part of the US Lands which are US Parcel Project Ready or the Canadian Lands which are Canadian Parcel Project Ready or any Infrastructure located thereon is occupied, or access to the US Lands which are US Parcel Project Ready or the Canadian Lands which are Canadian Parcel Project Ready is prevented or interfered with, by Protesters or Trespassers, then, as soon as reasonably practicable, Project Co shall notify WDBA of such occurrence and of the action which Project Co proposes to take in respect of such occurrence. Project Co may exercise any legal remedies available to it to remove Protesters or Trespassers (including obtaining, if available, injunctions or other similar relief), provided that Project Co shall give WDBA not less than 24 hours' notice (except in case of Emergency) prior to commencing any legal proceedings and shall continually update WDBA as to the status of any such proceedings.

### 18.2 WDBA's Assistance

Project Co may request the assistance of WDBA (including requesting that WDBA request the assistance of a WDBA Party) for the purposes of removing any Protestor or Trespasser from the US Lands which are US Parcel Project Ready or the Canadian Lands which are Canadian Parcel Project Ready or any Infrastructure if Project Co can demonstrate, to the reasonable satisfaction of WDBA, that:

- (a) it has exercised all reasonable legal means available to it to remove such Protestor or Trespasser (provided that for this purpose, Project Co may but shall not be obligated to seek injunctive or other judicial remedies beyond the court of first instance); and
- (b) the continued presence of these Protestors or Trespassers has a material adverse effect on the performance of the Project Work despite Project Co's actions to mitigate such effect.

Following such request, WDBA shall notify Project Co as to whether WDBA can lawfully provide any assistance in relation to the removal of such Protestors or Trespassers that is not independently available to Project Co and, to the extent that such assistance can be lawfully provided, WDBA shall provide such assistance (at Project Co's expense) to the extent that WDBA determines that it is reasonable and appropriate in the circumstances to do so.

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## 19. HEALTH AND SAFETY

### 19.1 Site Safety and Security

Project Co shall:

- (a) comply with the Safety Management Plan;
- (b) keep the Site, the Project Work and the Facility in a safe and orderly state, as appropriate in accordance with Good Industry Practice, to avoid danger to persons on the Site, in the Facility and in the immediate vicinity of the Site;
- (c) take such measures as are reasonable in accordance with Good Industry Practice to prevent access to the Site and the Facility of any persons or animals not entitled to be there;
- (d) with respect to Ontario DB Work, perform, or cause a Project Co Person to perform, all of the obligations of the “**constructor**”, and defend and indemnify WDBA, each WDBA Person and each Governmental Authority against any and all of the Losses and Claims at any time suffered or incurred by them in respect of a failure to comply with the obligations of the “**constructor**”, under the *Occupational Health and Safety Act* (Ontario) and all regulations thereto and Part 2 of the *Canada Labour Code* unless the failure is due to a WDBA Non- Excusable Event;
- (e) perform or cause a Project Co Person to perform, all of the obligations under OHSA Laws and indemnify WDBA, each WDBA Party and each WDBA Person and save them harmless from against any and all of the liabilities under OHSA Laws and any Claims and Losses arising out of or resulting from any violation of OHSA Laws by Project Co or a Project Co Person, including Claims or Losses attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, to the extent caused in whole or in part by the violation of any OHSA Law by Project Co or a Project Co Person, unless the failure is due to a Non-Excusable Event of WDBA; and
- (f) provide WDBA with certificates of good standing under OHSA Laws every 90 days.

## 20. HUMAN RESOURCES

### 20.1 Removal of Personnel

Without limiting any of WDBA's rights or increasing WDBA's responsibilities, WDBA shall have the right to order the removal from the Site of any person employed by or acting on behalf of Project Co or any Project Co Person. Such right shall be exercisable if, in the reasonable opinion of WDBA, such person engages in misconduct or is incompetent or negligent in the performance of any duties and causes or may cause a threat or a risk to the security, health or safety of any person, to the environment or to the safety or integrity of any Infrastructure on the Site or any property in the vicinity of the Site or if WDBA considers it may potentially compromise the reputation of WDBA or negatively affect public perception. The failure by WDBA to exercise any such rights shall not in any way affect Project Co's responsibilities hereunder.

### 20.2 Staff Competency

Project Co shall ensure that there shall be at all times a sufficient number of persons employed or retained by Project Co or by any Project Co Person, with the requisite level of skill and

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experience to perform the Project Work. Project Co shall further ensure that all persons employed or retained by Project Co or any Project Co Person engaged in the performance of the Project Work receive such training and supervision as is necessary to ensure the proper performance of the Project Work in accordance with the Project Requirements, including all applicable OSHA Laws.

### 20.3 Non-Discrimination

- (a) Project Co shall not refuse to employ and shall not discriminate in any manner against any person because:
- (i) of that person's race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, disability, conviction for which a pardon has been granted, family status, height, weight or genetic information;
  - (ii) of the race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, disability, conviction for which a pardon has been granted, family status height, weight or genetic information of any person having a relationship or association with that person;
  - (iii) a complaint has been made by or on behalf of that person or information has been given by or on behalf of that person relating to an alleged failure by Project Co to comply with the provisions of this Section 20.3; or

on any basis prohibited by FHWA Form 1273 with respect to any Project Work undertaken in Michigan.

### 20.4 Policies and Compliance

- (a) WDBA may, by way of a WDBA Change, require that Project Co or any Project Co Person comply with a specified labour or human resources policy of WDBA.
- (b) Project Co shall ensure that there are set up and maintained by it and by all Project Co Persons, human resources policies and procedures covering all relevant matters relating to the Project Work (including, for example, health and safety). Project Co and all Project Co Persons shall ensure that the terms and the implementation of such policies and procedures comply with Applicable Law and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are available to WDBA on a timely basis.

## PART C

### DESIGN, CONSTRUCTION, INTERIM OM WORK AND OMR WORK

## 21. DESIGN AND CONSTRUCTION

### 21.1 Overall Responsibility

- (a) Project Co shall be responsible at its cost for the design, engineering and construction of the Project Infrastructure and all other relevant components of the Project Work as well as their completion, commissioning and testing in accordance with the provisions of this Agreement. The DB Work shall be carried out in accordance with Good Industry Practice, Applicable Law, the Permits, the Quality Documentation, the DB Specifications, the Proposal and all other Technical Requirements. It shall also be carried out in accordance

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with the undertakings of Project Co set out in Schedule 34 [*Proposa*], the Certification Procedure, the Review Procedure and the DB Schedule.

- (b) All Design Work shall be performed by professional engineers, architects and other personnel having the level of specialized knowledge and experience as Good Industry Practice requires for the performance of design work of a similar nature, scope and complexity. In addition, Project Co shall ensure compliance with all Applicable Law which requires that Design Work be performed or reviewed by professional engineers and architects registered to practice in the jurisdiction in which the component of the Design Work will be situated. As and when required by Applicable Law, all relevant Design Documents and Working Drawings shall be signed and sealed by such registered architects and engineers. Project Co shall, or shall cause properly licensed architects or professional engineers to, prepare and provide Design Work that is complete, detailed, coordinated, accurate, adequate and buildable for securing required permits and approvals and constructing the Project Work in accordance with the Project Requirements.
- (c) The Design Work shall: (i) set out all requirements for the construction of the Project; (ii) include drawings and specifications that establish in detail the quality levels, materials and systems required for the Project Work and (iii) include all appropriate or advisable Project testing requirements, including geotechnical, structural, electrical, or mechanical tests and investigations, and construction materials testing and specify whether the testing is to be performed by the Independent Design Checker, the Independent Certifier, or by Project Co or a Project Co Person. Project Co shall provide WDBA with Design Work that depicts a Project which, if built in accordance with the Design Work, shall comply with the Project Documents. If any Governmental Authorities' interpretations of whether the Design Work complies with all Applicable Law conflict with one another, Project Co will coordinate with the Governmental Authorities in an effort to resolve the conflicts in interpretation. If despite Project Co's diligent and good faith efforts, resolution among and with the Governmental Authorities cannot be achieved to allow the Design Work to comply with all Applicable Law, Project Co shall notify WDBA and describe in detail the conflicts in interpretation, how Project Co attempted to resolve the conflicts and Project Co's recommendation of which interpretation, if any, is in Project Co's professional opinion the correct or best interpretation. WDBA shall then decide which, if any, Governmental Authorities' interpretation should be followed and Project Co shall proceed in accordance with WDBA's instructions. With respect to any Project Work in the US, the relevant Michigan Party shall make such determination and the determination of such Michigan Party shall be communicated to Project Co as the decision of WDBA.
- (d) If, at any time during the Term, the Project Infrastructure or any parts thereof or other relevant component of the Project Work do not fully satisfy the Project Requirements, Project Co shall, at its own cost and expense, rectify same so as to have them comply with such Project Requirements and meet all safety and performance standards and other requirements provided in this Agreement.
- (e) Project Co shall design, engineer, construct and commission the Facility so as to provide WDBA with a complete and operational Facility that is fit for its intended purposes in compliance with the Technical Requirements and that shall allow Project Co to fully perform the Interim OM Work and the OMR Work, all in accordance with the terms of this Agreement.

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## 21.2 Construction Management

Unless otherwise expressly provided in this Agreement, Project Co shall be responsible for the means, methods, techniques, sequences and procedures, and for the management and coordination of all portions of the DB Work, as well as the operation, maintenance and removal of temporary structures and facilities and shall provide everything (including labour, plant, equipment Utilities and materials) necessary for the construction and commissioning of the Facility and other performance of the DB Work.

Without limitation, Project Co shall in a timely and professional manner and in accordance with the requirements of this Agreement:

- (a) ensure that no work other than the DB Work under this Agreement is constructed on the Site by Project Co or any Project Co Person;
- (b) protect the DB Work from the elements, casualty and damage;
- (c) in respect of plant, equipment and materials incorporated in the DB Work, use plant, equipment and materials that:
  - (i) comply with the Technical Requirements; and
  - (ii) are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law and Good Industry Practice so as not be hazardous or dangerous.

## 21.3 No Liability of WDBA

Without limiting the generality of Section 2.4 (*Assumption of Risks and Responsibilities*), Project Co shall be liable for all Losses or Claims Project Co may suffer or incur due to its underestimation of the complexity of the Project which leads to an overrun in design or construction costs or a delay in the completion of the Project Infrastructure, with the exception of Losses or Claims arising from a failure by WDBA to comply with any of its obligations under this Agreement or except as may otherwise be provided for in this Agreement. Except as may otherwise be provided in this Agreement, Project Co shall also be liable for all Losses or Claims it may suffer or incur due to a loss of productivity of the workforce, an increase in the cost of labour and materials, the use of inadequate construction methods, an increase in the cost of interest related to the construction or currency fluctuations.

## 21.4 Advancement of Construction Work

Project Co may undertake the construction of any portion of the Project Infrastructure, subject to obtaining all necessary Permits, after the start of but prior to the completion of the review of the relevant Design Data by the Independent Certifier or by WDBA, but not prior to having completed all other requirements set out herein regarding the control and verification of the Design Work, including the Design Data related to such portion of the Project Infrastructure. However, Project Co shall undertake such work at its own risk and shall remain bound, in any event, to comply with the results of the Review Procedure once it is completed as well as to comply with all other requirements regarding the control and verification of such design. Project Co shall, at its own cost, effect any reconstruction, change or corrective work to the Project Infrastructure which is necessary in order to comply with the results of any such control and verification procedure and to satisfy the requirements of this Agreement.

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## 21.5 Community Benefits Plan

Project Co shall comply with and implement the Community Benefits Plan in accordance with the terms of the Proposal, the Proposal Extracts and the terms set out in Schedule 36 [*Community Benefits*].

## 21.6 Local Canadian Workforce Goal

Without limiting anything in Schedule 36 [*Community Benefits*], as part of the Workforce and Development Participation Strategy, Project Co shall comply with the Local Canadian Workforce Goal and shall report on Local Canadian Workforce Goal activities, accomplishments and outcomes.

## 22. CONSTRUCTION SCHEDULE

### 22.1 Scheduled POE Handover Dates and Scheduled Substantial Completion Date

- (a) Project Co shall, in accordance with this Agreement, complete and achieve (i) the Canadian POE Agency Buildings Handover by the Scheduled Canadian POE Agency Buildings Handover Date, (ii) the US POE Agency Buildings Handover, excluding the USDA Building, by the Scheduled US POE Agency Buildings Handover Date, and (iii) Substantial Completion by the Scheduled Substantial Completion Date. The Scheduled Substantial Completion Date shall be adjusted as a consequence of Project Co failing to achieve Canadian POE Agency Buildings Handover by the Scheduled Canadian POE Agency Buildings Handover Date or the US POE Agency Buildings Handover by the Scheduled US POE Agency Buildings Handover Date, and to the extent, if any, that the Scheduled Substantial Completion Date is extended as a result of a Supervening Event.
- (b) Project Co shall commence the Project Work promptly following the Commencement Date. Project Co shall pursue the Project Work diligently to ensure that each of the milestone events for the completion of the Project Infrastructure, as identified in the DB Schedule, as amended from time to time in accordance with the terms of this Agreement, is achieved at or before the time specified therefor in such DB Schedule. Project Co shall also perform the DB Work in material conformity with the DB Schedule, as updated from time to time in accordance with the terms of this Agreement.

### 22.2 DB Schedule

Project Co shall prepare and maintain the DB Schedule. The DB Schedule shall be prepared and maintained in accordance with Good Industry Practice and shall include at a minimum all of the elements required to be included pursuant to Schedule 9 [*Project Schedule*]. The DB Schedule shall contain sufficient detail to enable WDBA to monitor the progress of all Project Work to be carried out during the DB Period, including all commissioning activities.

### 22.3 Variations and Revisions to the DB Schedule

- (a) All variations, revisions and updates to the DB Schedule shall be made only in accordance with the provisions of Schedule 9 [*Project Schedule*].
- (b) WDBA may request at any time, as a WDBA Change pursuant to Schedule 22 [*Change Procedure*], a revision to the DB Schedule to accelerate the performance of the Project Work or any component thereof.

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- (c) Project Co shall also prepare and provide to WDBA an updated DB Schedule from time to time, as required to reflect consequential changes to the DB Schedule or changes following a WDBA Change or a Supervening Event.

#### 22.4 Failure to Maintain Schedule

- (a) Subject to Section 43 (*Supervening Events*), if, at any time, the actual progress of the DB Work performed during the DB Period has significantly fallen behind the DB Schedule or WDBA, is otherwise of the opinion, acting reasonably, that Project Co will not achieve the Bridge Handover by the Scheduled Bridge Handover Date, the Canadian POE Agency Buildings Handover by the Scheduled Canadian POE Agency Buildings Handover Date, the US POE Agency Buildings Handover by the Scheduled US POE Agency Buildings Handover Date, the Michigan Interchange Handover by the Scheduled Michigan Interchange Handover Date or Substantial Completion by the Scheduled Substantial Completion Date, Project Co shall:
  - (i) within 10 Business Days of receipt of a Notice from WDBA (or such other period WDBA may agree to, in the circumstances), produce and deliver to WDBA, pursuant to the Review Procedure, (A) a report identifying the reasons for the delay and/or negative float; and (B) a plan showing the steps that are to be taken by Project Co to eliminate or reduce the delay and/or negative float and to achieve the Canadian POE Agency Buildings Handover by the Scheduled Canadian POE Agency Buildings Handover Date, the US POE Agency Buildings Handover by the Scheduled US POE Agency Buildings Handover Date or Substantial Completion by the Scheduled Substantial Completion Date or, if any one of such dates can no longer be achieved, as soon as possible subject always to Section 46.1 (*Project Co Events of Default*); and
  - (ii) implement the measures identified in the plan delivered pursuant to Section 22.4(a)(i).
- (b) Failure by Project Co to comply with the DB Schedule, including failure to achieve the Bridge Handover by the Scheduled Bridge Handover Date, the Canadian POE Agency Buildings Handover by the Scheduled Canadian POE Agency Buildings Handover Date, the US POE Agency Buildings Handover by the Scheduled US POE Agency Buildings Handover Date, the Michigan Interchange Handover by the Scheduled Michigan Interchange Handover Date or Substantial Completion by the Scheduled Substantial Completion Date, shall not constitute a Project Co Event of Default to the extent that Project Co complies with the provisions of Section 22.3 and this Section 22.4(a).
- (c) In addition to any other rights WDBA has under this Agreement, in the event a plan delivered pursuant to Section 22.4(a)(i) is not being implemented to WDBA's satisfaction, acting reasonably, or if no such plan is delivered, then WDBA may give Project Co 30 days' Notice of same and if such failure is not remedied within such 30 day period, it shall be a Project Co Event of Default. WDBA may require Project Co to undertake Extraordinary Measures at Project Co's sole cost, to bring the Project Work into compliance with the Project's schedule by giving Project Co a Notice to that effect. If Project Co fails to take such Extraordinary Measures within 30 days after the giving of such Notice, it shall be a Project Co Event of Default.

#### 22.5 OMR Five Year Plan

Project Co shall prepare and maintain the OMR Five Year Plan. This plan shall be prepared and maintained in accordance with Good Industry Practice and shall include at a minimum all of the

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elements required to be included pursuant to Schedule 11 [*Operations, Maintenance and Rehabilitation*]. In all cases, it shall contain sufficient detail to enable WDBA to monitor the progress of all OMR Work to be carried out during the OMR Period.

## **22.6 Interim OM Period**

During the Interim OM Period, Project Co shall comply with all of the requirements set out in Appendix 11-2 of Schedule 11 [*Operations, Maintenance and Rehabilitation*].

## **22.7 Monitoring of Progress**

Project Co shall continuously monitor the progress of the Project Work in relation to the DB Schedule, any plan provided in relation to Interim OM Work and the OMR Five Year Plan and shall also provide WDBA all Mandatory Reports required pursuant thereto, as described in Schedule 8 [*Records and Mandatory Reports*].

## **23. UTILITIES**

### **23.1 Construction and Installation of Utilities**

Except for existing Utilities already on, under or over the Site as of the Commencement Date and which need to be relocated for purposes of the Project Work, Project Co shall not construct, install or permit the construction or installation of any Utilities on, under or over the Site or any part thereof without the prior written consent of WDBA, acting reasonably. Without limiting the generality of the foregoing, at no time shall Project Co use or permit the use of the Site or of any Project Infrastructure for gas, oil or other petroleum product pipelines or infrastructure in connection therewith without the prior consent of WDBA, provided that such consent shall not be unreasonably withheld or delayed with respect to temporary Utilities required for the performance of the Project Work.

### **23.2 Protection of Utilities**

Except as required for Utility Work carried out in compliance with Section 23.4 with respect to any Utilities located as at the Commencement Date or thereafter on, under or over the Site, Project Co shall not, and it shall cause Project Co Persons not to, interfere with the operations and services of such Utilities (except as permitted under Section 7.3 of Schedule 17 [*Utilities Requirements*]) nor cause any damage to such Utilities.

### **23.3 [REDACTED]**

### **23.4 [REDACTED]**

### **23.5 Utility Work**

- (a) Without limiting any other provision of this Agreement, Project Co acknowledges that it shall be responsible for the coordination of all Utility Work. Subject to **[REDACTED]** and **[REDACTED]**, Project Co shall also be responsible for any delays in the performance of the Project Work in connection with the carrying out of all Utility Work required in connection with such Project Work, including delays by the Utility Suppliers to perform their obligations in connection with such Utility Work.
- (b) Project Co shall also be responsible to ensure that all Utility Work performed by Project Co shall be carried out in accordance with the requirements set out in Schedule 17 [*Utilities Requirements*].

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- (c) Subject to the other provisions of this Agreement, Project Co shall be responsible to ensure that all Utility Work carried out in connection with the Project Work is carried out as required and, without limiting the generality of the foregoing, Project Co shall be responsible for:
- (i) obtaining from the relevant Utility Supplier or any other Relevant Authority all rights of entry or access necessary or expedient in connection with such Utility Work;
  - (ii) identifying all requirements of Utility Suppliers or other Relevant Authority in respect of such Utility Work, including determining the most effective strategies for undertaking such Utility Work;
  - (iii) arranging, co-ordinating and entering into all necessary agreements with relevant Utility Suppliers or other Relevant Authorities in connection with such Utility Work, complying with any requirements set out in such agreements, obtaining any necessary consents or approvals in connection therewith, providing safe and timely access for testing and inspections and providing information and drawings before, during and following completion of such Utility Work; and
  - (iv) ensuring that all Permits required to be obtained by Project Co in connection with such Utility Work are obtained, including preparing all required documentation in connection therewith.

A change to the US Utility Baseline Schedule that materially adversely impacts the DB Schedule shall constitute a Compensation Event. In the event that a Compensation Event is triggered as a result of a change to the US Utility Baseline Schedule, to the extent Project Co is compensated elsewhere due to such a delay (including pursuant to Section [REDACTED]), Project Co shall not be entitled to double recovery for the Compensation Events.

**23.6 [REDACTED]**

**23.7 [REDACTED]**

**23.8 [REDACTED]**

**23.9 [REDACTED]**

## **24. COMMISSIONING, INDEPENDENT CERTIFIER AND CERTIFICATION PROCEDURE**

### **24.1 Commissioning**

Project Co shall perform all commissioning activities required to be carried out in order to achieve the Canadian POE Agency Buildings Handover, the US POE Agency Buildings Handover and Substantial Completion, in full compliance with Part 25 [*Commissioning*] of Schedule 10 [*Design and Construction Specifications*] and the Technical Requirements.

### **24.2 Appointment of Independent Certifier**

The Independent Certifier was appointed by WDBA in accordance with the process set out in the RFP.

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### 24.3 Independent Certifier Agreement

WDBA and the Independent Certifier entered into the Independent Certifier Agreement substantially in the form set out in Schedule 32 [*Form of Independent Certifier Agreement*] at the Effective Time.

### 24.4 Role and Services

The general role, functions and obligations of the Independent Certifier and services to be provided are those described in the Independent Certifier Agreement. WDBA shall not amend the role, functions, obligations, fees paid or scope of work of the Independent Certifier or any other material provision of the Independent Certifier Agreement without prior consultation with Project Co.

### 24.5 Cooperation, Information and Access

- (a) All instructions and representations issued or given by WDBA to the Independent Certifier shall be simultaneously copied to Project Co. Project Co shall be entitled to attend all inspections performed by or meetings involving the Independent Certifier.
- (b) WDBA shall provide the Independent Certifier with any information the Independent Certifier reasonably requires for the purpose of providing the services described in the Independent Certifier Agreement, including all information and documents necessary for the Independent Certifier to deliver the relevant Certificates and other documentation pursuant to the Certification Procedure. Project Co shall cooperate with WDBA and provide any information in its possession or control which is requested by WDBA to enable WDBA to respond to a request for information from the Independent Certifier.
- (c) Project Co shall allow the Independent Certifier to have access to the Site and the Infrastructure located thereon (including the Project Infrastructure), and, except for records and communications which are legally privileged, to all documents and records relating to the Project Work, as the Independent Certifier reasonably requires to perform its obligations under the Independent Certifier Agreement.

### 24.6 Payment of Fees

WDBA and Project Co shall share all fees and costs of the Independent Certifier in the manner provided in Schedule 26 [*Construction Period Payments*].

### 24.7 Termination and Replacement

If the Independent Certifier's appointment is terminated for any reason, a suitably qualified and experienced replacement consultant firm shall be appointed by WDBA to act as the Independent Certifier as soon as reasonably practicable. The selection of any such replacement shall be made in accordance with WDBA's applicable rules and policies then in effect, but after consultation with Project Co. The terms of the appointment shall, unless otherwise agreed, be substantially the same as those set out in Schedule 32 [*Form of Independent Certifier Agreement*]. Pending the appointment of a replacement Independent Certifier, the Independent Certifier whose appointment was terminated shall continue to perform its functions under the Independent Certifier Agreement, or, if that is not possible or appropriate, the Owner's Engineer shall then carry out the duties of the Independent Certifier for such period.

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#### 24.8 Certification Procedure

- (a) Project Co shall ensure that all duties, obligations and requirements of Project Co or any Project Co Person set out in the Certification Procedure and in the Review Procedure are complied with by Project Co and by all Project Co Persons. Project Co shall ensure that at all relevant times duly authorized and qualified personnel of Project Co can comply with the requirements of such procedures and sign the relevant documents contemplated by the Certification Procedure. WDBA shall ensure that all duties, obligations and requirements of WDBA set out in the Certification Procedure and in the Review Procedure are complied with by WDBA and by all WDBA Persons.
- (b) The issuance of a Certificate by the Independent Certifier shall not in any way limit:
  - (i) the obligation of Project Co to design and construct the Project Infrastructure in accordance with the Project Requirements;
  - (ii) the obligation of Project Co to operate, maintain and rehabilitate the Project Infrastructure and the Site in accordance with the Project Requirements;
  - (iii) any representations or warranties given by Project Co under this Agreement; or
  - (iv) the obligations of Project Co to provide the Project Work and the Project Infrastructure in accordance with the Project Requirements.

#### 24.9 Certification Events

When, in the opinion of Project Co, a Certification Event has occurred, Project Co shall provide the required notification and shall comply with and provide all supporting documentation in accordance with the Certification Procedure. The Independent Certifier shall comply with its obligations and inspect the relevant segment of the Project Infrastructure for which Certificate is sought and, as applicable, provide the relevant response and Certificate pursuant to the Certification Procedure.

#### 24.10 Effect of Certificates

The issuance of any Certificate by the Independent Certifier for a Certification Event, the commencement of use by WDBA or the public of any part of the Project Infrastructure, or the conduct of any activities in connection or otherwise associated with the Site and the Project Infrastructure by any Governmental Authority or Emergency Service Provider shall not:

- (a) limit the obligations of Project Co under this Agreement, including in respect of any defects, deficiencies or items of outstanding Project Work existing or discovered prior to or after the date of any of such Certificates or the date of the Minor Deficiency List;
- (b) be construed as an approval by WDBA of the Project Infrastructure or relevant portion thereof or the way in which the DB Work has been carried out; or
- (c) be construed as having the effect of transferring responsibility for the Michigan Interchange to Michigan prior to the Michigan Interchange Handover Date.

#### 24.11 Disputed Certificates

- (a) Subject to Section 24.11(b) and Section 24.11(c), if there is any Dispute between WDBA and Project Co as to the decision of the Independent Certifier to issue or not to issue a Certificate in accordance with the applicable terms of the Certification Procedure, then

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either WDBA or Project Co may refer such Dispute for resolution under the Dispute Resolution Procedure. If the issuance or non-issuance of a Certificate by the Independent Certifier is disputed, each party shall bear its own costs and Project Co shall not be entitled to receive any compensation or relief with respect to such costs.

- (b) The Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate, the Canadian POE Agency Buildings Handover Certificate, the US POE Agency Buildings Handover Certificate, the Bridge Handover Certificate or the Michigan Interchange Handover Certificate shall be final and binding on the parties solely in respect of determining the date upon which the applicable Capital Payments shall commence and any dispute in relation thereto shall not be subject to resolution pursuant to Schedule 23 [*Dispute Resolution Procedure*].
- (c) As provided in Schedule 21 [*Certification Procedure*], the decision of the Independent Certifier as to any calculation of Progress in determining whether to issue a Progress Payment Certificate pursuant Schedule 26 [*Construction Period Payments*], is final and binding on the parties and is not subject to the Dispute Resolution Procedure.
- (d) The determination by the Independent Certifier of the IC Progress Ratio with respect to whether to issue a Progress Payment Certificate pursuant Schedule 26 [*Construction Period Payments*], is final and binding on the parties and is not subject to the Dispute Resolution Procedure.

## **25. MINOR DEFICIENCIES**

### **25.1 Minor Deficiencies**

Project Co shall rectify all Minor Deficiencies and all FAER Minor Deficiencies, which affect Elements of the Project Infrastructure, in accordance with the provisions of the Technical Requirements as applicable, and this Agreement. Other terms relating to Minor Deficiencies and FAER Minor Deficiencies are set out in Schedule 26 [*Construction Period Payments*].

### **25.2 Minor Deficiency List on Handovers**

The Independent Certifier, as part of the Certification Procedure for a Handover, shall prepare a Minor Deficiency List in respect of the Project Work related to such Handover. No amount shall be withheld by WDBA from a Construction Period Payment specifically for Minor Deficiencies with respect to the cost of remedying any such Minor Deficiencies in respect of the Certification of a Handover. However, the Minor Deficiencies Holdback Amount (as described in Schedule 26 [*Construction Period Payments*]) shall apply if such Minor Deficiencies are not remedied on or before Substantial Completion.

### **25.3 Final Minor Deficiency List**

The final Minor Deficiency List in respect of all Project Work, shall be determined by the Independent Certifier in connection with the Certification Procedure for Substantial Completion, taking into account the opinions of Project Co and WDBA. The Minor Deficiency list shall also include a list of the FAER Minor Deficiencies provided by WDBA, after consultation with Project Co, the Independent Certifier and the relevant Michigan Party.

### **25.4 FAER Minor Deficiencies**

- (a) If WDBA determines that Project Co has failed to comply with FAER, then Project Co shall take such action as is necessary to ensure that it does comply with FAER.

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- (b) The provisions of this Agreement relating to Minor Deficiencies shall otherwise apply to Minor Deficiencies that are in respect of FAER (“**FAER Minor Deficiencies**”), including with respect to preparation and agreement on the Minor Deficiency List except that WDBA shall make, with respect to FAER Minor Deficiencies, the determinations and decisions that the Independent Certifier makes in respect of the satisfaction and correction of other Minor Deficiencies.
- (c) WDBA shall consult with the relevant Michigan Party prior to making any determinations pursuant to Section 25.3 and this Section 25.4.

## 26. FINAL COMPLETION AND TRANSFER OF MICHIGAN INTERCHANGE

### 26.1 Final Completion

When, in the opinion of Project Co, the Project has reached Final Completion, Project Co shall provide the required notification and shall comply with and provide all supporting documentation, in accordance with Schedule 21 [*Certification Procedure*]. The Independent Certifier shall comply with its obligations and inspect the Project Infrastructure.

### 26.2 Transfer of the Michigan Interchange

- (a) Project Co shall be responsible for the Michigan Interchange until responsibility therefor is actually transferred to Michigan. Such transfer shall occur on the date (“**Michigan Interchange Handover Date**”) which is the date that the Facility is open to transportation by the public.
- (b) The transfer of responsibility for the Michigan Interchange shall be made in compliance with the Crossing Agreement and the requirements of Schedule 15 [*Michigan Interchange Design and Construction Specifications*] and Project Co shall also comply with the restoration requirements set out in such Schedule with respect to the restoration of the Michigan Interchange Area.
- (c) When responsibility for the Michigan Interchange is transferred in accordance with this Section 26.2, the Michigan Interchange shall be excluded from the definition of “**Project Infrastructure**” for all purposes of this Agreement, except with respect to the rectification of Minor Deficiencies and Michigan Interchange Warranty Work.

## 27. DEFECTS AND WARRANTIES

### 27.1 Risk of Defects in the Project Infrastructure

- (a) Project Co shall carry out, as part of the Project Work, any remedial or other works required as a result of any defect in the Project Infrastructure or in any other components of the Project Work.
- (b) Except as expressly provided in Section 27.2 or as otherwise expressly provided elsewhere in this Agreement, in respect of any defect in the Project Infrastructure:
  - (i) any such defect comprising a Non-Compliance shall be addressed by Project Co in accordance with Part 2 [*Non-Compliance*] of Schedule 7 [*Quality Management*];
  - (ii) all costs associated with such defect and any remedial or other work required as a result of such defect shall be borne by Project Co; and

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- (iii) WDBA shall not have any liability to Project Co or any Project Co Person in respect of any Losses or Claims arising out of or in connection with the existence of any such defect or any remedial or other work required as a result of any such defect.

## 27.2 Michigan Interchange Warranty Work

- (a) Project Co's warranties with respect to the Michigan Interchange shall be as follows.
  - (i) **[REDACTED]**
  - (ii) The Michigan Interchange Warranties shall each cover material and workmanship, including the costs of removal and replacement of covering materials. No Michigan Interchange Warranty shall limit extended warranties on any items of equipment or material called for elsewhere in Schedule 15 [*Michigan Interchange Design and Construction Specifications*] or otherwise provided by any manufacturer of such equipment or material. Project Co shall ensure that any such extended warranties specified in the Project Agreement are provided and shall assign to MDOT all such extended warranties as MDOT may direct provided that, upon such assignment, Project Co shall have no further extended warranty obligations in respect of such related equipment or material.
  - (iii) WDBA shall assign its rights in the Michigan Interchange Warranties to MDOT and shall give a Notice to Project Co of any such assignment of Project Co warranties.
  - (iv) On the commencement of the Michigan Interchange Warranties period, Project Co shall provide to WDBA and MDOT at least two copies of all warranty certificates relating to the Michigan Interchange.
- (b) Project Co shall carry out all work ("**Michigan Interchange Warranty Work**") to satisfy the Michigan Interchange Warranties promptly and in accordance with the applicable Michigan Interchange Warranty Period and Project Co shall also make good and repair in accordance with the requirements of this Agreement any damage to the Project Infrastructure or Michigan Interchange caused by the repairing of such defects, deficiencies or failures to comply with the Michigan Interchange Warranty. All Michigan Interchange Warranty Work shall be carried out and completed at Project Co's cost and expense and the obligation to perform Michigan Interchange Warranty Work shall not be the basis for a claim for a Compensation Event, a Change, additional compensation, or damages. Such defects, deficiencies and failures to comply include defects, deficiencies and failures to comply in respect of any workmanship.
- (c) If Project Co fails to carry out Michigan Interchange Warranty Work in the time specified or subsequently agreed upon, without prejudice to any other right or remedy WDBA may have, WDBA may correct the relevant defect, deficiency, failure or Non-Compliance and WDBA shall deduct the cost and expense thereof from any payment then or thereafter due to Project Co, provided the Independent Certifier has certified such cost to WDBA.
- (d) Project Co acknowledges that the timely performance of Michigan Interchange Warranty Work is critical to the ability of MDOT to maintain effective operations of the Michigan Interchange. Project Co shall use commercially reasonable efforts to respond to any requirement by MDOT to correct defective, deficient or non-compliant items in the Michigan Interchange, within the time periods required by MDOT. In relation to critical areas required for effective operations, Project Co shall commence, carry out and

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complete the Michigan Interchange Warranty Work on an urgent basis with all due haste, taking into account the circumstances.

- (e) Project Co further acknowledges that if MDOT is unable to contact Project Co and/or obtain the Michigan Interchange Warranty Work promptly, MDOT may take such emergency steps as are reasonable and appropriate to correct such defects, deficiencies or failures to comply with Schedule 15 [*Michigan Interchange Design and Construction Specifications*], at Project Co's sole cost and expense. Except in the case of damage caused by MDOT such emergency steps shall not invalidate any of the Michigan Interchange Warranties.
- (f) After the transfer of the Michigan Interchange in accordance with Section 26.2 (*Transfer of the Michigan Interchange*), Project Co shall be solely responsible for obtaining access from MDOT for the purpose of carrying out the Michigan Interchange Warranty Work. Project Co acknowledges that such access to the Michigan Interchange may be subject to such limitations as may be imposed by MDOT and that Project Co may be required to obtain a Permit to access the Michigan Interchange (or the lands on which the infrastructure is situated) for the purpose of carrying out the Michigan Interchange Warranty Work.
- (g) The Michigan Interchange Buy-Down Amount shall be calculated pursuant to Schedule 26 [*Construction Period Payments*]. WDBA may deduct such amount from the Substantial Completion Payment, as provided in Schedule 26 [*Construction Period Payments*].

### 27.3 Canadian Roads Warranty Work

- (a) Project Co warrants that all Infrastructure constructed as part of the WDBA Early Works Contract shall conform in all respects to the specifications set out in the WDBA Early Works Contract (applicable technical specifications and drawings) for the PAR and associated infrastructure and the specifications set out in this Agreement for Sandwich Street and shall be of good quality and merchantable material and workmanship.
- (b) The period ("**Canadian Roads Warranty Period**") during which such warranty (the "**Canadian Roads Warranty**") shall be in effect is:
  - (i) for the portion of Sandwich Street from the intersection of Ojibway Parkway to the intersection of Rosedale Roundabout as set out in Part 3 [*Sandwich Street Improvements*] of Schedule 43 [*Canadian Roads*], from and including the date of the Sandwich Street Handover to and including the date that is 1 year after the date of the Sandwich Street Handover; and
  - (ii) for the PAR and the portion of Sandwich Street as shown in Appendix 43-2-1 of Part 2 [*Sandwich Street South of Ojibway Reconstruction*] of Schedule 43 [*Canadian Roads*], from and including the Substantial Completion Date to and including the date that is 1 year after the Substantial Completion Date.
- (c) The Canadian Roads Warranty shall each cover material and workmanship, including the costs of removal and replacement of covering materials. The Canadian Roads Warranty shall not limit extended warranties on any items of equipment or material otherwise provided by any manufacturer of such equipment or material. Project Co shall ensure that any such extended warranties specified in this Agreement are provided and shall assign to the City of Windsor all such extended warranties as the City of Windsor may direct provided that, upon such assignment, Project Co shall have no further extended warranty obligations in respect of such related equipment or material.

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- (d) WDBA shall assign its rights in the Canadian Roads Warranty to the City of Windsor and shall give a Notice to Project Co of any such assignment.
- (e) On the commencement of the Canadian Roads Warranty Period, Project Co shall provide to WDBA and the City of Windsor at least two copies of all warranty certificates relating to the Canadian Roads.
- (f) Project Co shall carry out all work to satisfy the Canadian Roads Warranty promptly. Project Co shall also make good and repair in accordance with the requirements of this Agreement any damage to the Project Infrastructure or the Canadian Roads caused by the repairing of such defects, deficiencies or failures to comply with Canadian Roads Warranty ("Canadian Roads Warranty Work"). All Canadian Roads Warranty Work shall be carried out and completed at Project Co's sole cost and expense and Canadian Roads Warranty Work shall not be the basis for a claim for a Compensation Event, a Change, additional compensation, or damages. Such defects, deficiencies and failures to comply include defects, deficiencies and failures to comply in respect of any workmanship.
- (g) If Project Co fails to carry out any Canadian Roads Warranty Work in the time specified or subsequently agreed upon, then, without prejudice to any other right or remedy WDBA may have, WDBA may correct the relevant defect, deficiency, failure or Non-Compliance and WDBA shall deduct the cost and expense thereof from any payment then or thereafter due to Project Co under this Agreement.
- (h) Project Co acknowledges that the timely performance of Canadian Roads Warranty Work is critical to the ability of the City of Windsor to maintain effective operations of the Canadian Roads. Project Co shall use commercially reasonable efforts to respond to any requirement by the City of Windsor to correct defective, deficient or non-compliant items in the Canadian Roads, within the time periods required by the City of Windsor. In relation to critical areas required for effective operations, Project Co shall commence, carry out and complete any Canadian Roads Warranty Work on an urgent basis with all due haste, taking into account the circumstances.
- (i) Project Co further acknowledges that if the City of Windsor is unable to contact Project Co and/or obtain the Canadian Roads Warranty Work promptly, the City of Windsor may take such emergency steps as are reasonable and appropriate to correct such defects, deficiencies, failures or Non-Compliances to comply with Schedule 43 [*Canadian Roads*], at Project Co's sole cost and expense. Except in the case of damage caused by the City of Windsor such emergency steps shall not invalidate the Canadian Roads Warranty.
- (j) After the transfer of the Canadian Roads in accordance with Schedule 43 [*Canadian Roads*], Project Co shall be solely responsible for obtaining access from the City of Windsor for the purpose of carrying out the Canadian Roads Warranty Work. Project Co acknowledges that such access to the Canadian Roads may be subject to such limitations as may be imposed by the City of Windsor and that Project Co may be required to obtain a Permit to access the Canadian Roads (or the lands on which the Infrastructure is situated) for the purpose of carrying out Canadian Roads Warranty Work.

#### **27.4 No limitation on other Warranties**

Except with respect to the Michigan Interchange for which the Michigan Interchange Warranties are expressly provided and the Canadian Roads for which the Canadian Roads Warranty is expressly provided, the express warranties set out in this Section 27 shall not deprive WDBA, any Michigan Party or the City of Windsor of any action, right or remedy otherwise available to it at

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law or in equity and the warranty periods referred to in Section 27.2(a)(i) and Section 27.3(b), shall not be construed as a limitation on the time in which any of them may pursue such other action, right or remedy.

## **28. INTERIM OM WORK DURING DB PERIOD**

### **28.1 Overall Responsibility**

During the Interim OM Period, Project Co shall be responsible for performing the Interim OM Work in accordance with the provisions of this Agreement. The Interim OM Work shall be carried out in accordance with Good Industry Practice, Applicable Law, the Permits, the Quality Documentation, the OM Specifications and other Technical Requirements and in accordance with the undertakings of Project Co set out in the Proposal and in the Proposal Extracts.

### **28.2 No Liability of WDBA**

Without limiting the generality of Section 2.4 (*Assumption of Risks and Responsibilities*), Project Co shall be liable for all Losses or Claims Project Co may suffer or incur due to its underestimation of the quantity of Interim OM Work to be carried out which leads to an overrun in operation and maintenance costs with the exception of Losses or Claims arising from a failure by WDBA to comply with any of its obligations under this Agreement or except as may otherwise be provided for under this Agreement.

## **29. OPERATION, MAINTENANCE AND REHABILITATION OF PROJECT INFRASTRUCTURE**

### **29.1 Overall Responsibility**

- (a) Project Co shall be responsible for the OMR Work in accordance with the provisions of this Agreement. The OMR Work shall be carried out in accordance with Good Industry Practice, Applicable Law, the Permits, the Quality Documentation, the OMR Specifications and other Technical Requirements and in accordance with the undertakings of Project Co set out in the Proposal, the Proposal Extracts and the OMR Five Year Plan.
- (b) Without limiting the generality of Section 29.1(a), in connection with the OMR Work, Project Co shall procure, deliver, install, commission, maintain, repair, decommission, upgrade and replace any required equipment and the Project Infrastructure.
- (c) For the period starting on the Substantial Completion Date and ending on the Termination Date, as part of the OMR Work during the OMR Period, Project Co shall be responsible for the performance of all Tolling Operations which shall be carried out in accordance with the provisions of Schedule 13 [*Tolling Operations*].
- (d) Notwithstanding any other provision in this Agreement, Project Co has no right, power or authority to close public access to the Bridge, except in the case of an Emergency.

### **29.2 No Liability of WDBA**

Without limiting the generality of Section 2.4 (*Assumption of Risks and Responsibilities*), Project Co shall be liable for all Losses or Claims Project Co may suffer or incur due to its underestimation of the complexity of the OMR Work which leads to an overrun in operation, maintenance or rehabilitation costs, with the exception of Losses or Claims arising from a failure by WDBA to comply with any of its obligations under this Agreement or except as may otherwise be provided for under this Agreement.

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### 29.3 OMR Work

Project Co shall commence the OMR Work on the day following the Substantial Completion Date and shall continue to perform the OMR Work in respect of the Project Infrastructure until the Termination Date.

### 29.4 Performance and Inspections

The Certification Procedure and the Review Procedure as well as all applicable DB Specifications and other Project Requirements shall apply, with the necessary changes, to any Design Work and Construction Work carried out by Project Co during the OMR Period.

## 30. END OF TERM

### 30.1 Handback Work

Project Co shall be responsible for the Handback Work in accordance with the provisions of this Agreement. The Handback Work shall be carried out in accordance with Good Industry Practice, Applicable Law, the Quality Documentation and the Handback Requirements. The Handback Work shall be carried out by Project Co in accordance with the Handback Procedure as described in Schedule 14 [*Handback*].

### 30.2 Off-Site Facilities

- (a) WDBA or its nominee shall have (i) an option to purchase from or (ii) a right of first refusal on any sale, transfer, or disposition by, Project Co or any Subcontractor of any maintenance and back office facilities located off-Site which are owned by Project Co or any Subcontractor and dedicated to or predominantly used in respect of the Project Work. The purchase price for such option and right of first refusal is **[\$[REDACTED]]** in the aggregate. The term of the option to purchase shall expire at 11:59 pm on the date which is 30 days after the Expiry Date. Any purchase made pursuant to such option or right of first refusal shall be on an “**as is**”, “**where is**” basis, without representation, warranty or condition (express or implied, statutory or otherwise) entirely at the transferee’s risk and peril, except that it shall be free from any Encumbrance, with any make whole or termination payment with respect to any financial Encumbrances to be borne by WDBA. To the extent that any such maintenance and back office facilities located off-Site are leased or licensed by Project Co or a Subcontractor for use in the Project Work, on any termination of this Agreement, Project Co shall, or shall cause such Subcontractor to, assign such lease or license to WDBA, conditional on WDBA assuming all obligations which arise from and after the date of assignment under such lease or licence.
- (b) The purchase price of the assets subject to any option to purchase shall be the Fair Market Value (with any Dispute as to such Fair Market Value being determined pursuant to the Dispute Resolution Procedure). The transfer of the assets and the payment of the purchase price shall occur 30 days following the date of the exercise of the option or right of first refusal, at the sole cost of WDBA, including any land transfer tax or any other tax exigible thereon and any registration fees relating thereto, with any third party approvals and consents required in connection with such transfer to be obtained by WDBA, at its sole cost and expense.
- (c) Project Co shall ensure that all Subcontracts contain provisions which permit WDBA to exercise its rights under this Section.

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- (d) To protect WDBA's interest in the property described in this Section 30.2 by providing public notice of WDBA's purchase options and rights of first refusal, WDBA and Project Co agree that upon WDBA's request, Project Co shall sign: (i) with respect to WDBA's rights to Project Co's real property interests, memoranda or other short forms of agreement in recordable form; and (ii) with respect to WDBA's rights to Project Co's personal property, appropriate financing or other statements under personal property security Laws relating to the perfecting of security interests in personal property. WDBA shall have the right to record and/or file the applicable instruments to protect its interests in the property described in this Section 30.2.

### 30.3 Final Adjustments

- (a) Project Co and WDBA shall make all adjustments on the amounts owing to either party, as of the Expiry Date, pursuant to the obligations of Project Co and WDBA resulting from the Project Work. In such respect, the obligations of the parties set out in this Agreement which are necessary to allow Project Co and WDBA to make all required adjustments shall continue to apply during a 90 day period following the Expiry Date.
- (b) At the Expiry Date, Project Co shall give to WDBA full and final discharges, as well as a declaration from each of its Subcontractors confirming that they have been paid. Project Co shall also provide to WDBA sufficient information evidencing that on the Expiry Date, there are no Claims against Project Co, the Facility or the Lands resulting from the Project Work.

## 31. DAMAGE AND DESTRUCTION

### 31.1 Reinstatement Work on the Occurrence of Material Damage

- (a) Unless this Agreement is terminated in accordance with its terms, including under Section 31.5(b) or 43.9 (*Termination for Force Majeure Event or Relief Event*), and subject to Section 31.2, if all or any part of the Project Infrastructure (i) suffers substantial damage or (ii) is destroyed, and as a result, the use of such Project Infrastructure by the public is limited or restricted in any material respect ("**Material Damage**"), Project Co shall promptly, but as soon as practicable in the circumstances, at its own cost and expense (without affecting Project Co's rights and WDBA's obligations under this Agreement), restore, repair, replace or reinstate the Project Infrastructure or, as applicable, such part of the Project Infrastructure, that was subject to Material Damage (the "**Reinstatement Work**"). Except as otherwise expressly provided in this Agreement, Material Damage to all or any part of the Project Infrastructure shall not trigger a termination of this Agreement or relieve Project Co of any of its obligations hereunder or entitle Project Co to any compensation from WDBA.
- (b) The provisions of Schedule 11 [*Operations, Maintenance and Rehabilitation*] shall apply to any damage or destruction to any Project Infrastructure which occurs in the ordinary course of the operation of such Project Infrastructure and is not Material Damage.

### 31.2 Reinstatement Plan

- (a) If all or any part of the Project Infrastructure suffers Material Damage and if the Reinstatement Work is estimated to cost more than **[\$[REDACTED]]** or, if WDBA so requests, having regard to the nature of the Material Damage, Project Co shall prepare and submit to WDBA a plan establishing how the Reinstatement Work shall be carried out (the "**Reinstatement Plan**"). If the estimated cost of the Reinstatement Work is less than **[\$[REDACTED]]**, WDBA shall not request a Reinstatement Plan if the Material Damage

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occurs before Final Completion and WDBA considers that the continued application of the Certification Procedure and the Review Procedure would adequately address the Reinstatement Work without need for a separate Reinstatement Plan. The Reinstatement Plan shall be submitted to WDBA pursuant to the Review Procedure as soon as practicable and, in any event no later than 20 Business Days following the occurrence of the Material Damage or receipt of the notification from WDBA, as the case may be (or, within such longer period of time as WDBA may agree, if the circumstances so warrant). The Reinstatement Plan shall set out, in reasonable detail, among other things:

- (i) a description of the Reinstatement Work required to restore, repair, replace and reinstate the Project Infrastructure or any part thereof which suffered Material Damage;
- (ii) an estimate of the cost to carry out the Reinstatement Work, together with reasonable supporting documentation;
- (iii) a confirmation of whether or not there are sufficient funds available to Project Co from all sources, including debt, equity, letters of credit, construction or other security, Insurance Proceeds, recourses against third parties, amounts required to be paid by WDBA to Project Co pursuant to Section 43.4 (*Project Co's Entitlements for a Compensation Event*) or otherwise under this Agreement, but without imposing any obligation on Project Co to obtain any new debt or equity in order to carry out the Reinstatement Work and allow Project Co to complete such Reinstatement Work, while meeting its payment and other obligations under the Senior Lending Agreements, together with reasonable supporting documentation;
- (iv) Project Co's proposed schedule for the execution of the Reinstatement Work; and
- (v) the information required pursuant to Schedule 22 [*Change Procedure*] as if such plan were a Change Appraisal.

The Reinstatement Work shall not be commenced until WDBA consents, when applicable, to the Reinstatement Plan in accordance with the Review Procedure, except to the extent necessary to address any Emergency.

- (b) If no Reinstatement Plan is required pursuant to Section 31.2(a), Project Co shall submit to WDBA, no later than 20 Business Days following the occurrence of the Material Damage, an updated DB Schedule or, if the event occurs during the OMR Period, an amended OMR Five Year Plan, integrating the Reinstatement Work to be performed.

### **31.3 Conduct of Reinstatement Work**

Project Co shall carry out the Reinstatement Work in accordance with Good Industry Practice, Applicable Law, the Permits, the Quality Documentation, other Technical Requirements, the undertakings of Project Co set out in the Proposal, the Proposal Extracts, the Project Requirements and, where applicable, in accordance with the Reinstatement Plan accepted by WDBA. All designs, plans and specifications in respect of the Reinstatement Work shall be subject to the Certification Procedure and the Review Procedure. If requested by WDBA, the persons retained by Project Co to design and carry out any Reinstatement Work shall, as a condition to their retainer and prior to commencing any Reinstatement Work, enter into a Prime Contractor Direct Agreement with WDBA and Project Co in substantially the same form as the Prime Contractor Direct Agreement entered into by the Prime Contractors.

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### 31.4 Application of Insurance Proceeds

Project Co and WDBA shall comply with the provisions of Section 40 (*Insurance*), Schedule 29 [*Insurance Requirements*] and the Insurance Trust Agreement with respect to Insurance Proceeds which may be available to carry out the Reinstatement Work.

### 31.5 Termination for Reinstatement Funds Deficiency

If all or any substantial part of the Project Infrastructure suffers Material Damage as a result of the occurrence of any event and (i) the information provided by Project Co pursuant to Section 31.2(a)(iii), establishes that there are insufficient funds available to Project Co to allow the completion of the Reinstatement Work while meeting its scheduled payment obligations under the Senior Lending Agreements (for the purposes of this Section 31.5 the “**Reinstatement Funds Deficiency**”); and (ii) no party has agreed to fund the Reinstatement Funds Deficiency, then:

- (a) in the event that it is agreed or established that either:
- (i) such Material Damage results from a Non-Excusable Event of Project Co, including as a result of a failure by Project Co to comply with and implement all DB Specifications or other Project Requirements specified to be applicable to the Project Infrastructure which has suffered Material Damage; or
  - (ii) the cause of the Reinstatement Funds Deficiency, is a breach by Project Co of any of its obligations under Schedule 29 [*Insurance Requirements*] or the Insurance Trust Agreement including a failure by Project Co to fund deductibles or waiting periods for which it is responsible under this Agreement, then

WDBA may terminate this Agreement by giving a Notice to Project Co having immediate effect. The termination shall then be considered a termination following a Project Co Event of Default and the Project Co Default Termination Sum payable pursuant to Schedule 27 [*Compensation on Termination*] shall be determined accordingly;

- (b) in the event that it is agreed or established that either:
- (i) such Material Damage results from a Non-Excusable Event of WDBA; or
  - (ii) the cause of the Reinstatement Funds Deficiency is a breach by WDBA of any of its obligations under Schedule 29 [*Insurance Requirements*] or the Insurance Trust Agreement, including a failure by WDBA to fund deductibles or waiting periods for which it is responsible under this Agreement, then

Project Co may terminate this Agreement by giving a Notice to WDBA having immediate effect. The termination shall then be considered a termination following a WDBA Event of Default and the WDBA Default Termination Sum payable pursuant to Schedule 27 [*Compensation on Termination*] shall be determined accordingly; and

- (c) in any case where neither or both Sections 31.5(a) and 31.5(b) apply, either WDBA or Project Co may terminate this Agreement by giving a Notice to the other party having immediate effect. The termination shall then be considered a non-default termination and the Non-Default Termination Sum payable pursuant to Schedule 27 [*Compensation on Termination*] shall be determined accordingly.

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## 32. ACCESS, MONITORING AND REMEDIAL RIGHTS

### 32.1 Access by WDBA and Others

- (a) Without limiting any rights or obligations under Applicable Law or any of WDBA's rights in respect of the Site and the Project Infrastructure, and without prejudice to and in accordance with any access right pursuant to Section 5.5 (*Rights of Use Granted to Project Co*), Section 13 (*Public Use and Police Patrolling Services*) and Section 24.5(c) (*Cooperation, Information and Access*) or any other provision of this Agreement, Project Co shall ensure that throughout the Term:
- (i) WDBA and WDBA Persons have unrestricted access to the Site and the Project Infrastructure and any site or workshop where materials, plant or equipment are being manufactured, prepared or stored for the performance of the Project Work, at all reasonable times during normal working hours, including for the purposes of inspection or audit, of attending any test or study being carried out in respect of the Project Work, of performing any obligations or functions or exercising any rights under this Agreement or of fulfilling any statutory or public duties or functions;
  - (ii) WDBA may attend regular progress meetings and other similar progress meetings and Project Co shall give WDBA reasonable advance Notice of the time and place of all such meetings; and
  - (iii) inspectors and other persons authorized to act on behalf of WDBA or any Relevant Authority, including any municipality, have access to the Site and the Project Infrastructure for inspection and acceptance purposes, when relevant.
- (b) Without limiting any rights of access under Applicable Law or this Agreement, including Section 5.2, Project Co shall at WDBA's request provide to the applicable Michigan Party the same rights with respect to Project Infrastructure located in the US, to GSA the same rights with respect to the US POE Agency Buildings and to FHWA the same rights with respect to any matter relating to Federal Aid Eligibility Requirements, as are provided by this Section to WDBA.

### 32.2 Right to Uncover

- (a) Project Co shall ensure that WDBA and the Independent Certifier are afforded reasonable advance notice of and full opportunity to witness inspection and test activity in accordance with the requirements of Part 1 [*General*] of Schedule 7 [*Quality Management*]. If Project Co fails to comply with such requirements, Project Co shall have the obligation, if so requested by WDBA or by the Independent Certifier, to open, uncover, excavate or provide any other access to any relevant part of the Project Work which has been covered up or otherwise put out of view or, as the case may be, to remove any relevant part of the Project Work that has been proceeded with in order to allow WDBA or the Independent Certifier to inspect or witness the relevant test on such portion of the Project Work. Project Co shall bear all costs incurred in order to allow WDBA or the Independent Certifier to effect or assist with any opening, uncovering, excavation or removal, regardless of whether or not any defect or Non-Compliance is discovered in the relevant Project Work.
- (b) WDBA and the Independent Certifier shall have the right, at any time during the Term, to request Project Co to uncover and inspect any part of the Project Work where they reasonably believe that such part of the Project Work is defective or that Project Co has failed to comply with the requirements of this Agreement and Project Co shall be obliged

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to comply with such request. When WDBA makes such a request, WDBA shall include reasonably detailed reasons for such request.

- (c) Subject to the Michigan Interchange Buy-Down Amount set out in Schedule 26 [*Construction Period Payments*], if an inspection carried out pursuant to Section 32.2(b) shows a defect or Non-Compliance in any part of the Project Work or shows that Project Co has failed to comply with the requirements of this Agreement, Project Co shall bear the cost of such inspection and rectify such defect or Non-Compliance diligently and in a timely manner and Project Co shall not be entitled to any additional remuneration, compensation or extension of time or other relief in relation thereto.
- (d) If WDBA or the Independent Certifier requires an uncovering of the Project Work pursuant to Section 32.2(b) and such Project Work is not subsequently found to be defective and is found to be in compliance with the requirements of this Agreement, then such uncovering of the Project Work (including the ensuing re-performance or re-installment) shall constitute a Compensation Event.

### 32.3 Monitoring of Performance

The performance of the Project Work shall be monitored and for such purpose, Project Co shall comply with the provisions of Part 2 [*Non-Compliance*] of Schedule 7 [*Quality Management*] and acknowledges that Availability Failure Deductions and Service Failure Deductions may be made in accordance with Schedule 25 [*Payment Mechanism (OMR)*].

### 32.4 Warning Notices

Without prejudice to WDBA's rights under Section 46 or any other rights under this Agreement, if Project Co accrues, at any time during the Term, any of the following deductions, then WDBA may give a Notice (a "**Warning Notice**") to Project Co setting out the matter or matters giving rise to such Notice and stating that it is a Warning Notice:

- (a) Crossing Availability Failure Deductions exceed \$[REDACTED] in respect of any one Payment Period;
- (b) POE Buildings Availability Failure Deductions exceed \$[REDACTED] in respect of any one Payment Period;
- (c) Service Failure Deductions in relation to performance requirements in Appendix 25-4 of Schedule 25 [*Payment Mechanism (OMR)*] exceed \$[REDACTED] in respect of any one Payment Period; or
- (d) Service Failure Deductions in relation to performance requirements in Appendix 25-5 of Schedule 25 [*Payment Mechanism (OMR)*] exceed \$[REDACTED] in respect of any one Payment Period.

### 32.5 Increased Monitoring

Without limiting any other rights and remedies of WDBA in this Agreement, including to make Availability Failure Deductions, Service Failure Deductions and payment adjustments pursuant to Schedule 25 [*Payment Mechanism (OMR)*], Schedule 26 [*Construction Period Payments*] or to declare a Project Co Event of Default, WDBA shall have the following remedial rights at all times during the Term.

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- (a) If WDBA is of the opinion, acting reasonably, at any time during the Term, that Project Co has failed to comply in any material respect with the requirements of this Agreement, WDBA may, without prejudice to any other remedy or right available to it, by giving a Notice to Project Co (a "**Monitoring Notice**"), increase the level and frequency of its monitoring of the performance of and reporting from Project Co that is otherwise permitted under this Agreement or require Project Co to increase the level of monitoring of its own performance to such level as WDBA considers reasonable, taking into account the nature of the relevant failure, defect or Non-Compliance. Such increased monitoring shall continue until such time as Project Co shall have demonstrated, to the satisfaction of WDBA, that it is capable of performing and shall perform all its obligations in compliance with this Agreement.
- (b) Without limiting the generality of Section 32.5(a), WDBA shall also have the right to increase the level of monitoring in accordance with this Section 32.5 if at any time during the Term:
- (i) Crossing Availability Failure Deductions exceed \$[REDACTED] in respect of any 3 consecutive Payment Periods;
  - (ii) POE Buildings Availability Failure Deductions exceed \$[REDACTED] in respect of any 3 consecutive Payment Periods;
  - (iii) Service Failure Deductions in relation to performance requirements in Appendix 25-4 of Schedule 25 [*Payment Mechanism (OMR)*] exceed \$[REDACTED] in respect of any 3 consecutive Payment Periods;
  - (iv) Service Failure Deductions in relation to performance requirements in Appendix 25-5 of Schedule 25 [*Payment Mechanism (OMR)*] exceed \$[REDACTED] in respect of any 3 consecutive Payment Periods;
  - (v) a Project Co Event of Default occurs; or
  - (vi) any material discrepancy, inaccuracy or error (including error by omission or incompleteness) is discovered by WDBA in respect of any Mandatory Report delivered by Project Co to WDBA in accordance with Schedule 8 [*Records and Mandatory Reports*].
- (c) The Monitoring Notice shall specify in reasonable detail the additional measures to be taken by WDBA or Project Co in response to the matters which led to such Monitoring Notice being sent.
- (d) Project Co shall bear its own costs and expenses and shall bear all reasonable costs, charges and expenses of WDBA properly incurred as a result of such increased level of monitoring, provided that if it is subsequently agreed or determined pursuant to the Dispute Resolution Procedure that the additional measures requested by WDBA were excessive or that WDBA was not entitled to give a Monitoring Notice, then the carrying out of such increased monitoring shall constitute a Compensation Event.

### 32.6 Remedial Rights

- (a) Subject to Section 32.6(b), WDBA may exercise all rights set out in this Section 32.6 at any time and from time to time if:
- (i) WDBA considers the circumstances to constitute an Emergency;

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- (ii) WDBA considers that a breach of any obligation of Project Co under this Agreement can reasonably be expected to create or result in an Emergency;
  - (iii) Crossing Availability Failure Deductions exceed \$[REDACTED] in respect of any one Payment Period;
  - (iv) POE Buildings Availability Failure Deductions exceed \$[REDACTED] in respect of any one Payment Period;
  - (v) Service Failure Deductions in relation to performance requirements in Appendix 25-4 of Schedule 25 [*Payment Mechanism (OMR)*] exceed \$[REDACTED] in respect of any one Payment Period;
  - (vi) Service Failure Deductions in relation to performance requirements in Appendix 25-5 of Schedule 25 [*Payment Mechanism (OMR)*] exceed \$[REDACTED] in respect of any one Payment Period;
  - (vii) an undisputed quality audit carried out pursuant to Section 9.2 of Part 1 [*General*] of Schedule 7 [*Quality Management*], shows that Project Co has not performed or is not performing its obligations in compliance with the provisions hereof and Project Co has failed to perform the appropriate rectifications;
  - (viii) a labour dispute of Project Co or any of its Subcontractors (other than a labour dispute referred to in Section 43.5(f) (*Relief Event*)) materially affects or can reasonably be expected to materially affect the Project Work, the availability of any Project Infrastructure or the performance of any Governmental Activity provided in connection or otherwise associated with the Site, or any Project Infrastructure by any Governmental Authority or Emergency Service Provider;
  - (ix) WDBA has received a notice under any Prime Contractor Direct Agreement that entitles WDBA to exercise step-in rights thereunder; or
  - (x) WDBA receives a notice from GSA under the GSA Sublease specifying that an obligation of WDBA as sub-lessor under the GSA Sublease which Project Co is required to perform pursuant to Section 2.11(a) (*Material Agreements*), has not been performed.
- (b) In any of the circumstances set out in Section 32.6(a), (other than the circumstances set out in Section 32.6(a)(ix)), WDBA may notify Project Co to take such steps as WDBA considers necessary or expedient to mitigate, rectify or protect against such circumstances, including, if applicable, the termination and replacement of Subcontractors. Project Co shall use commercially reasonable efforts to comply with WDBA's requirements as soon as practicable. If WDBA gives such a Notice to Project Co and either:
- (i) Project Co does not confirm, within 5 Business Days of such Notice, or such shorter period as is appropriate in the circumstances described in Section 32.6(a)(ix) or Section 32.6(a)(x), that it is willing to take the steps required in such Notice or present an alternative plan to WDBA to mitigate, rectify and protect against such circumstances (which alternative plan shall be subject to WDBA's approval); or
  - (ii) Project Co fails to take the steps required in such Notice or in the accepted alternative plan within such time as set out in such Notice or in the accepted alternative plan;

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then WDBA may take such steps as it considers to be appropriate either itself or by engaging a third party, and may perform or obtain the performance of the relevant Interim OMR Work and the OMR Work (but not DB Work during the DB Period) in accordance with this Agreement.

- (c) Notwithstanding Section 32.6(b), in the event of an Emergency, the Notice under such Section shall be given as promptly as possible having regard to the nature of the Emergency and WDBA may, prior to Project Co's confirmation under Section 32.6(b)(i), take such steps as are appropriate having regard to the nature of the Emergency (excluding the performance of DB Work during the DB Period).
- (d) No action taken by WDBA under Section 32.6(b) shall be deemed to be a termination of this Agreement or relieve Project Co from any of its obligations under this Agreement (except to the extent any such obligation is fully performed by WDBA or cannot reasonably be performed due to such action taken by WDBA). WDBA shall not incur any liability to Project Co for any act or omission of WDBA or any other person in the course of taking such action, except to the extent of any failure by WDBA or any third party engaged by WDBA to comply with all Applicable Law and Permits in the course of exercising WDBA's rights under Section 32.6(b).
- (e) Where WDBA considers it to be necessary to do so, the steps which WDBA may take pursuant to Section 32.6(b) may include the partial or total suspension of Project Co's right and obligation to perform any OMR Work having regard to the circumstances in question (without any extension to the Expiry Date or suspension of any other OMR Work), but such suspension shall be only for so long as, as applicable:
  - (i) the circumstances referred to in Section 32.6(a) subsist; or
  - (ii) in respect of any such circumstances relating to Project Co's performance of the OMR Work, until such time as Project Co shall have demonstrated to the reasonable satisfaction of WDBA that, notwithstanding such circumstances, Project Co has taken such steps, including, if applicable, the termination and replacement of Subcontractors, as are required pursuant to Section 32.6(b) and as necessary to be capable of performing its obligations in respect of the relevant OMR Work in accordance with this Agreement, and thereafter Project Co shall perform such obligations.
- (f) Subject to WDBA's obligations pursuant to Sections 32.6(g), Project Co shall bear its own costs and expenses and shall bear all reasonable costs, charges and expenses of WDBA properly incurred in relation to the exercise of WDBA's rights pursuant to this Section 32.6, including the administrative expenses of WDBA and a reasonable sum in respect of general staff costs and overhead, provided that if it is subsequently agreed or determined pursuant to the Dispute Resolution Procedure that WDBA was not entitled to exercise its rights pursuant to this Section 32.6, then the exercising of any such right shall constitute a Compensation Event.
- (g) If WDBA either takes steps itself or requires Project Co to take steps in accordance with this Section 32.6 as a result of a Reimbursement Event, WDBA shall reimburse Project Co for its reasonable costs and expenses properly incurred in relation to the exercise of WDBA's rights pursuant to this Section 32.6 that would not otherwise have been incurred by Project Co in the proper performance of its obligations under this Agreement and WDBA shall bear all costs and expenses incurred by WDBA in relation to the exercise of its rights pursuant to this Section 32.6, provided however that if WDBA performs any part

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of the OMR Work either itself or by engaging others, WDBA shall be entitled to deduct from any payment to Project Co the reasonable cost of performing such OMR Work. If WDBA makes such a deduction, then Project Co shall be relieved of its reimbursement obligations under Section 32.6(f) up to the amount equal to the deduction. In this Section 32.6(g), a “**Reimbursement Event**” means:

- (i) a breach by Project Co of any obligation under this Agreement, but only to the extent such breach is caused by WDBA, a WDBA Party or a WDBA Person;
- (ii) a labour dispute involving employees of WDBA, any WDBA Party or any WDBA Person that materially affects or can reasonably be expected to materially affect the Project Work; or
- (iii) an Emergency that does not result from a breach by Project Co of any obligation of Project Co under this Agreement.

### **32.7 No Relief of Obligations**

- (a) Project Co acknowledges that the exercise by WDBA of its rights under this Section 32 is without prejudice to any other rights or remedies of WDBA under this Agreement and shall in no way affect the obligations of Project Co under this Agreement except as expressly set out in this Section 32.
- (b) Project Co has no right to require a determination of whether or not WDBA is entitled under the terms of this Agreement to exercise its rights pursuant to this Section 32 until Project Co has complied with all of WDBA’s requirements by performing or taking the required action pursuant to Section 32.6. Only concurrently with or after complying with WDBA’s requirements shall Project Co be entitled, as applicable, to claim a Compensation Event, WDBA Change or refer any Dispute for resolution in accordance with the Dispute Resolution Procedure.
- (c) Project Co shall ensure that the provisions contained in all Prime Contracts shall not prevent or inhibit WDBA from exercising its rights under this Section 32.

## **PART D**

### **FINANCIAL MATTERS**

### **33. FINANCIAL MODEL**

#### **33.1 Appointment of Custodian**

On or prior to Financial Close, the parties shall appoint a suitably qualified and experienced person to act as Custodian for the purposes of the Agreement and shall enter into an agreement with the Custodian substantially in the form of Schedule 39 [*Form of Custody Agreement*].

#### **33.2 Delivery of Financial Model**

Schedule 24 [*Financial Model*] is the Financial Model as at the Commencement Date and it has been provided both in hard copy and in electronic form. Concurrent with such delivery, Project Co has provided to WDBA a certificate by a senior officer or director of Project Co addressed to WDBA certifying that:

- (a) each copy of the Financial Model is a true and correct copy;

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- (b) the copy of the Financial Model audit report dated the date hereof which has been prepared by the Financial Model Auditor is a true and correct copy; and
- (c) the Financial Model formulas have not materially changed from the audit report referred to in Section 33.2(b).

In accordance with Schedule 2 [*Closing Deliveries and Ownership Information*], Project Co shall deliver copies of the Financial Model (1 printed copy and 2 copies on CD-Rom, USB flash drive or other similar and acceptable digital storage device) to WDBA and the Custodian to be held by the Custodian on the terms of the Custody Agreement.

### **33.3 Licence to Use Financial Model**

- (a) Project Co hereby grants to WDBA and its Representatives an irrevocable, royalty free, perpetual non-exclusive and non-transferable licence, including the right to grant sub-licences, to use the Financial Model or any revised version of the Financial Model for any purpose in connection with this Agreement, whether during the Term or thereafter. The Intellectual Property in the Financial Model shall not be treated as Project IP.
- (b) Project Co acknowledges and agrees that WDBA shall not be liable to Project Co for, and Project Co shall not seek to recover from WDBA or any WDBA Party, any Claims or Losses which may arise (whether in contract, tort or otherwise) as a result of any errors in the Financial Model.

### **33.4 Update of Financial Model**

- (a) Following the approval by WDBA of any amendment to the Financial Model in accordance with this Agreement, including, as applicable, as a result of a Refinancing, a Change or any changes to the methodologies or calculations, Project Co shall promptly deliver to WDBA and the Custodian copies of the updated Financial Model in the same form and structure as the original Financial Model (as at the Commencement Date) certified by a senior officer or director of Project Co as being a true and correct copy, along with all the information required to be provided pursuant to Section 33.4(b).
- (b) Each update of the Financial Model shall identify any key changes and shall include the following:
  - (i) an executive summary;
  - (ii) complete financial statements (including a balance sheet, an income statement, a statement of retained earnings and a cash flow statement) presented in accordance with the Accounting Principles, as well as Project Co's cascade of cash flows for the entire Term;
  - (iii) financial ratios as required by equity and debt investors as appropriate to the capital structure set out in the financing plan;
  - (iv) debt (both Junior Debt and Senior Debt) schedules providing details of amortization, interest and other information as appropriate on the debt instruments; and
  - (v) subject to Section 33.5, the assumptions book as well as the updated instruction booklet in order to compile such information.

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- (c) Project Co represents and warrants that:
- (i) the Financial Model reflects now and as from time to time updated, the Project (including financial outputs in respect of the Project) as defined by this Agreement and the other Project Documents; and
  - (ii) none of the assumptions that are contained in the Financial Model (as at the date hereof) and that are applicable to a Qualifying Refinancing referred to in Schedule 28 [*Refinancing*] that has not yet been carried out and closed shall be amended or deleted in any update of the Financial Model, until that Qualifying Refinancing has closed in accordance with this Agreement, in which event the Financial Model shall be updated to reflect the terms on which such Qualifying Refinancing closed.
- (d) Without limiting Section 58.2 (*No Relief Effect*), any receipt or review of any update of the Financial Model, by or on behalf of WDBA, shall not constitute acceptance of, approval of or consent to such update and shall not constitute or be deemed to constitute a waiver or release by WDBA of any of the obligations of Project Co under this Agreement.
- (e) If by any of the other terms of this Agreement, Project Co requires the consent or agreement of, or acceptance or no objection by WDBA to proceed with any update or amendment to the Financial Model, then Project Co shall not make or permit any such update or amendment, and the Financial Model shall be deemed not to have been validly updated or amended by any such update or amendment, until the consent or agreement of, or acceptance or no objection by, WDBA is given or deemed to have been given in accordance with this Agreement.

### **33.5 Financial Model Following Substantial Completion**

Notwithstanding the provisions of this Section 33 and the definition of "**Financial Model**", the Financial Model shall be updated at the Substantial Completion Date for all changes that were approved by WDBA during the Construction Period.

### **34. LENDING AGREEMENTS AND REFINANCING**

Project Co shall comply with the provisions of Section 3.3 (*Compliance with Project Documents*) and Schedule 28 [*Refinancing*] with respect to any Refinancing and with respect to termination, amendment or waiver or exercise of rights under any Lending Agreements.

### **35. ECONOMIC AND FINANCIAL ASPECTS**

Subject to any provision of this Agreement that provides relief, Project Co shall be liable for all Losses and Claims it may suffer or incur due to the failure to obtain the required financing or refinancing for the Project Work in accordance with the terms of this Agreement (including according to the terms of the Lending Agreements and Schedule 28 [*Refinancing*]) or for its failure to comply with the terms of the Lending Agreements or other financial documents necessary to carry out the Project Work. Without limiting the other provisions of this Agreement, Project Co shall also assume all Losses sustained by Project Co or Claims it may suffer or incur during the Term due to inflation or fluctuations in pricing related to materials or labour (other than as foreseen in the Payment Mechanism), fluctuations in currency conversion rates and fluctuations in interest rates.

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**36. TOLLS**

All Tolling Revenues shall be the property of WDBA. Project Co shall not create nor suffer or permit to exist, any Encumbrances (other than those created by or through WDBA) on Tolling Revenues.

**37. PAYMENTS****37.1 Construction Period Payments**

The provisions relating to the calculation and payment of each Construction Period Payment are set out in Schedule 26 [*Construction Period Payments*]. WDBA shall pay to Project Co the Construction Period Payments described in such Schedule at the times and subject to any applicable deductions and withholdings as set out in such Schedule. Project Co shall provide to WDBA or the Independent Certifier, as applicable, all documentation required by Schedule 26 [*Construction Period Payments*] and Schedule 21 [*Certification Procedure*] with respect to any Construction Period Payment. Project Co shall show with respect to each Construction Period Payment, the Applicable Canadian Taxes and Applicable US Taxes, if any, due in respect of the relevant payment.

**37.2 Monthly Payments**

- (a) Project Co shall prepare and file with WDBA as soon as practicable following the end of each Contract Month, (i) a report ("**Payment Report**") calculating the Monthly Payment for that Contract Month and (ii) all documentation and information necessary to make such calculation, as specified by Schedule 25 [*Payment Mechanism (OMR)*]. Payment Reports with respect to Monthly Payments filed pursuant to this Section, shall be accompanied by work papers including the information required under Schedule 8 [*Records and Mandatory Reports*] clearly setting out the derivation of the figures set out in the relevant Payment Report in accordance with all applicable calculations that are specified in Schedule 25 [*Payment Mechanism (OMR)*].
- (b) The Payment Report shall show the following calculations and information:
- (i) the Monthly Payment which is payable for the relevant Payment Period;
  - (ii) the Availability Failure Deductions and Service Failure Deductions applicable to the relevant prior Payment Period;
  - (iii) any adjustment to the Monthly Payment in respect of an Uninsurable Risk made in accordance with Schedule 29 [*Insurance Requirements*].
  - (iv) the Applicable Canadian Taxes and Applicable US Taxes, if any, included in any amount due on the relevant payment;
  - (v) any adjustment necessary to reflect any overpayment and/or any underestimated payment, as provided for in Section 37.10, with respect to any period prior to the period which is the subject of the Payment Report;
  - (vi) any interest payable in respect of any amounts owed;
  - (vii) any Pass-Through Costs or Gainshare Adjustment or Painshare Adjustment, each as calculated in accordance with Schedule 38 [*Energy Management*]; and
  - (viii) the net amount owing by WDBA to Project Co or by Project Co to WDBA.

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- (c) If the Payment Report submitted pursuant to Section 37.2(a) shows a net amount owing by WDBA to Project Co, it shall be accompanied by an invoice from Project Co to WDBA in respect of such amount. By submitting an invoice, Project Co certifies that the invoice is consistent with the work performed or delivered and is in accordance with this Agreement. The invoice shall be submitted in Project Co's name and shall show the date, the name and address of WDBA. The invoice shall separately identify any Applicable Canadian Taxes and any Applicable US Taxes that are included in the total amount indicated on the invoice, along with corresponding registration numbers from the tax authorities. All items that are zero-rated, exempt or to which Applicable Canadian Taxes or Applicable US Taxes do not apply must be identified as such. If the Payment Report shows a net amount owing by Project Co to WDBA, WDBA shall issue a debit note to Project Co in respect of such amount promptly following its receipt of such Payment Report. The debit note shall separately identify any Applicable Canadian Taxes and Applicable US Taxes that are included in the total calculation of such amount.
- (d) To the extent Project Co is late in submitting a Payment Report with all the required calculations and information, the deadline for payment of the relevant component or components of the payment referred to in Section 37.3 shall only begin as of the date the Payment Report in question with all the required calculations and information is received.

### 37.3 Payment Period

- (a) WDBA shall pay each Construction Period Payment at the times specified by Schedule 26 [*Construction Period Payments*], and shall pay each Monthly Payment at the times specified by Schedule 25 [*Payment Mechanism (OMR)*].
- (b) Except as otherwise expressly provided in this Agreement, any other payments due by WDBA to Project Co pursuant to this Agreement shall be paid within 15 days after the amount thereof is due. A payment is considered overdue on the day following its due date and interest will accrue and be paid automatically in accordance with Section 37.7.
- (c) If the content of the invoice and its substantiating documentation are not in accordance with this Agreement and with Applicable Law, WDBA may notify Project Co (i) within 5 Business Days of receipt, in relation to any Construction Period Payment, and (ii) within 15 days of receipt, in relation to any Monthly Payment or any other payment and request that the initial invoice be revised with appropriate information. The applicable payment period begins upon receipt of the revised invoice. Failure by WDBA to notify Project Co within 5 Business Days or 15 days, as applicable, will only result in the dates specified in Section 37.3(a) to apply for the sole purpose of calculating interest on overdue accounts.

### 37.4 Manner of Payment

Except as otherwise required by this Agreement, all amounts due by WDBA to Project Co under this Agreement shall be paid in Canadian dollars and shall be electronically transferred, quoting the invoice number or description against which payment is made. Payments shall be made not later than the due date, in immediately available funds, to such bank accounts located in Canada, as may be designated by Project Co from time to time by giving a Notice to WDBA. Unless WDBA otherwise directs Project Co, all amounts due and payable by Project Co to WDBA under this Agreement shall be deducted from the next amount due and payable to Project Co by WDBA with the exception of Tolling Revenues which will not be automatically deducted pursuant to this Section 37.4 but which will be subject to Section 37.8.

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### 37.5 Tax Remittances

Project Co shall withhold the applicable Taxes from the amounts it pays to any applicable payee in respect of the Project Work under this Agreement and shall remit the proceeds of such Tax withholdings, if any, to the relevant tax authorities. Project Co shall indemnify WDBA and hold WDBA harmless from and against any Losses and Claims WDBA might suffer or incur in respect of any payment made by Project Co without withholding such applicable Taxes. Should WDBA have to pay an amount due and payable under this Agreement where such a withholding of Tax is to be made from that amount, Project Co hereby consents to WDBA's withholding such Taxes and remitting the proceeds thereof to the relevant tax authorities.

### 37.6 Disputed Amounts

- (a) Each party shall have the right to dispute, in good faith, any amount specified as payable from one party to another. When such a Dispute arises, the undisputed portion of the amount claimed shall be paid not later than on its due date of payment. Upon resolution of the Dispute, the amount agreed to by the parties or otherwise determined through the Dispute Resolution Procedure shall be due within 30 days following such resolution, together with interest accrued thereon from the date it was initially due, at the rate stipulated in Section 37.7.
- (b) A Dispute over any amount specified as payable from one party to another shall not relieve Project Co from its obligation to continue to diligently perform its obligations under this Agreement.

### 37.7 Interest on Overdue Amounts

- (a) For the purpose of this Section:
  - (i) **"Average Rate"** means the simple arithmetic mean of the Bank Rates in effect at 4:00 p.m. each day during the calendar month immediately before the calendar month in which payment is made;
  - (ii) **"Bank Rate"** means the rate of interest established from time to time by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to members of the Canadian Payments Association; and
  - (iii) **"Date of Payment"** means the date that a negotiable instrument is delivered by a party to the other party or the date that a wire transfer is sent by a party to the other party, to pay any amount under this Agreement.
- (b) An amount becomes **"overdue"** when it is unpaid on the first day following the day on which it is due and payable according to this Agreement. Amounts payable by WDBA are paid on the Date of Payment.
- (c) A party shall pay to the other party simple interest at the Average Rate plus **[REDACTED]** percent per year (the **"Interest Rate"**) on any amount owing by the first party that is overdue, from the date that amount becomes overdue until the day before the Date of Payment, inclusive. Neither party is required to provide a Notice to the other party in order for interest to be payable.

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**37.8 Set-Off**

When a sum of money that is not the subject of an unresolved Dispute is due by Project Co to WDBA under this Agreement, as evidenced by supporting documentation, such sum may be set off from any amount due to Project Co by WDBA pursuant to this Agreement.

**37.9 Audit**

- (a) Without limiting the scope of any other provision of this Agreement (including the provisions relating to Confidential Information) and all the other audit, information or consultation rights or other similar rights set out in this Agreement, WDBA or any of its representatives may, at WDBA's expense, examine Project Co's books and records that relate to the Project and this Agreement and may make and retain copies of any of Project Co's books and records. This right may be exercised to the extent deemed necessary by WDBA to verify the accuracy of any accounting statement, charge, computation or Claim drawn up or made pursuant to any of the provisions of this Agreement, including any Payment Report. If WDBA or its representatives discover from any such examination any inaccuracy or error in any invoice which gives rise or would have given rise to overpayment by WDBA, the necessary adjustments shall be made in accordance with the provisions of Section 37.10. WDBA's expenses and other audit costs incurred by reason of such examination of the books and records shall then be paid by Project Co, up to an amount equal to the amount overpaid by WDBA.
- (b) Project Co shall ensure that the Prime Contracts contain provisions granting WDBA the same rights as those set out in Section 37.9(a) and requiring the Prime Contractors to cooperate with WDBA's representatives in that regard.
- (c) This Section 37.9 shall not limit or restrict any right of consultation, examination or audit of WDBA or any Governmental Authority under Applicable Law.

**37.10 Inaccuracies in Payments**

- (a) If there is any inaccuracy in any invoice, debit note or Payment Report, whether determined upon an examination by WDBA pursuant to Section 37.9 or otherwise, and it is revealed that WDBA has overpaid or underpaid any amounts, the party that discovers the error shall forward a Notice to the other party containing sufficient information to enable the other party to understand the reasons warranting the adjustment request and the calculation of such adjustment. The parties shall have 20 days from receipt of an adjustment request Notice (or such other time frame as the parties may agree upon) to review such request and notify the issuing party whether or not it agrees with the adjustment requested. In the event of a Dispute, the procedure set out in Section 37.6 (*Disputed Amounts*) shall apply, with the necessary alterations.
- (b) The adjustment shall be processed as follows:
  - (i) for an overpayment by WDBA, the amount of the adjustment and the applicable interest shall be deducted from the first payment due by WDBA following agreement or determination of the adjustment, together with interest thereon at the rate stipulated in Section 37.7, calculated from the date WDBA made the overpayment to the due date of payment of the amount from which the deduction will be made. WDBA's right to recover the overpayment together with interest thereon, if applicable, shall not interfere with any other rights WDBA may have under this Agreement; and

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- (ii) for an underpayment by WDBA, the adjustment agreed or determined shall be added to the next Payment Report submitted by Project Co and, provided the underpayment is due to an error of WDBA and not of Project Co or of any Project Co Person, the amount of the adjustment shall bear interest at the rate stipulated in Section 37.7 calculated from the date the amount should have been paid to the date the payment is made and shall constitute an overdue amount.

### 37.11 Effect of Payment

No payment hereunder shall be construed as an acceptance or approval of incomplete, defective or improper performance by Project Co of any of its obligations under this Agreement, nor shall it operate to relieve Project Co from the performance of any of its obligations under this Agreement which have not been performed.

### 37.12 Limitation on Payments

Project Co shall not be entitled to any payments, compensation, rights, remedies, benefits or entitlements under or in connection with this Agreement, except as specifically and expressly set out in this Agreement.

## 38. TAXES

### 38.1 Payment of Taxes

- (a) All amounts specified in this Agreement are expressed exclusive of Applicable Canadian Taxes and all other taxes but inclusive of Applicable US Taxes. All compensation payments for which section 182 of the *Excise Tax Act* (Canada) applies shall be grossed-up such that the recipient of such payment shall be entitled to retain the proper amount of compensation after the GST/HST deemed to be included in such payment is reported and remitted to the Canada Revenue Agency by such recipient. WDBA shall pay the Applicable Canadian Taxes and Applicable US Taxes payable by WDBA to Project Co under Applicable Law. Except as provided under Applicable Law, such Applicable Canadian Taxes and Applicable US Taxes, as the case may be, shall be paid simultaneously with any amount due hereunder, including any compensation on termination.
- (b) It is the sole responsibility of Project Co to charge Applicable Canadian Taxes and Applicable US Taxes at the correct rate in accordance with Applicable Law. Project Co agrees to report and remit the proper amounts of Applicable Canadian Taxes and Applicable US Taxes to the appropriate authorities in accordance with Applicable Law.
- (c) Project Co is not entitled to use WDBA's exemptions from any Tax unless otherwise specified by Applicable Law. Project Co must pay applicable Taxes on taxable goods or services used or consumed in the performance of the Project Work in accordance with Applicable Law, including for material incorporated into real property.

### 38.2 Property Taxes

- (a) [REDACTED].
- (b) [REDACTED].
- (c) Project Co shall promptly deliver all communications with regard to any real property tax or a payment in lieu of real property tax received from any Governmental Authority to WDBA.

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If WDBA decides to take any action in connection with any assessment of any real property tax or a payment in lieu of a real property tax assessed on any portion of the Project, Project Co shall cooperate fully with WDBA to take any action in connection with any such assessment. WDBA shall bear the cost required to pursue any such action including filing fees, third party representation and other reasonable out-of-pocket costs directly attributable to any such action. Project Co may retain its own representatives to ensure compliance with this Section 38.2. and any costs reasonably incurred by Project Co in respect thereof, and all costs reasonably incurred by Project Co in carrying out its responsibilities under this Section 38.2(c) shall be for the account of WDBA.

### 38.3 Changes in Recoverability of Tax Credits

- (a) WDBA shall pay to Project Co from time to time, as the same are incurred by Project Co, amounts equal to any Irrecoverable Tax to the extent such Irrecoverable Tax results from a Change in Law. Project Co shall pay to WDBA from time to time, as the same arise for the benefit of Project Co, amounts equal to any Recoverable Tax or Irrecoverable Tax to the extent such Recoverable Tax or Irrecoverable Tax results from a Change in Law. In no event, shall Change in Law be interpreted to include any assessment issued by a taxation authority as a result of any failure of Project Co to properly collect, pay, report, or remit any amount of tax in accordance with Applicable Law in existence at the material time.
- (b) For the purposes of this Section 38.3, the term “**Irrecoverable Tax**” means the Applicable Canadian Taxes or Applicable US Taxes, or an irrecoverable sales tax levied in lieu of all or a portion of Applicable Canadian Taxes or Applicable US Taxes, incurred by Project Co, the Construction Contractor or a Subcontractor in respect of the supply of any good or service to WDBA, which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co, the Construction Contractor or a Subcontractor in the course of carrying out the Project Work, to the extent that Project Co, the Construction Contractor or Subcontractor is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such Applicable Canadian Taxes or Applicable US Taxes, or after obtaining an input tax credit, is required to pay an additional amount on account of such Applicable Canadian Taxes equal to all or part of the input tax credit claimed.
- (c) For the purposes of this Section 38.3, the term “**Recoverable Tax**” means Applicable Canadian Taxes incurred by Project Co in respect of the supply of any good or service to WDBA which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Project Work to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such Applicable Canadian Taxes, other than input tax credits arising solely from an increase in the applicable HST rate.
- (d) Project Co shall provide WDBA with a written estimate of anticipated Irrecoverable Tax as of Financial Close. The estimate shall include sufficient detail to indicate the property and services, and the cost thereof, included in the Project Work upon which Project Co is bearing Irrecoverable Tax. Such estimates may be revised based on audits or reviews of such Project Work cost as WDBA shall determine. Project Co may not unilaterally increase or decrease such estimates after Financial Close without the consent of WDBA, acting reasonably. Any reimbursement of Irrecoverable Tax pursuant to this Section 38.3 shall be determined by reference to these estimated amounts, such that no amount of reimbursement shall be paid in respect of Irrecoverable Tax on property or services not described or quantified in the estimate described herein.

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### **39. PERFORMANCE AND PAYMENT SUPPORT**

Project Co shall cause to be maintained in full force and effect each of the Performance and Payment Support for the duration of the term provided for in each such Performance and Payment Support and in accordance with the terms and conditions provided for therein as of the Commencement Date. Any such Performance and Payment Support shall be assignable or otherwise transferable to WDBA pursuant to the Prime Contractor Direct Agreements, subject to the priority rights of Senior Lenders as set out in the Lenders' Direct Agreement.

### **40. INSURANCE**

#### **40.1 Insurance Requirements**

Project Co shall take out, maintain in full force and effect, pay for and renew or, as the case may be, cause to be taken out, maintained in force, paid for and renewed, from Eligible Insurers, certain insurance for the Project, pursuant to Insurance Policies as set out in and in full compliance with the provisions of Schedule 29 [*Insurance Requirements*]. Neither compliance nor failure to comply with the requirements set out in such Schedule shall relieve Project Co of its liabilities and obligations under this Agreement nor shall it prejudice or limit any rights of WDBA under this Agreement.

#### **40.2 No Compensation for Insured Claims**

Except in the case of compensation on termination under Section 50 (*Compensation on Termination*) and Schedule 27 [*Compensation on Termination*], any compensation, indemnity or other similar amounts payable by WDBA under this Agreement (including pursuant to Sections 43 (*Supervening Events*) and 44.2 (*Indemnification by WDBA*)) shall be reduced by the following:

- (a) any amount Project Co recovers or is entitled to recover under the insurance set out in Schedule 29 [*Insurance Requirements*], including any Project Co Insurance Policy taken out and maintained by Project Co in accordance with this Section 40 and Schedule 29 [*Insurance Requirements*] or that Project Co should have recovered if such Project Co Insurance Policy had been taken out and maintained, whether or not any such policy has in fact been effected or, if effected, has been vitiated as a result of any act or omission of Project Co or any Project Co Person (including non-disclosure or under-insurance);
- (b) any amount Project Co recovers or is entitled to recover under any other insurance policies that have been specifically procured in connection with the Project Work (excluding loss of profits insurance); and
- (c) any amount in respect of deductibles for which Project Co is responsible under this Agreement.

#### **40.3 Insurance Trust Agreement**

Project Co and WDBA shall execute and deliver the Insurance Trust Agreement with the Lenders' Agent and the Account Trustee at the Effective Time.

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**PART E****CHANGE, CHANGE IN LAW, SUPERVENING EVENTS, INDEMNITIES****41. CHANGES****41.1 Change Procedure**

- (a) If a Change occurs after the Commencement Date, the provisions of this Section 41 and of Schedule 22 [*Change Procedure*] shall apply. Except as otherwise expressly provided in this Agreement, Schedule 22 [*Change Procedure*] shall apply in respect of Minor Work.
- (b) If it is hereafter determined that the Proposal or the Proposal Extracts fail to comply with any provision of this Agreement, WDBA shall have the right to request Project Co to immediately comply with such provision and such request shall not constitute or be deemed to constitute a WDBA Change.
- (c) Project Co shall not be entitled to any payment, compensation or extension of time or other relief for a WDBA Change, a Project Co Change or Minor Work except to the extent provided in Schedule 22 [*Change Procedure*].

**42. CHANGE IN LAW****42.1 Performance after Change in Law**

- (a) Following any Change in Law, Project Co shall perform the Project Work in compliance with such Change in Law and, subject to Section 38.3 (*Changes in Recoverability of Tax Credits*), Section 42.2 and Section 42.3, shall not be entitled to any payment, compensation or delay in connection with such Change in Law.
- (b) Without prejudice to any of its other obligations under this Agreement, in the event of a Discriminatory Change in Law or a Works Change in Law, both parties shall:
  - (i) use reasonable efforts to mitigate the adverse effects of any such Change in Law and take all reasonable steps to minimize any increase in costs or other type of Loss arising from such Change in Law; and
  - (ii) use reasonable efforts to take advantage of any positive or beneficial effects of any such Change in Law and take all reasonable steps to maximize any reduction in costs arising from such Change in Law.
- (c) Any costs incurred by a party hereto as a result of such party's failure to comply with Section 42.1(b) shall not be taken into account in the determination of any compensation payable pursuant to Sections 42.2 and 42.3 and any reduction in costs that would have been realized had such party complied with its obligation to mitigate as set out in Section 42.1(b) shall be taken into account and reduce the amount of the compensation payable.

**42.2 Discriminatory Change in Law**

- (a) Upon the occurrence of a Discriminatory Change in Law, either party shall be entitled to seek compensation for any increase or decrease, as the case may be, in the Capital Expenditures and Operating Costs to Project Co to perform the Project Work and, as applicable, Project Co shall also be entitled to seek relief and an extension of time in

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accordance with the following provisions. Upon the occurrence of a Discriminatory Change in Law:

- (i) either party may give a Notice to the other of the need for a WDBA Change as a result of such Discriminatory Change in Law provided that if no such Notice is given within 180 days following the coming into force of such Discriminatory Change in Law, no request for compensation or other relief may then be made or sought by the parties in respect of such Discriminatory Change in Law;
  - (ii) the parties shall meet within 30 days of such Notice to discuss and seek to agree on the occurrence and impact of the Discriminatory Change in Law and, if they have not reached an agreement within 10 Business Days following such meeting (or such other period as the parties may agree upon), then either of them may refer the question of whether a Discriminatory Change in Law has occurred or the impact of the Discriminatory Change in Law to the Dispute Resolution Procedure, provided that if the matter is not referred to the Dispute Resolution Procedure within such period, the parties shall be deemed to have waived any rights to compensation or relief in respect of such Discriminatory Change in Law; and
  - (iii) within 10 Business Days of an agreement being reached or of a determination being made pursuant to the Dispute Resolution Procedure that a WDBA Change is required, WDBA shall issue a request for a WDBA Change and the relevant provisions of Schedule 22 [*Change Procedure*] shall apply, with the following adjustments:
    - (A) Project Co may decline to provide the Change Appraisal or object to such WDBA Change on the grounds that the implementation of such WDBA Change would not give effect to or would not comply with the Discriminatory Change in Law;
    - (B) Project Co shall be responsible for obtaining all Permits required in respect of such WDBA Change excluding any WDBA Permits;
    - (C) WDBA shall not be entitled to withdraw its request for a WDBA Change or WDBA Change Confirmation; and
    - (D) Project Co shall proceed to implement such WDBA Change within such period as will enable it to comply with the Discriminatory Change in Law.
- (b) Any entitlement to extension of time, relief and compensation in respect of a Discriminatory Change in Law shall be in accordance with this Section 42.2, and any calculation of compensation shall be on the basis that Project Co shall be placed in a no better and no worse position than it would have been in had the Discriminatory Change in Law not occurred. Any such compensation shall take into account:
- (i) any increase or decrease in Project Co's net costs of performing the Project Work resulting from such Discriminatory Change in Law; and
  - (ii) any amount which Project Co recovers under any Project Co Insurance Policy or would have recovered if it had complied with the requirements of this Agreement or the terms of any Project Co Insurance Policy required under this Agreement.

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- (c) Project Co shall not be entitled to any payment, compensation, extension of time or any other relief in respect of a Discriminatory Change in Law, other than in accordance with this Section 42.2 and as provided in a WDBA Change Confirmation or as determined pursuant to the Dispute Resolution Procedure.

#### 42.3 Works Change in Law

- (a) Upon the occurrence of a Works Change in Law, either party shall be entitled to seek compensation for any increase or decrease, as the case may be, in the Capital Expenditures and Operating Costs of Project Co to perform the Project Work and, as applicable, Project Co shall also be entitled to seek relief and an extension of time in accordance with the following provisions. Upon such occurrence:
- (i) either party may give a Notice to the other of the need for a WDBA Change as a result of such Works Change in Law provided that if no such Notice is given within 180 days following the coming in force of such Works Change in Law, no request for compensation or other relief may then be made or sought by the parties in respect of such Works Change in Law;
  - (ii) the parties shall meet within 30 days of such Notice to discuss and seek to agree on the occurrence and impact of the Works Change in Law and, if they have not reached an agreement within 10 Business Days following such meeting (or such other period as the parties may agree upon), then either of them may refer the question of whether a Works Change in Law has occurred or the impact of the Works Change in Law to the Dispute Resolution Procedure, provided that if the matter is not referred to the Dispute Resolution Procedure within such period, the parties shall be deemed to have waived any rights to compensation or relief in respect of such Works Change in Law;
  - (iii) within 10 Business Days of an agreement being reached or of a determination being made pursuant to the Dispute Resolution Procedure that a WDBA Change is required, WDBA shall issue a request for a WDBA Change and the relevant provisions of Schedule 22 [*Change Procedure*] shall apply, with the following adjustments:
    - (A) Project Co may decline to provide the Change Appraisal or object to such WDBA Change on the grounds that the implementation of WDBA Change would not give effect to or would not comply with the Works Change in Law;
    - (B) Project Co shall be responsible for obtaining all Permits required in respect of such WDBA Change excluding any WDBA Permits;
    - (C) WDBA shall not be entitled to withdraw its request for a WDBA Change or WDBA Change Confirmation; and
    - (D) Project Co shall proceed to implement WDBA Change within such period as will enable it to comply with the Works Change in Law.
- (b) Project Co shall not be entitled to any payment, compensation, extension of time or any other relief in respect of a Works Change in Law, other than in accordance with this Section 42.3 and as provided in a WDBA Change Confirmation or as determined pursuant to the Dispute Resolution Procedure.

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#### 42.4 Changes in Standards

Following a variation, addition, reduction, substitution, modification or other change in any Standard, Project Co shall comply with the requirements provided under Part 2 [*Standards and Specifications*] of Schedule 10 [*Design and Construction Specifications*]. Notwithstanding any provision to the contrary, Part 2 [*Standards and Specifications*] of Schedule 10 [*Design and Construction Specifications*] shall not apply where such variation, addition, reduction, substitution, modification or other change in any Standard is also a Change in Law.

### 43. SUPERVENING EVENTS

#### 43.1 General Provision

- (a) If, with respect to:
- (i) Project Co, a Compensation Event or Relief Event occurs; or
  - (ii) either WDBA or Project Co, a Force Majeure Event occurs,
- then, if and to the extent that such event interferes adversely with, or causes a failure of performance of, in the case of Project Co, the Project Work or, in the case of WDBA, any obligations under this Agreement, then subject to Section 43.1(b), the affected party (for purposes of this Section 43 the “**Applicant**”), to the extent provided in this Section 43 may apply for relief from its obligations or for extension of time, or claim compensation or claim a termination right under this Agreement.
- (b) Notwithstanding any other provision of this Agreement, an Applicant shall only be entitled to relief from obligations, extensions of time, compensation or termination rights under this Agreement in accordance with this Section 43 in respect of a Supervening Event:
- (i) to the extent that such Supervening Event or effect thereof does not result from or is not contributed to, directly or indirectly:
    - (A) in the case of a claim of any Supervening Event by Project Co, by any Non-Excusable Event of Project Co; or
    - (B) in the case of a claim of a Force Majeure Event by WDBA, any Non-Excusable Event of WDBA; and
  - (ii) if the Applicant provides a Supervening Event Notice in respect of such Supervening Event pursuant to this Section 43 on or before 180 days after the date of the occurrence or commencement of such Supervening Event.
- (c) Nothing in this Section 43 shall limit WDBA's right to request a WDBA Change pursuant to Section 41 (*Changes*) in response to the occurrence of any Supervening Event, including a WDBA Change to give to Project Co instructions to accelerate the Project Work or take other steps to avoid any delay or impediment, or reduce the period of any future delay or mitigate the effect of any future impediment, resulting from such Supervening Event. Subject to a cancellation of such request for a WDBA Change as a result of the successful exercise by Project Co of its rights in accordance with Section 2.5 of Schedule 22 [*Change Procedure*], in the event that WDBA requests such a WDBA Change, the procedures in respect of such Supervening Event set out in this Section 43 shall terminate, and the matter shall be fully determined, in accordance with Section 41 (*Changes*) and Schedule

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22 [*Change Procedure*], provided that the Supervening Event and its consequences shall be dealt with as part of the resulting WDBA Change.

#### 43.2 Supervening Events Procedure

The following procedure shall apply if a Supervening Event occurs.

- (a) As soon as practicable, and in any event within 10 Business Days after the Applicant has knowledge that the Supervening Event has caused, or is reasonably likely to cause, an entitlement under this Section 43, the Applicant shall give to the other party a Notice (the "**Supervening Event Notice**") identifying the particular Supervening Event and summarizing, to the extent the Applicant has knowledge thereof, the consequences and the nature of the Applicant's Claim.
- (b) As soon as practicable and, in any event, no later than within 20 Business Days after delivery by the Applicant of a Supervening Event Notice, the Applicant shall give to the other party:
  - (i) any additional details or information, including available supporting documentation, in support of its claim in respect of the occurrence of the Supervening Event;
  - (ii) if applicable, a detailed breakdown of all estimated Losses that have been, will be or are reasonably likely to be incurred by the Applicant as a result of the Supervening Event; and
  - (iii) all other relevant information which would be required to be included in the Change Appraisal if such Supervening Event were a WDBA Change, including any adjustments or modifications to any Construction Period Payment or the Monthly Payment, as applicable.
- (c) No later than 5 Business Days of the Applicant receiving or becoming aware of any supplemental information which may further substantiate or support the Applicant's claim, the Applicant shall submit further particulars based on such information to the other party. In particular, if a Supervening Event for which a Supervening Event Notice has been delivered ceases, the Applicant shall give the other party, a Notice thereof and of the date on which performance of its affected obligations can be resumed.
- (d) A party may not make multiple or duplicative claims in respect of a Supervening Event, and the relief, extension of time, compensation or termination right in respect of a Supervening Event as is agreed to by the parties or as is otherwise determined pursuant to the Dispute Resolution Procedure, shall be the only relief, extension of time, compensation or termination right to which the Applicant shall be entitled in respect of such Supervening Event.
- (e) The other party shall forthwith provide the Applicant any information reasonably requested by the Applicant in order for the Applicant to make its claim.
- (f) The Applicant shall demonstrate that:
  - (i) the applicable criteria required under Section 43.1(b) have been met;

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- (ii) the Supervening Event has caused or will cause the Applicant to suffer the effects from which the Applicant seeks relief, extensions of time, compensation or a termination right under this Section 43; and
  - (iii) it has complied with its mitigation obligations under Section 63.1 (*General Duty to Mitigate Damages*).
- (g) The Applicant shall advise whether, in the Applicant's opinion, any amendments should be considered to this Agreement, the Prime Contracts or any Lending Agreements as a result of the Supervening Event.
- (h) The parties shall meet within 5 Business Days of delivery of the documentation described in Section 43.2(b), to consult and seek to agree on the effect of the Supervening Event. If the parties, within 10 Business Days following such meeting, have not agreed to the occurrence or the effect of the Supervening Event, either party may refer the question of whether a Supervening Event has occurred or the extent of relief or compensation to which the affected party is entitled, for resolution in accordance with the Dispute Resolution Procedure.

### 43.3 Compensation Event

For the purposes of this Agreement, a "**Compensation Event**" means any of the following events or circumstances:

- (a) a breach of any obligation, undertaking, representation or warranty of WDBA under this Agreement;
- (b) an Environmental Assessment is declared invalid or defective by a court of competent jurisdiction or is judicially stayed pending final adjudication by such court, other than in connection with changes or amendments to the Environmental Assessments that are the responsibility and risk of Project Co under this Agreement;
- (c) the discovery of any Wildlife Species not otherwise identified in an Environmental Assessment. For the purpose of this Section 43.3(c), the term "**Wildlife Species**" refers to any wildlife species listed in the List of Wildlife Species at Risk prepared pursuant the *Species at Risk Act*, S.C. 2002, c.29, in the *U.S. Endangered Species Act*, 16 U.S.C. §§ 1531 et seq. or in the *Michigan Natural Resources and Environmental Protection Act*, MCL 324.36501 et seq.;
- (d) **[REDACTED]**.
- (e) any other events or circumstances specifically identified as a Compensation Event pursuant to the provisions of this Agreement, including the events or circumstances listed in 2.8(a) (*Business Opportunities*), 2.16(c) (*Foreign Dignitaries*), 5.1(c) (*Lands*), 5.4(b) (*Site Use and Administrative Services*), 5.5(h) (*Rights of Use Granted to Project Co*), 6.1(c) and **[REDACTED]**, **[REDACTED]**, 7.3(b) (*Exceptions for the Guaranteed Engineering Data*), 14.1 (*Other Work*), 14.2 (*Coordination and No Disruption*), **[REDACTED]**, **[REDACTED]**, **[REDACTED]**, 17.1(c) (*Items of Archaeological or Other Interest*), 17.3(b) (*Indigenous Peoples*), 17.4 (*Title Encumbrances*), **[REDACTED]** and **[REDACTED]**, (23.5(c) (*Utility Work*), 23.6 (*Unknown Utilities*), 32.2(d) (*Right to Uncover*), 32.5(d) (*Increased Monitoring*), 32.6(f) (*Remedial Rights*), **[REDACTED]** and 63.2 (*WDBA's Statutory Emergency Powers*), Section 2.7(d)(i) of Schedule 22 [*Change Procedure*] and Section 6.3 of Schedule 23 [*Dispute Resolution Procedure*] of this Agreement.

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**43.4 Project Co's Entitlements for a Compensation Event**

Subject to Section 43.1(b) and Project Co's obligations under Section 63.1 (*General Duty to Mitigate Damages*), if at any time a Compensation Event has occurred, then the following shall apply.

- (a) To the extent that, and for so long as, Project Co is prevented by the Compensation Event from performing any of its obligations under this Agreement (other than those obligations arising as a result of the Compensation Event):
  - (i) Project Co shall be relieved from any liability or consequence under this Agreement (including termination by WDBA) arising from its inability to perform such obligations;
  - (ii) no Availability Failure Deductions or Service Failure Deductions shall be made and in respect of any such prevented performance and any related Monitoring Notice shall be withdrawn.
- (b) Project Co shall be entitled to such compensation as would place Project Co in no better and no worse position than it would have been in had the relevant Compensation Event not occurred.
- (c) Project Co shall promptly provide WDBA with any information WDBA may require acting reasonably, in order to determine the amount of such compensation. The compensation payable to Project Co shall take into account the timing of the expenses incurred by Project Co and shall, at WDBA's option, be through a lump sum payment or payments at times and in a manner to be agreed with Project Co, acting reasonably, or, alternatively, WDBA may request Project Co to agree to an adjustment to a Construction Period Payment and the Monthly Payment, as applicable, in which case the provisions of Schedule 22 [*Change Procedure*] shall apply.
- (d) Subject to Section 43.4(e), if it has been agreed or determined pursuant to the Dispute Resolution Procedure that the Compensation Event has resulted or may result in a delay to meet the Scheduled Canadian POE Agency Buildings Handover Date, the Scheduled US POE Agency Buildings Handover Date or the Scheduled Substantial Completion Date, then the Scheduled Canadian POE Agency Buildings Handover Date, the Scheduled US POE Agency Buildings Handover Date or the Scheduled Substantial Completion Date, as applicable, shall be postponed for such time as it is reasonable in the circumstances, to take into account solely the effect of the delay caused by the Compensation Event to such date, provided that the Expiry Date and the Term shall not be extended. In such case the DB Schedule shall be amended accordingly to reflect such delay to the relevant date or dates, including any resulting delays to the other related milestone dates set out in such schedule.
- (e) Notwithstanding any provision in this Agreement to the contrary, if a Compensation Event resulting in a delay occurs prior to Substantial Completion, Project Co acknowledges and agrees that, in order to meet and satisfy WDBA's priority in achieving Canadian POE Agency Buildings Handover no later than by the Scheduled Canadian POE Agency Buildings Handover Date, the US POE Agency Buildings Handover no later than by the Scheduled US POE Agency Buildings Handover Date and Substantial Completion no later than by the Scheduled Substantial Completion Date, WDBA shall pursuant to Section 43.1(c) and Section 41 (*Changes*), have the right to request a WDBA Change to give Project Co instructions to accelerate the DB Work, in response to the occurrence of

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such delay. In such event the parties agree to abbreviate the time periods provided under the Change Procedure to the greatest extent reasonably possible.

#### 43.5 Relief Event

For the purposes of this Agreement, a “**Relief Event**” means any of the following events or circumstances to the extent they affect the Project:

- (a) fire, explosion, lightning, tempest, hurricane, tornado, flood, ionising radiation, earthquake or other natural disasters, riot or civil commotion, in each case to the extent it does not constitute a Force Majeure Event;
- (b) accidental loss or damage to the Project Infrastructure and/or the Facility;
- (c) without prejudice to any obligations of Project Co to provide stand-by power facilities in accordance with this Agreement, failure or shortage of power, fuel or transport;
- (d) receipt by Project Co of a legitimate order or direction by an Emergency Service Provider;
- (e) blockade or embargo falling short of a Force Majeure Event;
- (f) any general strike affecting the supply of iron or steel in Canada or the US or any general strike in the Province of Ontario or Michigan, go-slow or other labour dispute lasting more than 5 days generally affecting the construction industry or the buildings, roads and bridges maintenance industry or a significant sector thereof;
- (g) any civil disobedience or protest action, including any action taken by any person or persons protesting or demonstrating against the carrying out of any part of the Project, provided, however, that a civil disobedience or protest action shall not, in any event be cause for a Relief Event, unless Project Co has fully complied with Section 18 (*Protest and Trespass*); and
- (h) any event or circumstance specifically identified as a Relief Event pursuant to the provisions of this Agreement, including the events or circumstances listed in Section [REDACTED] of this Agreement.

#### 43.6 Project Co's Entitlements for a Relief Event

- (a) Subject to Section 43.1(b) and to Project Co's obligations under Section 63.1 (*General Duty to Mitigate Damages*) if at any time a Relief Event has occurred, then the following shall apply.
  - (i) To the extent that, and for so long as, Project Co is prevented by the Relief Event from performing any obligations under this Agreement (other than those obligations arising as a result of the Relief Event):
    - (A) Project Co shall be relieved from any liability or consequence under this Agreement arising from its inability to perform such obligations (other than as expressly provided in Section 31.5 (*Termination for Reinstatement Funds Deficiency*) and Section 43.9; and
    - (B) no Availability Failure Deductions or Service Failure Deductions shall be made in respect of any such prevented performance and any related Monitoring Notice shall be withdrawn.

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- (ii) If the Relief Event occurs prior to a Handover or the Substantial Completion Date, provided that it has been agreed by the parties or determined pursuant to the Dispute Resolution Procedure that the Relief Event has resulted or will result in a delay to meet the Scheduled Canadian POE Agency Buildings Handover Date, the Scheduled US POE Agency Buildings Handover Date or the Scheduled Substantial Completion Date, then the Scheduled Canadian POE Agency Buildings Handover Date, the Scheduled US POE Agency Buildings Handover Date or the Scheduled Substantial Completion Date, as applicable, shall be postponed for such time as it is reasonable in the circumstances, to take into account solely the effect of the delay caused by the Relief Event to such date, provided that the Expiry Date and the Term shall not be extended. In such case the DB Schedule shall be amended accordingly to reflect such delay to the relevant date or dates, including any resulting delays to the other related milestone dates set out therein.
  - (iii) If a Relief Event described in Sections 43.5(e), 43.5(f), 43.5(g), **[REDACTED]** or **[REDACTED]** occurs prior to a Handover Date or the Substantial Completion Date, provided that it has been agreed by the parties or determined pursuant to the Dispute Resolution Procedure that the Relief Event has resulted or will result in a delay to meet a scheduled Handover Date or the Scheduled Substantial Completion Date, WDBA shall pay to Project Co an amount equal to the Senior Debt Service Amount accrued and paid or which became payable in accordance with the Senior Lending Agreements during the period of delay.
- (b) Notwithstanding any provision to the contrary, if a Relief Event occurs prior to Substantial Completion, Project Co acknowledges and agrees that, in order to meet and satisfy WDBA's priority in achieving Canadian POE Agency Buildings Handover no later than by the Scheduled Canadian POE Agency Buildings Handover Date, US POE Agency Buildings Handover no later than by the Scheduled US POE Agency Buildings Handover Date and Substantial Completion no later than by the Scheduled Substantial Completion Date, WDBA shall pursuant to Section 43.1(c) and Section 41 (*Changes*), have the right to request a WDBA Change to give Project Co instructions to accelerate the DB Work, in response to the occurrence of such Relief Event. In such event the parties agree to abbreviate the time periods provided under the Change Procedure to the greatest extent reasonably possible.

#### 43.7 Force Majeure Event

- (a) For the purpose of this Agreement, a "**Force Majeure Event**" means the occurrence of any of the following events or circumstances which directly causes either party to be unable to perform all or a material part of its obligations under this Agreement:
- (i) war, civil war, armed conflict, an act of foreign enemy or an act of terrorism, plague, epidemics or any chemical or biological contamination of the Facility, the Project Infrastructure or the Lands resulting from or caused by any of the foregoing events;
  - (ii) pressure waves caused by aircraft or other aerial devices traveling at supersonic speeds; and
  - (iii) contamination resulting from nuclear explosion, combustion of nuclear fuel or ionizing radiation which affects the Site or the Project Infrastructure, unless the

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source or cause of such Contamination is brought to the Site or to the Project Infrastructure or in the vicinity thereof by Project Co or a Project Co Person.

- (b) The only events which qualify as Force Majeure Events are those listed in Section 43.7(a).

#### 43.8 Parties' Entitlements for a Force Majeure Event

- (a) Subject to Section 43.1(b) and to Project Co's obligations under Section 63.1 (*General Duty to Mitigate Damages*), if at any time a Force Majeure Event has occurred then the following shall apply.
- (i) To the extent that, and for so long as, the Applicant is prevented by the Force Majeure Event from performing any obligations under this Agreement (other than those obligations arising as a result of the Force Majeure Event):
- (A) the Applicant shall be relieved from any liability or consequence under this Agreement arising from its inability to perform such obligations (other than as expressly provided in Sections 31.5 (*Termination for Reinstatement Funds Deficiency*) and 43.9; and
- (B) if the Applicant is Project Co, no Availability Failure Deductions or Service Failure Deductions shall be made in respect of any such prevented performance and any related Monitoring Notice shall be withdrawn.
- (ii) If the Force Majeure Event occurs prior to the Substantial Completion Date, provided that it has been agreed by the parties or determined pursuant to the Dispute Resolution Procedure that the Force Majeure Event has resulted or will result in a delay to meet the Scheduled Canadian POE Agency Buildings Handover Date, the Scheduled US POE Agency Buildings Handover Date or the Scheduled Substantial Completion Date, then the Scheduled Canadian POE Agency Buildings Handover Date, the Scheduled US POE Agency Buildings Handover Date or the Scheduled Substantial Completion Date, as applicable shall be postponed for such time as it is reasonable in the circumstances, to take into account solely the effect of the delay caused by the Force Majeure Event, provided that the Expiry Date and the Term shall not be extended. In such case the DB Schedule shall be amended accordingly to reflect such delay to the relevant date or dates, including any resulting delays to the other related milestone dates set out therein.
- (iii) If a Force Majeure Event occurs prior to the Substantial Completion Date, provided that it has been agreed by the parties or determined pursuant to the Dispute Resolution Procedure that the Force Majeure Event has resulted or will result in a delay to meet the Scheduled Canadian POE Agency Buildings Handover Date, the Scheduled US POE Agency Buildings Handover Date or the Scheduled Substantial Completion Date, WDBA shall pay to Project Co an amount equal to the Senior Debt Service Amount accrued and paid or which became payable in accordance with the Senior Lending Agreements during the period of delay.
- (b) Notwithstanding any provision to the contrary, if a Force Majeure Event occurs prior to Substantial Completion, Project Co acknowledges and agrees that, in order to meet and satisfy WDBA's priority in achieving Canadian POE Agency Buildings Handover no later than by the Scheduled Canadian POE Agency Buildings Handover Date, US POE Agency

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Buildings Handover no later than by the Scheduled US POE Agency Buildings Handover Date and Substantial Completion no later than by the Scheduled Substantial Completion Date, WDBA shall pursuant to Section 43.1(c) and Section 41 (*Changes*), have the right to request a WDBA Change to give Project Co instructions to accelerate the DB Work, in response to the occurrence of such Force Majeure Event. In such event the parties agree to abbreviate the time periods provided under the Change Procedure to the greatest extent reasonably possible.

#### **43.9 Termination for Force Majeure Event or Relief Event**

- (a) If a Force Majeure Event or a Relief Event occurs, and it or any material effect thereof renders either party unable to perform all or a material part of its obligations under this Agreement and same persists for 180 days after the date a Supervening Event Notice is delivered by the Applicant, either party may at any time, so long as such Force Majeure Event or Relief Event or such material effect thereof is continuing, terminate this Agreement by giving a Notice to the other party.
- (b) If Project Co gives a Notice of termination to WDBA under Section 43.9(a), WDBA shall have the option to either accept such Notice or respond in writing on or before the date falling 10 Business Days after the date of receipt of such Notice stating that it requires this Agreement to continue. If WDBA gives Project Co such response then:
  - (i) Project Co's termination Notice shall have no legal effect and Project Co, insofar as it is able to do so, shall continue to perform its obligations in accordance with the provisions of this Agreement;
  - (ii) the Force Majeure Event, or Relief Event shall be deemed to constitute a Compensation Event occurring as of the date on which Project Co delivered the termination Notice pursuant to Section 43.9(a);
  - (iii) at any time, so long as the event is continuing, WDBA may terminate this Agreement by giving a Notice of termination to Project Co; and
  - (iv) Project Co may at any time after a further period of 180 days after the date on which Project Co delivered the termination Notice pursuant to Section 43.9(a), so long as the event is continuing, terminate this Agreement by giving a Notice of termination to WDBA.
- (c) If this Agreement is terminated pursuant to Sections 43.9(a), 43.9(b)(iii) or 43.9(b)(iv), Project Co shall be entitled to compensation on such termination in accordance with Section 4 of Schedule 27 [*Compensation on Termination*].
- (d) Notwithstanding Section 43.9(a), neither party shall be entitled to exercise its right to terminate this Agreement where a Relief Event occurs, if Project Co or a Project Co Person recovers or should have recovered under any Project Co Insurance Policy or any other insurance policy (including loss of profits insurance), an amount which, together with all Construction Period Payments and Monthly Payments for the relevant Payment Periods, is equal to or greater than the Senior Debt Service Amount and the Junior Debt Service Amount for the relevant Payment Periods.

#### **43.10 Delay in Notification**

If the Supervening Event Notice or any of the information required pursuant to Section 43.2 is provided by an Applicant to the other party after the applicable time periods provided under

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Section 43.2, then the Applicant shall not be entitled to any compensation, extension of time or relief from its obligations under this Agreement to the extent that the amount thereof was increased or the party's ability to mitigate was adversely affected, as a result of such delay in providing such Notice or information.

#### 44. INDEMNIFICATION, CONDUCT OF THIRD PARTY CLAIMS AND THIRD PARTY RECOVERY

##### 44.1 Indemnification by Project Co

- (a) Subject to Section 44.1(c), Project Co shall be responsible for and indemnify, defend and hold harmless WDBA, each WDBA Party and WDBA Persons from and against any and all Losses and Claims at any time suffered, sustained or incurred by them in respect of a failure by Project Co to achieve (i) Canadian POE Agency Buildings Handover by the Scheduled Canadian POE Agency Buildings Handover Date, (ii) US POE Agency Buildings by the Scheduled US POE Agency Buildings Handover Date or (iii) Substantial Completion by the Scheduled Substantial Completion Date. Project Co's maximum aggregate liability in respect of all claims under this Section 44.1(a) shall not exceed **[\$[REDACTED]]**. This limit shall be Index Linked and shall be exclusive of any Insurance Proceeds.
- (b) Subject to Section 44.1(c), Project Co shall be responsible for and indemnify, defend and hold harmless WDBA, each WDBA Party and WDBA Persons from and against any and all Losses and Claims at any time suffered, sustained or incurred by them in respect of:
- (i) the death or personal injury of any person;
  - (ii) a loss of or damage to all or any part of the Site, the Project Infrastructure, the Facility or any other relevant component of the Project Work or to any property owned or controlled by any of them on or adjacent to the Site; or
  - (iii) **[REDACTED]**;
  - (iv) a breach of any representation, warranty, obligation or undertaking of Project Co under this Agreement or the fault of Project Co or any Project Co Person;
  - (v) anything for which Project Co has liability pursuant to Section 16 (*Environmental Matters*); or
  - (vi) any other matter for which Project Co must indemnify WDBA, any WDBA Party or any WDBA Person under this Agreement.
- (c) Project Co shall not be responsible or obliged to indemnify, defend and hold harmless WDBA, a WDBA Party or any WDBA Person pursuant to Section 44.1(a) or Section 44.1(b) if the Losses or Claims suffered, sustained or incurred by WDBA, such WDBA Party or any WDBA Person are caused by a Non-Excusable Event of WDBA.
- (d) Project Co agrees that the indemnities contained in this Section in favour of WDBA Parties and WDBA Persons may be enforced by WDBA on behalf of any of them as if they were a Beneficiary under Section 44.3 of this Agreement and the provisions of Section 1.5(a) (*Third Party Relief*) shall apply.

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#### 44.2 Indemnification by WDBA

Subject to Crown immunities and limitations on liability under Applicable Law and other provisions of this Agreement, WDBA shall be responsible for and indemnify, defend and hold harmless Project Co and Project Co Persons from and against any and all Losses and Claims at any time suffered, sustained or incurred by it which may arise out of, or in consequence of;

- (a) any breach of any representation, warranty, obligation or undertaking of WDBA under this Agreement or any fault of WDBA or any WDBA Person under this Agreement;
- (b) [REDACTED]
- (c) [REDACTED]
- (d) any other matter for which WDBA must indemnify Project Co or a Project Co Person under this Agreement.

only if and so long as such event is not caused by a Non-Excusable Event of Project Co or any Project Co Person.

#### 44.3 Conduct of Third Party Claims

- (a) This Section 44.3 shall apply to the conduct of Claims made by a third party against a party having, or claiming to have, with respect to such third party Claim, the benefit of an indemnity under this Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and the party from whom the indemnity is sought is referred to as the “**Indemnifier**”.
- (b) If the Beneficiary receives any notice, demand, letter or other document concerning any Claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Agreement in respect of the entire Claim, the Beneficiary shall give a Notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt thereof, provided that a failure by the Beneficiary to give such Notice within such time shall not adversely affect the rights of the Beneficiary to indemnification hereunder except to the extent that such failure materially and adversely affects or prejudices the ability of the Indemnifier to defend or contest the Claim. Such Notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the Claim and the amount of the Claim.
- (c) If Notice is given by the Beneficiary as provided in Section 44.3(b), where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all, but not part only, of the liability arising out of the Claim, subject to Section 44.3(e), the Indemnifier shall be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the Claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such Claim, including providing or making available to the Indemnifier and its counsel documents and information and witnesses for attendance at examinations on discovery and trials, subject always to Applicable Law, solicitor and client privilege and any applicable confidentiality obligations.
- (d) The defense and any other legal proceedings in respect of any Claim subject to Section 44.3(c) shall be through legal counsel acceptable to and, subject to Section 44.3(e), shall be conducted in a manner, acceptable to, both the Indemnifier and

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the Beneficiary. The Beneficiary may, at its own cost and expense, participate in the defence of the Claim and it shall have the right to employ separate counsel in respect of such Claim, provided that the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and the Beneficiary and only if it is determined that the Beneficiary is entitled to indemnification by the Indemnifier.

- (e) Notwithstanding any other provisions of this Section 44.3, when WDBA is the Beneficiary, the Indemnifier's right to dispute the Claim in the name of the Beneficiary shall be subject to the application of the *Department of Justice Act*, RSC 1985, c J-2 and any requirements WDBA may impose with regard to the conduct of any defence, dispute, compromise, or appeal of the Claim and of any incidental negotiations in relation with the application of such Act.
- (f) With respect to any Claim conducted by the Indemnifier:
  - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
  - (ii) demonstrate to the Beneficiary, at the reasonable request of the Beneficiary, that the Indemnifier has sufficient means to pay all costs and expenses that it may incur by reason of conducting the Claim;
  - (iii) the Indemnifier shall not pay or settle such Claims nor admit liability or fault to any third party without the consent of the Beneficiary, such consent not to be unreasonably withheld;
  - (iv) the Indemnifier shall not pay or settle such Claims that impose any obligation other than financial obligations for which the Beneficiary will be indemnified hereunder;
  - (v) the Indemnifier shall not pay or settle such Claims or consent to any final judgment that does not include as an unconditional term thereof the delivery by the claimant or plaintiff of a written release from all liability in respect of such Claim in favour of the Beneficiary.
- (g) The Beneficiary may take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations if:
  - (i) the Indemnifier is not entitled to take conduct of the Claim in accordance with Section 44.3(c);
  - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant Claim within 10 Business Days of the Notice from the Beneficiary under Section 44.3(b) or notifies the Beneficiary that it does not intend to take conduct of the Claim; or
  - (iii) the Indemnifier fails to comply in any material respect with Section 44.3(f).

In any such event, the Beneficiary may then pay or settle any Claim on such terms as it considers and determines appropriate and without prejudice to its rights and remedies under this Agreement.

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- (h) The Beneficiary may at any time give a Notice to the Indemnifier that it is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise, settlement or appeal of any Claim, or of any incidental negotiations, to which Section 44.3(c) applies. On receipt of such Notice, the Indemnifier shall promptly take all steps necessary to transfer the conduct of such Claim to the Beneficiary, and shall provide to the Beneficiary all reasonable cooperation, access and assistance for the purposes of considering and resisting such Claim. If the Beneficiary gives any Notice pursuant to this Section 44.3(h) for reasons other than as provided in Sections 44.3(g)(ii) or 44.3(g)(iii), then the Indemnifier shall be released from any liability under its indemnity under Section 44.1 in respect of such Claim. WDBA shall not be deemed to retain or take over the conduct of any defence, dispute, compromise, settlement or appeal of any Claim, or of any incidental negotiations, as a result of the exercise of its rights pursuant to Section 44.3(e).
- (i) In response to any Claim of infringement or alleged infringement of the Intellectual Property Rights of any person, Project Co may replace such infringing or allegedly infringing item provided that:
  - (i) the replacement is performed without additional cost to WDBA; and
  - (ii) the replacement has at least equal quality performance capabilities when used in conjunction with the Project Infrastructure or other relevant component of the Project Work.
- (j) Any person taking any of the steps contemplated by this Section 44.3 shall, subject to Section 44.3(e), comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement.

#### 44.4 Third Party Recovery

If a party (in this Section 44.4 the “**Paying Party**”) has paid to the other party (in this Section 44.4 the “**Receiving Party**”) an amount in respect of any indemnity, Supervening Event or other liability hereunder (in this Section 44.4 a “**Liability Payment**”), and the Receiving Party has a bona fide Claim for recovery of any such Liability Payment from a third party (excluding, in the case where WDBA is the Paying Party, Project Co and the Project Co Persons and, in the case where Project Co is the Paying Party, WDBA, WDBA Parties and WDBA Persons) or under any Insurance Policies, the Receiving Party shall:

- (a) as directed by the Paying Party, either:
  - (i) promptly make all reasonable efforts to pursue and recover such Claim and provide evidence of such efforts to the Paying Party; or
  - (ii) assign to the Paying Party the right to pursue and recover such Claim and, at the Paying Party's cost, provide reasonable cooperation in connection with the pursuit and recovery of such Claim; and
- (b) if it subsequently recovers, or the Paying Party makes recovery on its behalf, (whether by payment, discount, credit, saving, relief or other benefit or otherwise) an amount which is directly referable to the fact, matter, event or circumstances giving rise to the payment of the Liability Payment, forthwith repay to the Paying Party an amount equal to the lesser of:

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- (i) an amount equal to the sum recovered (or of the value of the saving or benefit obtained) less any out of pocket costs and expenses reasonably and properly incurred by the Receiving Party in recovering such sum; and
- (ii) the Liability Payment;

provided that the Paying Party shall be repaid only to the extent that the amount of such recovery plus the Liability Payment exceeds the total loss or liability of the Receiving Party in respect of the fact, matter or circumstance giving rise to the Liability Payment.

#### **44.5 Costs and Expenses**

Where in accordance with any provision of this Agreement a party is entitled to claim indemnification, compensation or reimbursement from the other party for any costs, expenses or other amounts, the indemnifying party shall be obligated to provide indemnification, compensation or reimbursement only to the extent of the costs, expenses or other amounts claimed that were reasonably incurred having regard to all relevant circumstances.

#### **45. LIABILITY LIMITS**

##### **45.1 No Liability for Indirect Losses**

Unless specifically allowed under this Agreement and without prejudice to WDBA's rights under the Payment Mechanism or the parties' rights in respect of payments provided for herein (including Project Co's right to receive payment under the Payment Mechanism, compensation under Schedule 27 [*Compensation on Termination*] or any other compensation or reimbursement hereunder), no party to this Agreement shall be obligated to pay to the other party or shall be liable to the other party for:

- (a) loss of revenue (including Tolling Revenues), loss of profits, loss of use, loss of contract, loss of goodwill, loss of business or loss of business opportunity;
- (b) exemplary or punitive or special damages; or
- (c) indirect loss of any nature;

claimed or suffered by Project Co or any Project Co Person (in the case of Project Co) or by WDBA, any WDBA Party or WDBA Person (in the case of WDBA) (collectively, "**Indirect Losses**").

##### **45.2 No Liability in Tort**

Subject to the indemnities provided herein, neither WDBA, nor a WDBA Party nor any WDBA Person shall be liable in tort to Project Co or any Project Co Person, and neither Project Co nor any Project Co Person shall be liable in tort to WDBA, a WDBA Party or any WDBA Person in respect of any negligent act or omission of any such person relating to or in connection with this Project Agreement and no such person shall bring such a claim.

##### **45.3 Sole Remedy**

- (a) Subject to any other right of WDBA expressly provided for in this Agreement and to WDBA's right to claim, on or after termination of this Agreement, all Losses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Agreement by Project Co (except to the extent that such Losses have already been recovered by WDBA pursuant to this Agreement or have been taken into account to

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reduce any compensation payable pursuant to Schedule 27 [*Compensation on Termination*]), WDBA's remedies in respect of any breach or failure by Project Co or other events or circumstances giving rise to Availability Failure Deductions or Service Failure Deductions shall be limited to the operation of the Payment Mechanism and the applicable deductions.

- (b) Nothing in Section 45.3(a) shall prevent or restrict the right of WDBA from seeking injunctive relief, specific performance or other discretionary remedies in the Dispute Resolution Procedure, or from a court of competent jurisdiction in the circumstances permitted by the Dispute Resolution Procedure.
- (c) Notwithstanding any other provision of this Agreement, neither party shall be entitled to recover compensation from, or make a Claim against, the other party under this Agreement in respect of any Loss that it has incurred to the extent that it has already been compensated in respect of that Loss pursuant to this Agreement or otherwise.

#### **45.4 No Duplication of Compensation**

Every right to claim compensation or indemnification or reimbursement under this Agreement shall be construed so that recovery is without duplication to any other amount recoverable under this Agreement. Neither party shall be entitled to make any Claim against the other party for compensation, indemnification nor reimbursement other than as provided under this Agreement.

### **PART F**

#### **DEFAULTS AND TERMINATION**

#### **46. PROJECT CO DEFAULT AND WDBA REMEDIES**

##### **46.1 Project Co Events of Default**

For the purposes of this Agreement, "**Project Co Event of Default**" means any one or more of the following events or circumstances:

- (a) a resolution of Project Co is passed for the dissolution, liquidation or winding-up of Project Co, or for the suspension of operations of Project Co, or authorizing any of the actions in any of Sections 46.1(b) to 46.1(f), inclusive;
- (b) a decree, declaration or order of a court having jurisdiction is issued or entered, adjudging Project Co bankrupt or insolvent, or ordering the winding-up or liquidation of Project Co, or approving any reorganization, arrangement, compromise, composition, compounding, extension of time, moratorium or adjustment of liabilities of Project Co under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 or the *Winding-up and Restructuring Act*, RSC 1985, c W-11 or any other bankruptcy, insolvency, moratorium, reorganization or analogous law of any applicable jurisdiction, or any action or proceeding is commenced or instituted against Project Co for any of the foregoing and such action or proceeding against Project Co continues unstayed and is not withdrawn or dismissed within 30 days after it is commenced or instituted, or any action or proceeding is commenced or instituted by Project Co for any of the foregoing;
- (c) an execution, distress, sequestration or any analogous process is issued, filed or levied against Project Co or against all or a substantial part of the property or assets of Project Co and such execution, distress, sequestration or other process and continues unstayed

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and in effect and is not withdrawn, dismissed, overturned or set aside within the period of 30 days following its issuance or filing and such execution, distress, sequestration or analogous process has or could reasonably be expected to have a material adverse effect on the financial position of Project Co or the performance by Project Co of its obligations under this Agreement;

- (d) a trustee, receiver, receiver and manager, interim receiver, custodian, liquidator, provisional liquidator, agent for a secured creditor, or other person with similar powers, is appointed in any manner in respect of Project Co or in respect of all or a substantial portion of the property and assets of Project Co, or any creditor takes control of Project Co or of all or a substantial portion of the property and assets of Project Co, or any action or proceeding is commenced or instituted against Project Co for any of the foregoing and such action or proceeding against Project Co continues unstayed and is not withdrawn or dismissed within 30 days after it is commenced or instituted, or any action or proceeding is commenced or instituted by Project Co for any of the foregoing;
- (e) Project Co admits its inability to pay or fails to pay its debts generally as they become due, acknowledges its insolvency, makes an assignment in bankruptcy or makes any other assignment for the benefit of creditors, or files any proposal, notice of intention or petition or otherwise commences or consents to or acquiesces in the commencement of any proceeding seeking any reorganization, arrangement, compromise, composition, compounding, extension of time, moratorium or adjustment of liabilities of Project Co under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 or the *Winding-up and Restructuring Act*, RSC 1985, c W-11 or any other bankruptcy, insolvency, moratorium, reorganization or analogous law of any applicable jurisdiction, or consents to or acquiesces in the appointment in any manner of a trustee, receiver, receiver and manager, interim receiver, custodian, liquidator, provisional liquidator, agent for a secured creditor or other person with similar powers in respect of Project Co or in respect of all or a substantial portion of the property or assets of Project Co; or
- (f) other than as a result of a Supervening Event, Project Co ceases performing all or a material portion of its business, or all or a material portion of such business is suspended or is not being performed, other than as may be permitted under this Agreement, and that has or could reasonably be expected to have a material adverse effect on the financial position of Project Co or the performance by Project Co of its obligations under this Agreement or any other Project Document and such cessation or suspension is not remedied within 30 days after a Notice thereof has been given by WDBA to Project Co;
- (g) there is (i) a sale, transfer, assignment, lease or disposition by Project Co, or any Equity Member of the whole or any part of its undertaking, property or assets by a single transaction or a number of transactions, whether related or not and whether at the same time or over a period of time, other than as permitted pursuant to Section 55.1 (*Assignment by Project Co*), or (ii) the occurrence in respect of any Equity Member of any event of the type contemplated in Sections 46.1(a) to 46.1(f) inclusive, that has or could reasonably be expected to have a material adverse effect on the financial position of Project Co or the performance by Project Co of its obligations under this Agreement or by Project Co or such Equity Member under any other Project Document;
- (h) the abandonment of the Project Work by Project Co for a period which exceeds 3 Business Days from receipt by Project Co of a written request from WDBA to return to the Site and recommence the Project Work;

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- (i) failure to achieve Substantial Completion within 18 months following the Scheduled Substantial Completion Date;
- (j) at any time after Substantial Completion:
  - (i) Deductions exceeding \$[REDACTED] in any 3 consecutive Payment Periods, excluding any System Acceptance Deductions;
  - (ii) Deductions exceeding \$[REDACTED] in any 6 consecutive Payment Period, excluding any System Acceptance Deductions; or
  - (iii) Deductions exceeding \$[REDACTED] in any 12 consecutive Payment Periods, excluding any System Acceptance Deductions;
- (k) Project Co fails to pay any sum due and payable to WDBA under this Agreement, which sum is not being disputed by Project Co pursuant to the Dispute Resolution Procedure and which sum, either singly or in aggregate, exceeds \$[REDACTED] and such failure continues for 30 days from the receipt by Project Co of a Notice of non-payment from WDBA;
- (l) Project Co carries out a Refinancing in breach of its obligations under Section 34 (*Lending Agreements and Refinancing*) or Schedule 28 [*Refinancing*] or fails to comply with the provisions of Section 3.4 (*Amendments/Termination of Project Documents*) with respect to the termination or amendment of, or waiver or exercise of rights under, any Lending Agreements, other than the Performance and Payment Support and such breach or failure, if it is capable of remedy, is not remedied within 15 Business Days after a Notice of such breach or failure has been given by WDBA to Project Co;
- (m) if any Performance and Payment Support described in Section 39 (*Performance and Payment Support*) fails to remain in effect and such failure is not remedied within 15 Business Days of the occurrence of such failure;
- (n) the occurrence of any event that is not permitted pursuant to Section 55.1 (*Assignment by Project Co*), Section 55.3 (*Change in Ownership*) or Section 55.5 (*Change in Control*);
- (o) Project Co fails to obtain, maintain, pay for or renew any Project Co Insurance Policy in accordance with Section 40 (*Insurance*) and Schedule 29 [*Insurance Requirements*] and such breach is not remedied within 15 Business Days of the occurrence of the breach;
- (p) failure by Project Co to comply with any determination, order or award made against Project Co in accordance with the Dispute Resolution Procedure and such failure continues for 30 days from the receipt by Project Co of a Notice of non-compliance from WDBA (or within such longer period of time after the date such Notice is given which is reasonably required to comply);
- (q) the occurrence of a Persistent Breach;
- (r) the commission of a Prohibited Act by Project Co or a Project Co Person that is not remedied in accordance with Section 57.4 (*WDBA Remedies For a Prohibited Act*);
- (s) subject to Section 55.3(b) and Section 55.6, Project Co, an Equity Member, a Prime Contractor or any Related Owner of any of them becomes an Ineligible Person;

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- (t) any representation or warranty made by Project Co hereunder being incorrect in any material respect when made and such incorrect representation or warranty has or might reasonably be expected to have a material adverse effect on (i) the ability of Project Co to perform its obligations under this Agreement or any other Project Document to which it is a party, or (ii) on the ability of WDBA to exercise any of its rights under this Agreement or any other Project Document to which Project Co is a party, except where such incorrect representation or warranty or relevant material adverse effect is capable of being remedied and is in fact remedied within 30 days of receipt of a Notice of the same from WDBA;
- (u) except for a breach that is referred to in Sections 46.1(a) to 46.1(t) inclusive or a breach for which Availability Failure Deductions or Service Failure Deductions can be made, any act or omission by Project Co constituting a breach of any of Project Co's obligations under this Agreement or any other Project Document which has or might reasonably be expected to have a material adverse effect on:
- (i) WDBA or a WDBA Party;
  - (ii) the availability of the Project Infrastructure or Facility to the public; or
  - (iii) the ability of a Governmental Authority to carry out any Governmental Activity,
- or bring the standing or reputation of WDBA, a WDBA Party, a WDBA Person or a Governmental Authority into disrepute or attract material adverse publicity to any of them, except where such breach or the relevant material adverse effect is capable of being remedied and is in fact remedied within 30 days after the date a Notice of such breach is given by WDBA to Project Co;
- (v) Project Co committing a breach of Section 53 (*Confidentiality*) or Section 54 (*Personal Information*) of this Agreement which has a material adverse effect on WDBA, a WDBA Party, a WDBA Person or any other person and such breach, if it is capable of remedy, is not remedied within 30 days after a Notice of such breach is given by WDBA to Project Co;
- (w) Project Co failing to remove an Encumbrance that arose due to an act or omission by Project Co or any Project Co Person (other than a Title Encumbrance and any Encumbrance derived through WDBA) within 45 days (or such shorter period specified in Schedule 26 [*Construction Period Payments*]) of the earlier of: (i) the registration of such Encumbrance against title to the Lands, and (ii) the date on which Project Co or any Project Co Person knew, or ought to have known, about the existence of the Encumbrance;
- (x) at any time after the Substantial Completion Date, Project Co commits a breach of its obligations under this Agreement (other than as a consequence of a Non-Excusable Event of WDBA) which results in a criminal conviction or a conviction under OHS Laws against Project Co or any Project Co Person or WDBA (an "**H&S Conviction**") provided however that:
- (i) an H&S Conviction of Project Co, a Project Co Person or WDBA shall not constitute a Project Co Event of Default if, within 90 days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project Work of each relevant Project Co Person (which in the case of an individual director, officer or employee shall be deemed to include the Project Co Person of which that person

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is a director, officer or employee) is terminated in accordance with Section 55.9 (*Subcontracting*) or Project Co takes such other disciplinary action against each such Project Co Party as is acceptable to WDBA; and

- (ii) in determining whether to exercise any right of termination for a Project Co Event of Default pursuant to this Section 46.1(x), WDBA shall:
  - (A) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing the act leading to the H&S Conviction; and
  - (B) give all due consideration, where appropriate, to action other than termination of this Agreement;
- (y) a breach of the Security Requirements which WDBA determines cannot be remedied and is not otherwise a Project Co Event of Default;
- (z) Project Co failing to observe or perform any obligations of WDBA as operator under any provision of IBTA or the regulations thereunder unless such obligations can only be performed by WDBA or another Governmental Authority, and such failure is not remedied within 30 days of the giving of a Notice of such failure by WDBA to Project Co;
- (aa) a breach occurring under Section 55.9 and such breach is not remedied by Project Co within 30 days of Project Co first having knowledge of such breach; or
- (bb) any other event or circumstance that is designated as a "Project Co Event of Default" under this Agreement.

#### **46.2 Notification**

- (a) Each Notice provided by WDBA pursuant to Section 46.1 (*Project Co Events of Default*) shall (i) specify the relevant Section pursuant to which Notice is given and (ii) set out in reasonable detail, according to the information then reasonably available to WDBA, the circumstances in respect of which the Notice is given and that such circumstances constitute a Project Co Event of Default, provided however that the validity of any Notice provided in accordance with the terms of such Sections shall not be affected by any failure to include such information therein, but without however limiting the obligation of WDBA to provide, such information within 5 Business Days of a request from Project Co to provide such information.
- (b) Project Co shall notify WDBA of the occurrence and details of any Project Co Event of Default and of any event or circumstance which could, with the passage of time or otherwise, constitute or give rise to a Project Co Event of Default, in each case promptly upon Project Co becoming aware of the occurrence thereof.

#### **46.3 Remedies of WDBA for Project Co Event of Default**

On the occurrence of a Project Co Event of Default and while it is continuing, WDBA may, at its option and without prejudice to any of its other rights or remedies, exercise any or all of the following rights and remedies as WDBA may determine.

- (a) In the case of any Project Co Event of Default referred to in Sections 46.1(a) through 46.1(t) inclusive:

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- (i) which is not capable of being remedied; or
- (ii) which is capable of being remedied, but has not been remedied within any applicable time period specified in this Agreement including Section 46.3(c),

WDBA may terminate this Agreement in its entirety by giving a Notice having immediate effect (or having effect within any period of time WDBA may decide, subject to Section 49.4 (*Disputed Termination*)).

- (b) In the case of any Project Co Event of Default under Section 46.1(u), the following shall apply.

- (i) WDBA may give a Notice of default to Project Co requiring Project Co, within 5 Business Days or such longer period as may be agreed by WDBA to put forward a reasonable plan and schedule for diligently remedying the Project Co Event of Default. The plan and schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Event of Default is proposed to be remedied, which latest date shall be within 30 days of the receipt of the Notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to WDBA.
- (ii) Where Project Co submits a schedule and plan in accordance with Section 46.3(b)(i), WDBA shall have 10 Business Days within which to notify Project Co that it does not accept such schedule and plan as being reasonable, failing which WDBA shall be deemed to have accepted such schedule and plan and Project Co shall then carry out such plan. Where WDBA notifies Project Co that it does not accept such schedule and plan as being reasonable, the parties shall endeavour within the following 5 Business Days to agree on any necessary amendments to the schedule and plan put forward. In the absence of agreement within such period, the question of whether or not the schedule and plan is reasonable may be referred by either party to the Dispute Resolution Procedure.
- (iii) If a Project Co Event of Default for which a Notice of default was given under Section 46.3(b)(i) occurs and:
  - (A) Project Co fails to immediately commence and thereafter diligently continue to remedy the Project Co Event of Default and to mitigate any adverse effects on WDBA;
  - (B) Project Co fails to put forward a plan and schedule pursuant to Section 46.3(b)(i); or
  - (C) such Project Co Event of Default is not remedied in accordance with the plan and schedule established pursuant to Sections 46.3(b)(i) and 46.3(b)(ii),

then WDBA may terminate this Agreement in its entirety by giving a Notice having immediate effect, subject to Section 49.4 (*Disputed Termination*).

- (c) In the case of a Project Co Event of Default under Section 46.1(s), WDBA may:
  - (i) where the breach is occasioned by Project Co, terminate this Agreement in its entirety by giving a Notice having immediate effect, subject to Section 49.4 (*Disputed Termination*);

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- (ii) where the breach is occasioned by an Equity Member, a Prime Contractor or Related Owner of either of them, then unless:
  - (A) in the case of an Equity Member, such Equity Member either (I) ceases to be an Ineligible Person, or (II) is replaced as an Equity Member by a substitute acceptable to WDBA based on information equivalent to what has to be provided in respect of the replacement of a Prime Contractor under Section 55.9(b) (*Subcontracting*), in each case within 90 days after the occurrence of such breach, or such longer period as WDBA may permit by giving a Notice;
  - (B) in the case of a Prime Contractor, such Prime Contractor either (I) ceases to be an Ineligible Person, or (II) is replaced as a Prime Contractor by a substitute acceptable to WDBA applying the criteria set out in Section 55.9(c) (*Subcontracting*), in each case within 90 days after the occurrence of such breach, or such longer period as WDBA may permit by giving a Notice;
  - (C) in the case of a Related Owner of an Equity Member or a Prime Contractor, such Related Owner either (i) ceases to be an Ineligible Person or (ii) ceases to have an Ownership Interest in Project Co or such Prime Contractor, as applicable, in each case within 90 days after the occurrence of such breach, or such longer period as WDBA may permit by giving a Notice

terminate this Agreement in its entirety by giving a further Notice after the end of such 90 day period or such longer period, as the case may be, such further Notice having immediate effect, subject to Section 49.4 (*Disputed Termination*);

- (d) In the case of a Project Co Event of Default under Section 46.1(r), or where the Project Co Event of Default results from non-compliance with all applicable requirements of FAER and the requirements of Section 4.1 (*Compliance with Federal Aid Eligibility Requirements under the Crossing Agreement*) and Section 4.2 (*Additional Requirements*), WDBA may, where the breach is occasioned by a Subcontractor referred to in Section 57.2(f) (*Integrity Provisions*) or a Related Owner or a defaulting Subcontractor under Section 4.1 and 4.2, unless Project Co terminates the engagement or employment of the relevant Subcontractor or such Related Owner ceases to be a Related Owner within 30 days and provides details of a proposed replacement in accordance with Section 55.9(b) (*Subcontracting*) within 45 days, in each case, after the earlier of Project Co becoming aware of the breach or notification to Project Co of the breach or such longer period as WDBA may permit by giving a Notice, terminate this Agreement in its entirety by further Notice given after the end of such 30 day or 45 day period, as the case may be, such further Notice having immediate effect, subject to Section 49.4 (*Disputed Termination*).
- (e) At any time during which WDBA is entitled to terminate this Agreement as a result of a Project Co Event of Default, WDBA may, at Project Co's risk and expense, after advising Project Co of its intention to do so, take such steps as WDBA considers appropriate, either itself or by engaging others to take such steps, to perform or obtain the performance of Project Co's obligations under this Agreement or to remedy such Project Co Event of Default. Project Co shall pay to WDBA on demand all reasonable costs and expenses incurred by WDBA in remedying or attempting to remedy such Project Co Event of Default, including the administrative expenses of WDBA and a reasonable sum in respect of general staff costs and overhead. This Section shall not obligate WDBA to remedy or to

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attempt to remedy a Project Co Event of Default, or, after having commenced to remedy or to attempt to remedy a Project Co Event of Default, to continue to do so, and no such action by WDBA shall be deemed to be a termination of this Agreement or to relieve Project Co from any of its obligations under this Agreement (except to the extent any such obligation is fully performed by WDBA).

#### 46.4 WDBA's Costs

Without limiting, but without duplicating, any other amounts Project Co is obligated under this Agreement to pay to WDBA on account of costs incurred by WDBA, to the extent WDBA is entitled to exercise its rights under this Section 46, Project Co shall bear all reasonable costs, charges and expenses properly incurred by WDBA in exercising such rights, including any relevant increased administrative expenses.

#### 46.5 Replacement of OMR Contractor

- (a) WDBA may, acting reasonably, require Project Co to terminate the OMR Contract and ensure that a replacement OMR Contractor is appointed in accordance with Section 55.9 (*Subcontracting*) to provide the OMR Work within 60 days:
- (i) as an alternative to termination of this Agreement pursuant to Sections 46.1 or 46.3, in any circumstance in which WDBA could exercise such right of termination, if the Project Co Default was caused, or contributed to, by the OMR Contractor or otherwise relates to the OMR Work; or
  - (ii) if Project Co accrues, in any consecutive 6 Payment Periods during the OMR Period:
    - (A) Crossing Availability Failure Deductions exceeding \$[REDACTED];
    - (B) POE Buildings Availability Failure Deductions exceeding \$[REDACTED];
    - (C) Service Failure Deductions in relation to performance requirements in Appendix 25-4 of Schedule 25 [*Payment Mechanism (OMR)*] exceeding \$[REDACTED]; and
    - (D) Service Failure Deductions in relation to performance requirements in Appendix 25-5 of Schedule 25 [*Payment Mechanism (OMR)*] exceeding \$[REDACTED];

provided that this Section 46.5 shall not give rise to partial termination of either the obligation to provide the OMR Work or this Agreement.

- (b) If WDBA exercises its rights under this Section 46.5, Project Co shall, within 5 Business Days, put forward a proposal for the interim management or provision of the OMR Work, until such time as a replacement OMR Contractor can be engaged by Project Co. If Project Co fails to do so, or if its proposal is not reasonably likely to make adequate provision for the OMR Work and the parties cannot agree within a further 3 Business Days on a plan for the interim management or provision of the OMR Work, then, without prejudice to the other rights of WDBA in this Section 46.5, WDBA itself may perform, or engage others (including a third party) to perform, the OMR Work and Project Co shall reimburse WDBA for all reasonable costs and expenses incurred by WDBA in relation to the exercise of WDBA's rights pursuant to this Section 46.5 and Project Co shall bear its own costs and expenses incurred by it in relation to the exercise of WDBA's rights

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pursuant to this Section 46.5. Any Dispute in respect of the interim management or provision of the OMR Work may be referred for resolution in accordance with Schedule 23 [Dispute Resolution Procedure].

- (c) If Project Co fails to terminate, or secure the termination of, the OMR Contract, and to secure a replacement OMR Contractor, in accordance with this Section 46.5, WDBA shall be entitled to exercise its termination rights in accordance with Section 46.3.
- (d) Where a replacement OMR Contractor is appointed in accordance with this Section 46.5, for the purposes of tracking against the Deductions Thresholds only, [REDACTED]% of the Deductions accrued by Project Co prior to such replacement, shall be cancelled. The Monthly Payment for the relevant Contract Month shall be adjusted for the full amount of Deductions determined in accordance with Schedule 25 [*Payment Mechanism (OMR)*].

## **47. WDBA DEFAULT AND PROJECT CO REMEDIES**

### **47.1 WDBA Events of Default**

For the purposes of this Agreement, “**WDBA Event of Default**” means any one or more of the following events or circumstances:

- (a) WDBA fails to pay any sum due and payable to Project Co under this Agreement, which sum is not being disputed by WDBA pursuant to the Dispute Resolution Procedure and which sum, either singly or in aggregate, exceeds \$[REDACTED] (Index Linked), and such failure continues for 30 days from the receipt by WDBA of a Notice of non-payment from Project Co;
- (b) any representation or warranty made by WDBA hereunder is incorrect in any material respect when made or a material breach by WDBA of any of its obligations under this Agreement, which substantially frustrates the performance of, or renders it impossible for Project Co to perform, Project Co’s material obligations under this Agreement for a continuous period of not less than 60 days after the date a Notice of such breach is first given by Project Co to WDBA;
- (c) a breach by WDBA of its obligations under Section 55.2 (*Assignment by WDBA*); and
- (d) any requisition or other seizure by WDBA or any Governmental Authority, of the Site or the Project Infrastructure or any material part thereof, other than in the exercise of rights or obligations set out in, or expressly contemplated by, this Agreement, and such action substantially frustrates the performance of, or renders it impossible for Project Co to perform, Project Co’s material obligations under this Agreement for a continuous period of not less than 180 days after the date a Notice of such action is first given by Project Co to WDBA.

### **47.2 Remedies of Project Co for WDBA Default**

On the occurrence of a WDBA Event of Default and while such default is continuing, Project Co may give a Notice to WDBA of the occurrence of such WDBA Event of Default, which Notice shall specify the details thereof, and, at Project Co’s option and without prejudice to any of its other rights or remedies under this Agreement, Project Co may:

- (a) suspend performance of the DB Work until such time as WDBA has remedied such Event of Default, or

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- (b) if such WDBA Event of Default has not been remedied within 30 days of receipt by WDBA of a Notice of the occurrence of such WDBA Event of Default, terminate this Agreement in its entirety by giving a Notice having immediate effect, subject to Section 49.4 (*Disputed Termination*).

#### **47.3 Project Co's Costs**

Without limiting, but without duplicating, any other amounts WDBA is obligated under this Agreement to pay to Project Co on account of costs incurred by Project Co, and except to the extent Project Co is compensated for such costs in compensation paid or payable pursuant to Section 50 (*Compensation on Termination*), to the extent Project Co is entitled to exercise its rights under this Section 47, WDBA shall bear all reasonable costs, charges and expenses properly incurred by Project Co in exercising such rights, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

#### **47.4 [REDACTED]**

### **48. NON-DEFAULT TERMINATION**

#### **48.1 Expiry of Term**

This Agreement shall terminate automatically on the Expiry Date. Project Co shall not be entitled to any compensation due to termination of this Agreement on the Expiry Date.

#### **48.2 Termination for Force Majeure Event or Relief Event**

Either party may terminate this Agreement in accordance with Section 43.9 (*Termination for Force Majeure Event or Relief Event*) in connection with the occurrence of a Force Majeure Event or Relief Event.

#### **48.3 Termination for Uninsurable Risk**

WDBA may terminate this Agreement in accordance with Section 16(c) of Schedule 29 [*Insurance Requirements*] in connection with Uninsurable Risk.

#### **48.4 Termination for Damage or Destruction**

Either party may terminate this Agreement in accordance with Section 31.5 (*Termination for Reinstatement Funds Deficiency*) in connection with Material Damage to the Project Infrastructure where there is a Reinstatement Funds Deficiency.

#### **48.5 Termination for Convenience**

WDBA may, for any reason whatsoever, terminate this Agreement at any time on 90 days' prior Notice to Project Co. In the event that such Notice is given by WDBA, WDBA shall, at any time before the expiry of such 90 day period, be entitled to direct Project Co, where any part or element of the Project Work has not been commenced, to refrain from commencing any such part or element or from allowing any Subcontractors to commence the same.

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**48.6 [REDACTED]****49. EFFECT OF TERMINATION****49.1 Termination**

Notwithstanding any provision of this Agreement, upon the service of a Notice of termination or termination on the Expiry Date pursuant to Section 48.1 (*Expiry of Term*), this Section 48.6 shall apply in respect of such termination.

**49.2 Continued Effect, No Waiver**

Notwithstanding any breach of this Agreement by a party, the other party may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights hereunder without prejudice to any other rights which such other party may have in relation to such breach. The failure of either party to exercise any right hereunder including any right to terminate this Agreement and any right to claim damages shall not be deemed a waiver of such right for any continuing or subsequent breach.

**49.3 Continuing Performance**

- (a) Except in the case of termination on the Expiry Date, subject to any exercise by WDBA of its rights to perform or to seek a third party to perform the obligations of Project Co, the parties shall continue to perform their obligations under this Agreement notwithstanding the giving of any Notice of default or Notice of termination until the termination of this Agreement becomes effective in accordance with this Section 48.6.
- (b) In case of a Notice of termination given during the OMR Period, Project Co shall also cooperate with WDBA and any potential successor contractor or operator with regards to the transitional arrangements that WDBA may initiate prior to the effective termination of this Agreement in order to achieve a smooth and orderly transfer of the Project Work and the Project Infrastructure as a going concern upon termination and so as to protect the safety of, and avoid undue delay or inconvenience to, members of the public. Without limiting this general obligation to cooperate, Project Co shall immediately upon request by WDBA provide operation and maintenance manuals, in their most current edition, for the Project Infrastructure and any other assets transferred or to be transferred to WDBA or its nominee, and shall use all reasonable efforts to ensure that the Key Individuals listed in sections 1 and 3 of Schedule 3 [*Key Individuals*] remain available to WDBA and any successor contractor or to address transitional issues and to provide any required training as determined by WDBA.

**49.4 Disputed Termination**

Where either party has given Notice of termination to the other party, other than a Notice of termination by WDBA pursuant to Section 48.5 (*Termination for Convenience*), the other party may dispute the right to terminate and refer the question to the Dispute Resolution Procedure within 14 days of receipt of such Notice, in which event the Dispute shall be resolved by agreement of the parties or, failing such agreement within 5 Business Days, through the Dispute Resolution Procedure and such termination shall take effect when it is agreed by the parties or finally determined by the Dispute Resolution Procedure that the exercise of the right to terminate is valid in accordance with this Agreement. Notwithstanding the foregoing, where termination has been sought by WDBA as a result of a Project Co Event of Default pursuant to Section 46.3 (*Remedies of WDBA for Project Co Event of Default*) and Project Co disputes WDBA's right to terminate and refers the question to the Dispute Resolution Procedure, the termination shall

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nonetheless be effective as of the date stipulated in the Notice of termination sent by WDBA, provided, however, that if it is subsequently determined pursuant to the Dispute Resolution Procedure that WDBA did not have a right to terminate this Agreement, the termination shall then be treated as a termination for convenience pursuant to Section 48.5 (*Termination for Convenience*).

#### 49.5 Ownership of Information

Subject to Section 52 (*Intellectual Property*), all information including final plans and survey plans, and other technical drawings and data, supplier agreements and contracts, Traffic Data, environmental and technical reports, lease, licence and subletting data and contracts, asset condition data, standard operating procedures, processes and manuals and all other information directly related to the Project Work accumulated over the course of the Term shall be the property of WDBA and upon termination of this Agreement shall be forthwith provided or returned to WDBA, as applicable, in electronic format acceptable to WDBA where it exists in electronic format, and in its original format, when not in electronic format.

#### 49.6 Transfer of Assets

The following shall apply on any termination of this Agreement.

- (a) If the termination occurs prior to Substantial Completion:
  - (i) in so far as any transfer is necessary to fully and effectively transfer such property to WDBA or its nominee to the extent that it has not already been transferred pursuant to Section 12 (*Title and Risk of Loss*), Project Co shall transfer to, and there shall vest in, WDBA or such nominee as applicable, free from all Encumbrances (other than Encumbrances, if any, set out in Schedule 35 [*Land Restrictions*] or otherwise created in accordance with this Agreement, or in respect of the US Lands, which were in existence prior to the date upon which Project Co was provided access to such Lands), such part of the Project Infrastructure as has been constructed and all the installations, materials, machinery, supplies and equipment forming part or intended to form part of the Project Infrastructure. Project Co shall confirm by bill of sale or other document requested by WDBA or such nominee, any and all such transfers to WDBA or such nominee, as applicable; and
  - (ii) if and to the extent that WDBA or a nominee, as applicable so elects, all the other Project related installations, materials, machinery and equipment (whether owned or leased) not otherwise transferred or to be transferred to WDBA or its nominee pursuant to any other provision of this Agreement shall remain available to WDBA or such nominee, as applicable for the purposes of completing the DB Work, subject to payment by WDBA or such nominee, as applicable, of the Construction Contractor's reasonable expenses.
- (b) If the termination occurs after the Substantial Completion Date in so far as title has not already passed to WDBA, or its nominee, pursuant to Section 12 (*Title and Risk of Loss*), Project Co shall transfer to, and there shall vest in, WDBA or such nominee, as applicable, any real or personal rights of Project Co, whether direct or indirect, in and to the Project Infrastructure and in the case of the expiry of this Agreement on the Expiry Date, shall be in the state required in accordance with the Handback Requirements;
- (c) If WDBA so elects, Project Co shall ensure that the Prime Contracts, any other Subcontracts entered into between Project Co and other Subcontractors, and any other

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instrument entered into between any such Subcontractor and Project Co for securing the performance by such Subcontractor of its obligations thereunder or to protect the interests of Project Co, shall be assigned to WDBA or its nominee, provided that where termination occurs other than as a result of a Project Co Event of Default, the consent of the relevant Subcontractor shall be required, and further provided that any assignment of a Prime Contract with a Prime Contractor shall be made to WDBA pursuant to, and subject to, the terms of the applicable Prime Contractor Direct Agreement.

- (d) In order to facilitate a decision by WDBA as to whether WDBA wishes to assign any agreement referred to in Section 49.6(c), Project Co shall, within 15 days of receipt of a Notice from WDBA requiring it to do so, give a Notice to WDBA of:
- (i) any Dispute which exists in relation to the relevant agreement, including copies of any correspondence and other documentation relating thereto;
  - (ii) any sum which Project Co is aware is due and payable by either party under the relevant agreement as at the date of the Notice; and
  - (iii) any material unperformed obligations and outstanding liabilities of either party under the relevant agreement of which Project Co is aware as at the date of the Notice.
- (e) WDBA or its nominee shall have an option to purchase from any Subcontractor, free from any Encumbrance (other than Encumbrances, if any, set out in Schedule 35 [*Land Restrictions*] or otherwise created in accordance with this Agreement) and at a Fair Market Value (with any Disputes as to such Fair Market Value being determined pursuant to the Dispute Resolution Procedure), or to require the transfer of any lease relating to all or any part of, the stocks of material and other assets, vehicles, construction equipment, spare parts and other moveable property owned or leased by any Subcontractor and dedicated to or predominantly used in respect of the Project Work and not otherwise transferred or to be transferred to WDBA or its nominee, as the case may be, pursuant to any other provision of this Agreement.
- (f) Subject to Section 52 (*Intellectual Property*), Project Co shall deliver forthwith to WDBA or as otherwise directed by WDBA, to the extent available at the time of termination of this Agreement:
- (i) final plans and survey plans showing all alterations made since the commencement of the Project Work to or for the Project Infrastructure and the Site, to the extent not previously delivered to WDBA;
  - (ii) all the information, reports, documents, records and the like required to be delivered to WDBA upon termination of this Agreement for whatever reason pursuant to the Technical Requirements and Schedule 8 [*Records and Mandatory Reports*];
  - (iii) operation and maintenance manuals for the Project Infrastructure and any other assets transferred or to be transferred to WDBA or to its nominee, including in respect of the Tolling Infrastructure and the communications, signalling, and other systems in service at the Termination Date; and
  - (iv) to the extent such items have not already been delivered to WDBA, one complete set of all Project Data and the Intellectual Property relating to the Project, the Facility, the Project Work and the Project Infrastructure.

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- (g) Project Co shall use all reasonable efforts to assign the benefit of all manufacturers' warranties, including all documentation in respect thereof, in respect of equipment used or made available by Project Co under this Agreement and included in the Project Infrastructure.
- (h) To the extent permitted by Applicable Law, Project Co shall assign to WDBA or its nominee all Permits.
- (i) Project Co shall ensure, in the case of all Subcontracts to which it is a party, and shall use all reasonable efforts to ensure, in the case of Subcontracts to which it is not a party, that provisions are included to ensure that WDBA will be in a position to exercise its rights and that Project Co will be in a position to comply with its obligations under this Section 49.6, without additional payment or compensation to any person except as expressly contemplated by this Section 49.6.

#### 49.7 Transitional Arrangements

The following transitional arrangements shall apply on the termination of this Agreement.

- (a) Project Co shall, for a reasonable period of time following the Termination Date, cooperate fully with WDBA and any successors providing services in the nature of any of the Project Work in order to achieve a smooth and orderly transfer of the Project Work and the Project Infrastructure as a going concern and so as to protect the safety of, and avoid undue delay or inconvenience to, members of the public, as may be required to achieve such smooth and orderly transfer or as may otherwise be required in accordance with Project Requirements. Without limiting this general obligation to cooperate, Project Co shall use all reasonable efforts to ensure that the Key Individuals remain available to WDBA and any successors providing services in the nature of any of the Project Work for a reasonable period following the Termination Date to address transitional issues and to provide any required training as determined by WDBA.
- (b) Project Co shall, as soon as practicable after receipt of a Notice from WDBA to do so, remove from the Site and the Project Infrastructure all materials, plant, machinery, equipment, apparatus, temporary buildings, road vehicles, spare parts and other property, other than those for which title has passed to WDBA or its nominee, as the case may be, pursuant to Section 12 (*Title and Risk of Loss*) or those required to be transferred, delivered, sold or rented to at the direction of WDBA pursuant to Section 49.6. If Project Co has not done so within 30 days after any Notice from WDBA requiring it to do so, WDBA may (without being responsible for any Loss) remove and sell any such property and the proceeds thereof less any costs incurred by WDBA shall be to the benefit of Project Co.
- (c) The access rights granted to Project Co under Section 5 (*Lands, Site and Access*) shall terminate and Project Co shall cease to have any further rights under such Section, except to the extent necessary to enable Project Co to perform any of its obligations under this Agreement which are required to be performed in consequence of or following such termination. Project Co shall, as soon as reasonably practicable, vacate the Project Infrastructure and the Site and leave the Project Infrastructure and the Site in a clean, safe and orderly condition.
- (d) For termination occurring at the Expiry Date, Project Co shall hand over to WDBA the Project Infrastructure and the Site in the state required by Schedule 14 [*Handback*].

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- (e) If WDBA wishes to conduct a request for proposals prior to the Expiry Date with a view to entering into an agreement for the provision of services (which may or may not be the same as, or similar to, the OMR Work or any aspect thereof) after the Expiry Date, Project Co shall, if requested by WDBA and subject to payment of Project Co's reasonable costs, cooperate fully with WDBA in such request for proposals process including by:
- (i) providing any information which WDBA may reasonably require to conduct such request for proposals except for information which is commercially sensitive to Project Co (and, for such purpose, commercially sensitive information means information which would, if disclosed to a competitor of Project Co or of one of its Affiliates, give that competitor a competitive advantage over Project Co or the Affiliate and thereby prejudice the business of Project Co or such Affiliate); and
  - (ii) assisting WDBA by providing any participants in such request for proposals process with access to the Site and the Project Infrastructure provided such access does not materially and adversely affect the OMR Work.

#### 49.8 Survival

Except as otherwise provided in this Agreement, termination or expiry of this Agreement shall be without prejudice to, and shall not affect:

- (a) the representations, warranties and indemnities under this Agreement; and
- (b) the obligations which are expressly provided to survive termination or expiry of this Agreement or which by their nature are intended to survive termination or expiry of this Agreement, including Sections 1.3 (*Conflict of Terms*), 3 (*Project Documentation*), 7 (*Disclosed Data*), 8 (*Representations and Warranties*), 12 (*Title and Risk of Loss*), 15 (*Inspection and Assessment of Site Conditions*), [REDACTED], [REDACTED], 17.1(b) (*Items of Archaeological or Other Interest*), 24.6 (*Payment of Fees*), 24.8(b) (*Certification Procedure*), 30 (*End of Term*), 37.2 (*Invoicing and Payment Reports*), 37.12 (*Limitation on Payments*), 38 (*Taxes*), 44 (*Indemnification, Conduct of Third Party Claims and Third Party Recovery*), 45 (*Liability Limits*), 46.4 (*WDBA's Costs*), 47.3 (*Project Co's Costs*), 48.1 (*Expiry of Term*), 48.6 (*Effect of Termination*), 50 (*Compensation on Termination*), 52 (*Intellectual Property*), 53 (*Confidentiality*), 54 (*Personal Information*), 56 (*Conflict of Interest, International Sanctions, Security Requirements and Tolling Information Security*), 57 (*Prohibited Acts and Integrity*), 59 (*Mandatory Reports, Records, Audit and Information*), 61 (*Dispute Resolution Procedure*), 62 (*Notices*), 63.1 (*General Duty to Mitigate Damages*), 63.7 (*Further Assurances*), 63.8 (*Binding Effect*), 63.9 (*Cumulative Remedies*) and 63.10 (*Governing Law and Jurisdiction*) of this Agreement, Section 2 of Schedule 1 [*Definitions and Interpretation*], Section 8 of Schedule 14 [*Handback*], Schedule 23 [*Dispute Resolution Procedure*] Section 2.13 (*Unintended Consequences Fund*) of Schedule 25 [*Payment Mechanism (OMR)*], Schedule 27 [*Compensation on Termination*] and Section 5 (*Unintended Consequences Fund*) of Schedule 36 [*Community Benefits*],

all of which shall survive the termination of this Agreement, including termination on the Expiry Date.

#### 49.9 Termination

On completion of Project Co's obligations pursuant to this Section 48.6, this Agreement shall terminate and, except as provided in Section 49.8, all rights and obligations of WDBA and Project Co under this Agreement shall cease and be of no further force and effect.

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## 50. COMPENSATION ON TERMINATION

### 50.1 Compensation on Termination

If this Agreement is terminated in accordance with the terms hereof, compensation on termination shall be payable in accordance with Schedule 27 [*Compensation on Termination*]. No compensation shall be payable because of the termination of this Agreement on the Expiry Date.

### 50.2 Full and Final Settlement

- (a) Except as otherwise provided in Section 50.2(b), any compensation paid pursuant to this Section 50, including pursuant to Schedule 27 [*Compensation on Termination*] in the total amount owing thereunder, as a result of or in connection with a termination of this Agreement, shall be full and final settlement of all Claims of Project Co and of WDBA, and each shall be released from all liability to the other in relation to any breaches or other events leading to such termination of this Agreement, and Project Co and WDBA shall be precluded from exercising all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common law, or otherwise.
- (b) Section 50.2(a) shall be without prejudice to:
- (i) any liability of either party to the other, including under the indemnities contained in this Agreement that arose prior to the Termination Date (but not from the termination itself or the events leading to such termination), to the extent such liability has not already been set off or taken into account in determining or agreeing upon relevant compensation amount and adjustments thereto;
  - (ii) any liabilities arising under or in respect of any breach by either party of their obligations under Section 49.8 (*Survival*) of this Agreement, or the Sections referred to therein, which did not lead to such termination and which arise or continue after the Termination Date; and
  - (iii) any amount owing to WDBA in relation to (i) Taxes; (ii) fines, liquidated damages or restitution orders by a court under any Applicable Law; (iii) any fraud or other criminal offence committed against WDBA; and (iv) Tolling Revenues.

## 51. NO OTHER RIGHTS OF TERMINATION

Notwithstanding Section 63.9, (*Cumulative Remedies*) neither party shall have any right or entitlement to terminate this Agreement, including for fundamental breach, nor to accept any repudiation of this Agreement, and shall not exercise, nor purport to exercise, any such right or entitlement except as expressly set out in this Agreement.

## PART G

### INTELLECTUAL PROPERTY, CONFIDENTIALITY AND PERSONAL INFORMATION

## 52. INTELLECTUAL PROPERTY

### 52.1 Access to Project IP

During the Term, Project Co shall provide WDBA, and, to the extent any Project IP, is in the possession or control of any Project Co Person, shall cause any such Project Co Person to provide WDBA, without charge, with access to the Project IP in hard copy, physical model or electronic format as required by WDBA, for any purpose in connection with this Agreement, the

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Project, the Project Work, the Site, the Project Infrastructure or any part thereof, the whole subject to and in accordance with this Section 52 and as otherwise contemplated in this Agreement.

## 52.2 License to Project IP

Subject to Sections 52.2(b), 52.2(c), and 52.2(e), Project Co grants to WDBA and each WDBA Party a non-exclusive, perpetual, irrevocable, worldwide, fully-paid, royalty-free, sub-licensable, transferable licence (fully assignable and sub-licensable without the consent of or payment to Project Co or any Contracting Affiliate) to use, execute, reproduce, practice, manufacture, display, copy, perform, distribute, disclose, adapt, modify, and create derivative works from (i) any and all Intellectual Property and Intellectual Property Rights created, brought into existence, licensed or acquired by Project Co and/or any Contracting Affiliate which have been developed in whole or in part for the purposes of the Project, and (ii) Intellectual Property and Intellectual Property Rights brought into existence, licensed or acquired by Project Co and/or a Contracting Affiliate which have not been developed exclusively for the purposes of the Project but have been included in or are necessary to perform the Project Work (collectively, including the Tolling System IP, the "**Project IP**"). The license granted pursuant to this Section 52.2 is subject to the following.

- (a) With respect to any Project IP that is created after the Commencement Date, such license shall take effect immediately upon the coming into existence of such Project IP.
- (b) The license granted by Project Co whether during or after the Term, is solely for use by WDBA or a WDBA Party in connection with (i) this Agreement, the Project, the Project Work, the Site, the Project Infrastructure or any part thereof and (ii) to carry out or to perform any Governmental Activities.
- (c) All rights, title and interest in and to any modifications to the Project IP made by WDBA or a WDBA Party and all improvements with respect thereto, vest in WDBA and each WDBA Party immediately upon creation, provided that such modifications or improvements are solely for use by WDBA or such WDBA Party in connection with (i) this Agreement, the Project, the Project Work, the Site, the Project Infrastructure or any part thereof and (ii) to carry out or to perform any Governmental Activities. Such modifications and Improvements shall not be used, executed, reproduced, practiced, manufactured, displayed, copied, performed, distributed, disclosed, modified, or retained by Project Co, a Project Co Person or a Contracting Affiliate, without the express written consent of WDBA.
- (d) Project Co is not required to provide a license under this Section with respect to off-the-shelf, not customized, commercial software used for general business applications.
- (e) Subject to Section 52.3, where any Project IP is or becomes vested in any third party, Project Co shall, at Project Co's expense and free of charge to WDBA and each WDBA Party, either obtain a license from any such third party that permits compliance with this Section or arrange for any such third party to convey directly to WDBA or such WDBA Party, as applicable, equivalent rights by execution of documentation acceptable to WDBA.
- (f) Subject to Section 52.3, to the extent that any of the Project IP is generated by, maintained or reproduced in any electronic format, Project Co shall obtain for the benefit of WDBA and each WDBA Party, at Project Co's expense and free of charge to WDBA and each WDBA Party, the grant of a license or sub-license, as applicable, for the supply of any relevant software, including the source codes, or database permitting access and use thereof, whether during or after the Term.

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- (g) The rights granted under this Section 52.2 shall be effective on submission or disclosure of any Project IP to WDBA, a WDBA Person or any WDBA Party.
- (h) For the purpose of this Section 52.2 and Sections 52.5 and 52.7, “**use**” includes any and all acts of copying, modifying, adapting, translating, incorporating with other materials, creating derivative works, displaying, transmitting and otherwise using the Project IP, subject to the limitations set out in this Section.

### 52.3 Rights re Project IP, Tolling System IP and Software Code

During the Term of this Agreement, (a) within 30 days after any Project IP is created, brought into existence, licensed or acquired by Project Co and/or any Contracting Affiliate, Project Co shall as applicable, advise WDBA that such Project IP has been created, brought into existence, licensed or acquired by Project Co and/or a Contracting Affiliate, and (b) Project Co shall at least once per year or upon request by WDBA, deliver the Software Code (in all forms, including source code and executable or object code) for all such applicable Project IP that is required to: (i) generate, maintain or reproduce such Project IP, or (ii) to operate and maintain the Project or any part thereof, including any and all instructions, macroinstructions, manuals, settings or any other information allowing a user to adequately operate and maintain the Project or any part thereof, to be held by an escrow agent pursuant to an agreement acceptable to Project Co and WDBA. Such agreement shall conform to the terms of industry standard agreements commonly used in respect of the licensing of Intellectual Property and shall provide for the following:

- (a) the costs of the escrow agent shall be borne by Project Co;
- (b) at any time following the Termination Date and ending on the date which is one year following the Termination Date, WDBA or its nominee shall be granted use of the Software Code and all such information held in escrow (which WDBA will treat as Confidential Information) to the extent required for the purpose of operating and maintaining the Project and/or the Project IP or any part thereof; and
- (c) on any insolvency or bankruptcy of Project Co or the owner of the Software Code during the Term, WDBA shall have the benefit of the Software Code in connection with its use of the Project IP for the balance of the original Term.

### 52.4 License by WDBA

- (a) WDBA hereby grants to Project Co a non-transferable, non-exclusive, royalty-free license (but with no right to grant sub-licenses except to the Project Co Persons for purposes of the Project Work) to use, copy and create derivative works from, for the duration of the Term only, and only for the purpose of carrying out the Project and the Project Work and all obligations of Project Co under this Agreement and the Project Documents, all materials, documents and data of any nature relating to the Project which is or becomes vested in WDBA and is required by Project Co for any purpose relating to the Project (including the Disclosed Data), subject to any restrictions or limitations contained therein, and all Intellectual Property Rights therein, provided that, with respect to any such material, document or data created after the Commencement Date, such license shall take effect immediately upon the coming into existence of such material, document or data.
- (b) Project Co shall not nor shall it suffer or permit any Project Co Person to:
  - (i) use any mark, trade-mark, service mark, logo, insignia, seal, design or symbol of WDBA or a WDBA Party; or

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- (ii) use the names or any identifying logos of WDBA or a WDBA Party in any advertising or permit them so to be used.

## 52.5 Project Data - Ownership and Use

- (a) Any and all Project Data is the sole property of WDBA, Project Co shall have no rights in and to the Project Data and the Project Data shall not be used by Project Co or any Project Co Person for any purpose other than carrying out its duties under this Agreement including as expressly set out in Schedule 8 [*Records and Mandatory Reports*], Part 22 [*Tolling Infrastructure*] of Schedule 10 [*Design and Construction Specifications*], Part 23 [*Intelligent Transportation System*] of Schedule 10 [*Design and Construction Specifications*], Schedule 11 [*Operations, Maintenance and Rehabilitation*], Schedule 13 [*Tolling Operations*] and Schedule 25 [*Payment Mechanism (OMR)*].
- (b) Project Co shall not distribute or disclose any Project Data outside Project Co without the prior consent of WDBA except (i) to Project Co Persons who need to know such data in order to perform their functions with respect to the Project and (ii) to Governmental Authorities who have a legal right to have such Project Data disclosed to it.
- (c) Project Co shall not conceal any Project Data, in part or in full, from WDBA or its designates.
- (d) WDBA shall be the sole owner of all Project Data collected by any system in the Project from the time it is created. Project Co shall provide any Project Data requested by WDBA in a useable format and in a timely manner, including in real-time where required by WDBA.
- (e) Project Data shall be time stamped using a single time server across all ITS and tolling systems.
- (f) Project Co shall promptly provide any and all raw Project Data as requested by WDBA.
- (g) In addition, Project Co shall have no rights in and to the Traffic Data. WDBA or any WDBA Party may:
  - (i) use the Traffic Data for the purposes of exercising rights or carrying out duties under this Agreement or carrying out any Governmental Activities; and
  - (ii) incorporate the Traffic Data in any traffic or other statistics prepared by or on behalf of WDBA and publish such statistics or the Traffic Data either generally or to a limited category of persons or otherwise to exploit such statistics or the Traffic Data and whether or not in return for any fee.
- (h) Without prejudice to the rights of WDBA or any WDBA Party in and to the Traffic Data, Project Co shall be entitled to use the Traffic Data to assist it in carrying out its duties under this Agreement.

## 52.6 Representations, Warranties and Covenants

Project Co represents, warrants and covenants to WDBA that:

- (a) it has and shall have all the necessary rights, licenses, permissions and consents required to use the Project IP and to give effect to this Section 52, including to grant all the licenses provided herein;

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- (b) it shall use the Project IP only to the extent that it can comply with the provisions of this Section 52; and
- (c) the use of the Project IP does not and shall not infringe, and is not and shall not be misappropriation of, any third party Intellectual Property Rights, and, as of the Commencement Date, Project Co has not received any notice of a potential or alleged infringement or misappropriation from a third party regarding any of the Project IP.

## 52.7 Claims

- (a) Project Co shall be responsible for and indemnify, defend and hold harmless WDBA, each WDBA Party and WDBA Persons from and against any and all Claims and Losses suffered, sustained or incurred by them in respect of the use of the Project IP in accordance with the terms of this Section 52 or allegations of or findings of infringement or misappropriation of Intellectual Property Rights of other persons, including breach of confidence, breach of moral rights, unauthorized use, or failure to obtain waivers of moral rights, attributable to the breach of this Section 52 by Project Co, in each case to the extent not (i) caused directly by a Non-Excusable Event of WDBA, (ii) arising out of the use of the Project IP by WDBA, a WDBA Party or any WDBA Person otherwise than in accordance with the terms of this Agreement or (iii) arising out of any modification or adaptation of the Project IP by WDBA, WDBA Party or any WDBA Person, and Section 44.3 (*Conduct of Third Party Claims*) shall apply.
- (b) Where any Claim or Loss arises in respect of allegations of or findings of infringement or misappropriation of Intellectual Property Rights of other persons for which Project Co has given an indemnity pursuant to this Section 52.7, Project Co may, at its option, cost and without limiting its obligation to indemnify, defend and hold WDBA harmless to the extent required by this Section 52.7, either:
  - (i) obtain the right to continue to use the relevant Intellectual Property Rights; or
  - (ii) make such modifications to the relevant Intellectual Property Rights so that it becomes non-infringing or duly appropriated, or replace such necessary portion of the Project IP with non-infringing or duly appropriated substitutes, in both cases, without incurring any diminution in the performance, function or use of the Project Work as intended by this Agreement.

## 52.8 Confidential Information

It is expressly acknowledged and agreed that nothing in this Section 52 shall be deemed to (i) create or convey to a party any right, title or interest in or to the Confidential Information of the other party or (ii) permit a party to contravene such party's obligations under Section 53 (*Confidentiality*).

## 52.9 Further Assurances

Project Co and WDBA each undertakes, at the request of the other, to execute all documents and do all acts which may be necessary to bring into effect or confirm the terms of any license or sub-license or undertakings contained or referred to in this Section 52.

## 52.10 Survival of Obligations

This Section 52 shall survive the expiry or any other termination of this Agreement.

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**53. CONFIDENTIALITY****53.1 Accessibility of Project Information**

- (a) Project Co acknowledges that the ATI/FOI Legislation applies to this Agreement and to all contractual submissions, other documents and records under the control of WDBA or a WDBA Party, including documents and records relating to this Agreement and to the procurement process in respect of the Project and that WDBA and each WDBA Party is required to comply with applicable ATI/FOI Legislation and other Applicable Law. Project Co waives any right it may have to make any Claim, including any Claim based on an alleged violation of Section 53.3(c) of this Agreement, or take any other action against WDBA, a WDBA Party or a WDBA Person as a result of any action or omission by WDBA, a WDBA Party or a WDBA Person for the purpose of complying with applicable ATI/FOI Legislation, other Applicable Law or any final and non-appealable court or tribunal order.
- (b) WDBA shall have the right to disclose or publish this Agreement, any terms thereof, including any contractual submissions or other records kept in accordance with this Agreement, any information related to the performance of Project Co or any Project Co Person or any information derived from such information, subject to the withholding of any trade secrets, proprietary commercial or financial information, or other confidential information designated as such by Project Co pursuant to Section 53.2(a). Prior to disclosing or publishing such information, and subject to any information designated as exempt by Project Co pursuant to this Agreement, WDBA shall provide to Project Co a redacted version of this Agreement or other information or documents to be disclosed or published, on the basis that the information so redacted constitutes information which should not be disclosed pursuant to Section 53.2. If WDBA receives a request for information to which information designated by Project Co as exempt by reason of being trade secrets, proprietary commercial or financial information, or other confidential information is responsive, WDBA shall provide Project Co with a copy of the request in advance of disclosure of such information. If Project Co, acting in good faith, contends that any of the information not redacted constitutes information that was either (i) designated by Project Co as trade secrets, proprietary commercial or financial information, or other confidential information, or (ii) that falls within the scope of Section 53.2 and accordingly, would be exempt from disclosure under ATI/FOI Legislation, then the dispute may be referred to the Dispute Resolution Procedure and WDBA, subject to such ATI/FOI Legislation or other Applicable Law, shall not disclose any information in dispute until a determination is made.

**53.2 Confidentiality of Information**

- (a) Each party agrees, for itself and, in the case of Project Co, any Project Co Person and in the case of WDBA, for any WDBA Person, to keep confidential and not to disclose to any person any Confidential Information received from the other party, other than as expressly provided in Section 53.3 or as otherwise expressly provided in this Agreement. Each party acknowledges that it shall be responsible for the breach of this undertaking by any Project Co Person, in the case of Project Co, or by any WDBA Person, in the case of WDBA.
- (b) Project Co shall comply with GSA's requirements for the safeguarding and dissemination of sensitive but unclassified building information, as set out in GSA's policies and guidelines in effect from time to time.

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**53.3 Circumstances Where Confidential Information Can Be Disclosed**

Subject to Section 56.3 (*Security Requirements*), a party may disclose, in whole or in part, Confidential Information in any of the following circumstances.

- (a) In the case of either party, they may disclose Confidential Information:
- (i) to the Project Co Persons or WDBA Persons, Contracting Affiliates, WDBA Parties, CBP, CFIA, GSA and FHWA, as the case may be, on a need to know basis, to the extent necessary to enable them to perform (or to cause to be performed) the Project Work or to protect or enforce any of their respective rights or obligations under this Agreement, or any of the other Project Documents, provided that the party has first obtained from such person to whom the disclosure is to be made an undertaking of strict confidentiality in relation to the relevant Confidential Information;
  - (ii) to the extent required to be provided to the Independent Certifier pursuant to the Independent Certifier Agreement or any person fulfilling functions similar to those of the Independent Certifier or to the Handback Independent Certifier;
  - (iii) to the extent authorized or required to do so by Applicable Law (including ATI/FOI Legislation), and by or pursuant to the rules or any order having the force of law of any Governmental Authority;
  - (iv) to the extent that the Confidential Information has, except as a result of any disclosure prohibited by this Agreement, become publicly available or generally known to the public at the time of such disclosure;
  - (v) to the extent that the Confidential Information is already lawfully in the possession of the recipient or lawfully known to the recipient prior to such disclosure;
  - (vi) to the extent that a party has acquired the Confidential Information from a third party who is not in breach of any obligation as to confidentiality to any other party to this Agreement;
  - (vii) to any assignee or proposed assignee permitted under Section 55 (*Assignment, Change in Control and Subcontracting*) provided that Project Co has first obtained from such person to whom the disclosure is to be made an undertaking of strict confidentiality in relation to the relevant Confidential Information; or
  - (viii) the disclosure of which is expressly permitted or required by this Agreement or any other Project Document.
- (b) In the case of Project Co, it may disclose Confidential Information in confidence to the Senior Lenders, Junior Lenders, other potential lenders, equity providers, underwriters, arrangers, investment dealers, bank or financial institution from whom it is seeking or has obtained financing for the Project Work or any rating agency from whom it is seeking or has obtained a rating in connection with the financing of the Project Work, and their respective directors, officers, employees, and professional advisors. Nothing in this Section shall prevent any lender under the Senior Lending Agreements or the Junior Lending Agreements from disclosing in confidence any such Confidential Information to any person acquiring or potentially acquiring any interest of such lender under such

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agreements, and such person's respective directors, officers, employees, and professional advisors.

- (c) In the case of WDBA, it may disclose Confidential Information:
- (i) to the extent required for the design, construction, completion, commissioning, testing, operation, maintenance, rehabilitation or improvement of the Project Infrastructure and the Site, or the carrying out of any statutory or public duties or functions in respect of the Project Infrastructure and the Site;
  - (ii) subject to Section 53.1(b), in relation to the outcome of the Competitive Selection Process as may be required to be published pursuant to Applicable Law or the Crossing Agreement;
  - (iii) to any ministry, office or agency of Canada, including the Auditor General of Canada, and their respective directors, officers, employees, and professional advisors, where required for parliamentary, governmental, statutory or judicial purposes; and
  - (iv) whether or not falling within Sections 53.3(c)(i) to 53.3(c)(iii), to any WDBA Party or other Governmental Authority and their respective directors, officers, employees, and professional advisors,

provided that WDBA (or any person to whom WDBA discloses the Financial Model in accordance with this Section 53.3(c)) shall not be entitled as a result of this Section 53.3(c) to disclose to a competitor or potential competitor of Project Co, the Prime Contractors or of any of their Affiliates (i) the Financial Model or (ii) information commercially sensitive to Project Co and designated as such, the disclosure of which would give such competitor or potential competitor a competitive advantage over Project Co, the Prime Contractors or an Affiliate thereof.

#### **53.4 Use of Confidential Information**

- (a) Without limiting any of the rights set out in Section 52 (*Intellectual Property*), neither WDBA nor Project Co shall use, or directly or indirectly cause, authorize or permit any other person to use, any Confidential Information of the other party except for the purposes of this Agreement, as permitted by this Agreement or any other Project Document or as authorized by the disclosing party in writing.
- (b) Each party shall protect all Confidential Information of the disclosing party with the same degree of care as it uses to prevent the unauthorized use, disclosure, publication, or dissemination of its own confidential information of a similar nature or character, but in no event with less than a reasonable degree of care.
- (c) Neither party shall, without the prior consent of the other party, publish, alone or in conjunction with any other person, any articles or other material relating to any Dispute arising under this Agreement nor disclose any information regarding any such Dispute except to its professional advisors or to the persons referred to in Section 53.3(b) in accordance with the Senior Lending Agreements or the Junior Lending Agreements. In this regard, either party shall have the right to grant or withhold its consent at its discretion, except where such publication arises out of any statutory or regulatory obligation applicable to either party.

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**53.5 Remedies - Confidentiality**

Subject to any other rights and remedies that a party may have, each of the parties agrees that each party shall be entitled to the remedies of injunction, specific performance, damages and/or other similar relief for any threatened or actual breach of this Section 53, subject to Applicable Law.

**54. PERSONAL INFORMATION****54.1 General Obligations**

- (a) Project Co acknowledges that Personal Information under the control of WDBA or any other Governmental Authority is subject to the Privacy Laws, including Personal Information contained in this Agreement and all contractual submissions, other documents and records relating to this Agreement and to the procurement process in respect of the Project Work and that WDBA and any other Governmental Authority are required to comply with Privacy Laws. Project Co waives any right it may have to make any Claim or take any other action against WDBA or any other Governmental Authority as a result any action taken or required to be taken by WDBA and any other government institution for the purpose of complying with the Privacy Laws or other Applicable Law or any order of a court or tribunal.
- (b) Project Co shall and shall require each Project Co Person to:
  - (i) only collect, hold, process, use, store and disclose Personal Information in accordance with Applicable Law (including applicable Privacy Law);
  - (ii) only collect, hold, process, use or store Personal Information to the extent necessary to perform Project Co's obligations under this Agreement;
  - (iii) treat Personal Information as strictly confidential and not disclose Personal Information or otherwise permit access to or make Personal Information available to any person except as permitted by Applicable Law (including Privacy Laws); and
  - (iv) comply with the requirements of all Privacy Laws now in force or that may in the future come into force applicable to Project Co, each Project Co Person or to the Project Work.
- (c) Project Co shall allow WDBA or, as applicable, any Governmental Authority having jurisdiction under Applicable Law, on reasonable notice, to audit Project Co and each Project Co Person's compliance with this Section 54 including the measures used by Project Co and each Project Co Person to protect Personal Information. Project Co shall promptly and properly respond to all reasonable inquiries of WDBA and any other Governmental Authority, with respect to Project Co or each Project Co Person's handling of Personal Information.
- (d) Project Co shall provide, and shall cause each Project Co Person to provide, in a timely manner, all necessary and reasonable information and to cooperate with WDBA and any Governmental Authority with jurisdiction on matters contemplated by Privacy Laws, in connection with any investigations, audits or inquiries made by any such authorities under such legislation.

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## 54.2 Protection of Personal Information

- (a) Project Co shall implement and use, and shall require each Project Co Person to implement and use, appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use, modification or disposal, and shall otherwise ensure that Project Co and the Project Co Persons shall protect, secure and keep confidential any Personal Information.
- (b) Project Co shall and shall cause each Project Co Person to restrict access to Personal Information to only those authorized employees that require access to such Personal Information to fulfil their job requirements in connection with the Project Work and that are subject to obligations of confidentiality and Personal Information protection no less stringent than those of this Section 54.
- (c) Upon termination of this Agreement, Project Co shall immediately cease all use of and provide to WDBA or any other person or entity designated by WDBA, all Personal Information, and, at the direction of WDBA, dispose of, eradicate, wipe, destroy or render permanently anonymous, all Personal Information, in each case using appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use or modification.
- (d) To the extent that any Project Work involves or may involve destruction or disposal of Personal Information, such activities shall include, at a minimum, irreversible destruction, wiping, shredding or pulverizing of all documents, records or media containing Personal Information to a size or state that ensures that the document, record or other medium is permanently eradicated and destroyed and that no information contained therein can be read, reconstructed or deciphered.
- (e) Project Co shall immediately inform WDBA of any actual or suspected loss, theft or accidental or unauthorized access, disclosure, copying, use, modification or destruction of Personal Information by Project Co or any Project Co Person or any other breach of this Section 54 of which it has knowledge.
- (f) WDBA may from time to time require that Project Co and any Project Co Person execute and deliver, within 2 Business Days of such request, an agreement satisfactory to WDBA requiring such person to keep Personal Information confidential.

## 54.3 Survival

The obligations in this Section 54 shall survive the termination of this Agreement.

## PART H

### GENERAL PROVISIONS

## 55. ASSIGNMENT, CHANGE IN CONTROL AND SUBCONTRACTING

### 55.1 Assignment by Project Co

- (a) Project Co shall not and it shall ensure that no Contracting Affiliate, Assigns in any manner whatsoever, this Agreement or any other Project Document to which it or such Contracting Affiliate is a party without the prior written consent of WDBA.
- (b) The provisions of Section 55.1(a) shall not apply to:

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- (i) the Assignment by way of security interest, in the interests and rights of Project Co in and under this Agreement or any other Project Document, as security for any loan made to Project Co in accordance with the Senior Lending Agreements or under the terms of a Refinancing in compliance with this Agreement, provided that the grantee of such security shall enter into the Lenders' Direct Agreement in relation to the exercise of its rights, if WDBA so requires; and
- (ii) the Assignment of all but not less than all of the interests and rights of Project Co in and under this Agreement to a Substitute Project Co in accordance with the provisions of the Lenders' Direct Agreement.

## 55.2 Assignment by WDBA

WDBA may, without the consent of Project Co, Assign, or enter into any form of reorganization pursuant to which, any and all of its rights under this Agreement are assigned or otherwise transferred to or assumed by Canada, any Crown corporation or any other person Controlled by Canada so long as, (i) in the case of such assignment, transfer or assumption, Canada or an agent of Canada assumes all of the obligations of WDBA or (ii) in the case of such assignment, transfer to or assumption by a Crown Corporation or a person Controlled by Canada that is not an agent of Canada, [REDACTED].

## 55.3 Change in Ownership

- (a) No Change in Ownership of Project Co shall be permitted:
  - (i) subject to Section 55.3(b) and Section 55.6, where the person acquiring the Ownership Interest is an Ineligible Person; or
  - (ii) if such Change in Ownership would have a material adverse effect on the performance of the Project Work, the Governmental Activities or the use and availability of the Facility to the public.
- (b) Project Co may by Notice to WDBA request that WDBA consent to any proposed or completed acquisition of an Ownership Interest in Project Co by an Ineligible Person. Such Notice shall contain complete information on the ownership and Control of such Ineligible Person and the reasons why, in the context of this Project, WDBA should consent to the acquisition of such Ownership Interest by such Ineligible Person. WDBA shall respond in writing to such request within 30 days after the Notice was given. Such response shall be either (i) consent is granted or (ii) consent is not granted. Failure to provide a response within such time period shall be deemed to be a refusal by WDBA to provide consent. In the case of a completed acquisition of an Ownership Interest by an Ineligible Person, if WDBA does not consent to such acquisition as herein provided, then Project Co shall cause such Ineligible Person to divest its Ownership Interest to a person who is not an Ineligible Person, within 90 days after the refusal by WDBA to grant its consent, or such longer period as WDBA may agree in writing. Project Co shall provide a Notice to WDBA within 5 Business Days after it has knowledge of any completed acquisition of an Ownership Interest in Project Co by an Ineligible Person, that has not previously been consented to by WDBA.
- (c) Subject to Section 55.3(a), any Change in Ownership of Project Co pursuant to which a person acquires, or a group of persons acting jointly or in concert acquires, an Ownership Interest in Project Co of 10% or more in any one transaction, or in a series of related transactions, shall require the prior written consent of WDBA, not to be unreasonably withheld or delayed, provided that:

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- (i) no consent shall be required for any Change in Ownership as a result of any corporate reorganization of a person, so long as the ultimate Ownership Interest in such person remains the same after the corporate reorganization as it was before the corporate reorganization;
- (ii) no consent shall be required for any Change in Ownership in Project Co resulting from the transfer of an Ownership Interest in Project Co by one Equity Member to (A) an original Equity Member or (B) a subsequent Equity Member approved by WDBA pursuant to Section 55.8, so long as such Change in Ownership Interest does not result in a Change in Control; and
- (iii) no consent shall be required for any Change in Ownership of Project Co or Change in Control of Project Co, as a result of the enforcement of any security held by the Senior Lenders under the Senior Lending Agreements, so long as there is compliance with the provisions of the Lenders' Direct Agreement and following the enforcement of such security, all Ownership Interests in Project Co are held by or on behalf of the Senior Lenders.

#### **55.4 Notice of Change in Ownership**

Whether or not Project Co is required to obtain WDBA's consent pursuant to Section 55.3, Project Co shall provide a Notice to WDBA of any proposed Change in Ownership or Change in Control of (i) Project Co, (ii) any Equity Member or (iii) any Related Owner, (other than Publicly Traded Persons or Passive Ownership Interests) within 10 Business Days after such Change in Ownership or Change in Control, and such notification shall include a statement identifying, in respect of the relevant direct or indirect owners of the Ownership Interests of Project Co, such Equity Member or such Related Owner, as the case may be, the holdings prior to and holdings following the Change in Ownership or Change in Control, respectively.

#### **55.5 Change in Control**

Subject to Section 55.3(c)(iii), no Change in Control of Project Co shall be permitted without the prior written consent of WDBA.

#### **55.6 Exception to Restrictions**

Sections 55.3(a), 55.3(c) and Section 55.5, shall not apply to a Change in Ownership or Change in Control of a Publicly Traded Entity or of an Investment Fund, provided that Ineligible Persons do not have in total more than 10% of all of the Ownership Interests in Project Co at any time. If such 10% threshold is exceeded at any time and Project Co becomes aware that such threshold has been exceeded, then, Project Co shall have 90 days within which to take such action as may be required so that such 10% threshold is not exceeded.

#### **55.7 Share of Excess Equity Gain**

Prior to the third anniversary following the Substantial Completion Date, Project Co shall pay to WDBA an amount equal to **[REDACTED]**% of any Excess Equity Gain arising from any Change in Ownership of Project Co.

#### **55.8 New Equity Members of Project Co**

If a person becomes an Equity Member of Project Co after the Commencement Date, Project Co shall cause such new Equity Member to comply with the provisions of Section 34 (*Lending Agreements and Refinancing*) of this Agreement. Project Co shall provide to WDBA within 10

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days after any Change in Ownership which results in a new Equity Member, all required documentation to give effect to this Section, duly signed by the new Equity Member.

### 55.9 Subcontracting

- (a) Project Co shall not subcontract any interest in this Agreement or a Prime Contract, and shall not suffer or permit a Prime Contractor to subcontract any interest in a Prime Contract, to an Ineligible Person.
- (b) Subject to Section 55.9(a), if a Prime Contract shall at any time lapse, terminate or otherwise cease to be in full force and effect, whether by reason of expiry, default or otherwise, with the effect that a Prime Contractor shall cease to act in relation to the Project, Project Co shall forthwith appoint a replacement, subject to WDBA's prior written consent as to the suitability of the replacement. For purposes of obtaining the consent of WDBA, Project Co shall obtain and provide to WDBA, in respect of the proposed Prime Contractor, the same information as was required to be provided in the RFQ for prime team members and such other documentation relating to the proposed new Prime Contractor as WDBA may reasonably require under Applicable Law or otherwise to give or withhold its consent. The foregoing provisions shall not apply to any Prime Contract which has expired in accordance with its terms and is no longer required for the current stage of the Project.
- (c) In determining whether to provide its consent under Section 55.9(b), Project Co acknowledges that, at a minimum, the following shall constitute reasons for WDBA to withhold its consent:
  - (i) if the proposed Prime Contractor:
    - (A) does not have the legal capacity, power and authority to fulfill the functions of that appointment;
    - (B) does not have experience or expertise equivalent to that of the person that it is replacing to properly fulfil the functions of that appointment; or
    - (C) is not of sufficiently sound financial standing to properly fulfil the functions of that appointment;
  - (ii) if the proposed Prime Contractor is an Ineligible Person;
  - (iii) if the proposed appointment of a new Prime Contractor or termination and replacement of an existing Prime Contractor could have a material adverse effect on the Project, on the Project Work, on the availability of the Project Infrastructure or on the performance of the obligations of Project Co pursuant to this Agreement; or
  - (iv) if the proposed appointment of a new Prime Contractor or termination and replacement of an existing Prime Contractor could have a material adverse effect on a right conferred by this Agreement to WDBA, on its ability to exercise such right or to discharge an obligation of WDBA pursuant to this Agreement or on the ability of WDBA or of a Governmental Authority to discharge an obligation or to perform its function.
- (d) It is a condition of a replacement of a Prime Contractor that any replacement enter into a contract upon the same or substantially similar terms as the person so replaced and into

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an agreement on the same terms as the applicable Prime Contractor Direct Agreement entered into by the person so replaced, unless any material variations are approved by WDBA.

- (e) Subject to Section 3.4(a)(v), except as may be required by Section 32.6 (*Remedial Rights*), Project Co shall not replace any Prime Contractor or any Material Subcontractor without the prior written consent of WDBA, acting reasonably.
- (f) Copies of all Material Subcontracts shall be delivered to WDBA prior to commencement of the portion of the Project Work that is subject to the Material Subcontract. All Material Subcontracts shall contain provisions which (i) subject to the Lenders' Direct Agreement, freely permit an assignment of the Material Subcontract to WDBA upon a termination of this Agreement or the replacement of Project Co under this Agreement, (ii) require such Subcontractors to be joined in any Dispute between WDBA and Project Co if so requested by a party (iii) use its best efforts to cause all Material Subcontractors to comply with the terms of this Agreement, including the warranty, audit, insurance and indemnity requirements and the representations and warranties in this Agreement and, with respect to any inconsistency, the more stringent requirement shall apply.

#### **55.10 Reimbursement of WDBA's Costs**

Project Co shall promptly reimburse WDBA for its reasonable due diligence costs (including fees of professional advisors) in connection with any consent required of WDBA pursuant to this Section 55 or with WDBA's determination of Project Co's compliance with this Section 55, whether or not such consent is granted.

### **56. CONFLICT OF INTEREST, INTERNATIONAL SANCTIONS, SECURITY REQUIREMENTS AND TOLLING INFORMATION SECURITY**

#### **56.1 Conflict of Interest**

Project Co shall not knowingly consent or permit any member of the Senate or of the House of Commons of Canada to derive any direct benefit from this Agreement or any other Project Document and shall also ensure that no other person derives any direct benefit from this Agreement or any Project Document who, as a result thereof, would not be in compliance with the provisions of Applicable Law, including the Code of Conduct for Procurement- Integrity Provisions, the *Conflict of Interest Act*, SC 2006, c 9, s 2, the Values and Ethics Code for the Public Service or the Conflict of Interest and Post-employment Code for Public Office Holders, the *Lobbying Disclosure Act of 1995* (US), as amended, 49 CFR Part 20 or the *Michigan Lobby Registration Act* (Public Act 472 of 1978), and 23 CFR 1.33 and 23 CFR 636.116.

#### **56.2 International Sanctions**

- (a) Persons and companies in Canada and the US and Canadians and Americans outside of Canada and the US are bound by economic and other sanctions imposed by Canada or the US.
- (b) Project Co and Project Co Persons shall comply with Applicable Law relating to economic or other sanctions in Canada or the US and not supply to WDBA any goods or services which are subject to such sanctions.
- (c) After the Commencement Date and during the Term, should the imposition of sanctions against a country or person or the addition of a good or service to the list of sanctioned

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goods or services require a change in the design, quality, scope, methodology or cost of the Project Work, it shall be deemed to be a Discriminatory Change in Law.

### 56.3 SECURITY REQUIREMENTS

- (a) At all times during the Term, Project Co must hold a valid facility security clearance at the level of SECRET, with approved document safeguarding at the level of [REDACTED], issued by the Canadian Industrial Security Directorate (“CISD”) of PSPC. The provisions of this Section 56.3 are collectively called the “Security Requirements”.
- (b) Project Co personnel requiring access to PROTECTED/CLASSIFIED information, assets or sensitive work sites must each hold a valid personnel security screening at the level of [REDACTED], granted or approved by CISD. Until the security screening of Project Co personnel has been completed satisfactorily by CISD, Project Co personnel may not have access to PROTECTED/CLASSIFIED information or assets, and may not enter sites where such information or assets are kept without an escort.
- (c) Project Co personnel requiring access to foreign PROTECTED/CLASSIFIED information, assets or sensitive work sites must hold a valid personnel security screening at the level of [REDACTED], granted or approved by CISD.
- (d) Project Co must not utilize its information technology systems to electronically process, produce or store any sensitive CLASSIFIED information until CISD has issued written approval. After approval has been granted, these tasks may be performed at the level of [REDACTED].
- (e) Subcontracts which contain security requirements are not to be awarded without the prior written permission of WDBA or CISD.
- (f) Project Co must comply with:
  - (i) RFP Schedule 10 [*Security Requirements Checklist*]; and
  - (ii) Industry Canada’s Processing of Sensitive Information for contract RFP 2016-039 Guide, included as Background Information.

### 56.4 Tolling Information Security

- (a) Project Co must ensure that all the databases and servers containing any tolling information related to the Project Work are located in Canada or, if WDBA has first consented in writing, in another country where:
  - (i) equivalent protections are given to personal information as in Canada under legislation such as the *Privacy Act*, RSC 1985, c P-21, and the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, and under any applicable policies of Canada; and
  - (ii) the laws do not allow the government of that country or any other entity or person to seek or obtain the right to view or copy any tolling information relating to this Agreement without first obtaining WDBA’s written consent.

In connection with giving its consent to locating a database in another country, WDBA may, at its option, require Project Co to provide a legal opinion (from a lawyer qualified in the foreign country) that the laws in that country meet the requirements of this Section

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56.4, or may require Project Co to pay for WDBA to obtain such a legal opinion. WDBA has the right to reject any request to store WDBA's tolling data in a country other than Canada if there is any reason to be concerned about the security, privacy, or integrity of WDBA's tolling data. WDBA may also require that any tolling data sent or processed outside of Canada be encrypted with WDBA-approved cryptography and that the private key required to decrypt the data be kept in Canada in accordance with key management and storage processes approved by WDBA.

- (b) Project Co must control access to all databases and servers on which any tolling data relating to this Agreement is stored so that only individuals with the appropriate security clearance are able to access the database, either by using a password or other form of access control (such as biometric controls).
- (c) Project Co must ensure that all databases and servers on which any tolling data relating to this Agreement is stored are physically and logically independent (meaning there is no direct or indirect connection of any kind) from all other databases and servers, unless those databases and servers are located in Canada (or in another country approved by Canada under Section 56.4(a) and otherwise meet the requirements of this Section 56.4(a).
- (d) Project Co must ensure that all Traffic Data is processed only in Canada or in another country approved by WDBA under Section 56.4(a).
- (e) Project Co must ensure that all domestic network traffic (meaning traffic or transmissions initiated in one part of Canada to a destination or individual located in another part of Canada) is routed exclusively through Canada, unless WDBA has first consented in writing to an alternate route. WDBA will only consider requests to route domestic traffic through another country that meets the requirements of Section 56.4(a).
- (f) Despite any Section of this Agreement relating to subcontracting, Project Co must not subcontract (including to an Affiliate) any function that involves providing a Subcontractor (other than a Prime Contractor) with access to any Traffic Data that contains Personal Information, unless WDBA first consents in writing.

## **57. PROHIBITED ACTS AND INTEGRITY**

### **57.1 No Bribe**

Project Co represents, warrants and covenants that no bribe, gift, benefit, nor other inducement has been, nor shall be, paid, given, promised or offered directly or indirectly to any official or employee of WDBA or of a Governmental Authority or to a member of the family of such a person, with a view to influencing the entry into this Agreement or the administration of this Agreement.

### **57.2 Integrity Provisions**

- (a) Project Co represents and warrants to WDBA that as at the date hereof, Project Co and each Project Co Person is in compliance with the Integrity Provisions and that neither Project Co nor any Project Co Person is in breach of, or subject to ineligibility, debarment or suspension pursuant to, the Integrity Provisions, except as previously disclosed to WDBA during the RFQ process and the RFP Process.
- (b) Project Co confirms that it understands that, to ensure fairness, openness and transparency in the procurement process, the commission of certain acts or offences may

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result in a termination for default under this Agreement. If Project Co or a Contracting Affiliate has made a false statement in any document, agreement, declaration or certificate submitted in connection with the RFQ, the RFP or in the Proposal, makes a false declaration under this Agreement, fails to diligently maintain up to date the information requested, or if Project Co or any of its Contracting Affiliates becomes in breach of, or subject to ineligibility, debarment or suspension pursuant to the Integrity Provisions during the Term, such false statement or declaration or failure to comply with the Integrity Provisions may result in a termination for a Project Co Event of Default in accordance with Section 46.1(u) and Section 46.3 (*Remedies of WDBA for Project Co Event of Default*). Project Co understands that a termination for default will not restrict WDBA's right to exercise any other remedies that may be available against Project Co.

- (c) Project Co has provided a list of names of all individuals who are partnership board members of Project Co and directors of its general partners and Equity Members. Project Co shall diligently inform WDBA in writing of any changes affecting the list of names of such partnership board members and directors during the Term. Project Co must also, when requested, provide WDBA with properly completed and signed consent forms and associated information, and cooperate with the verification process.
- (d) Project Co certifies that it is aware, and that its Affiliates are aware, that WDBA may verify the information provided by Project Co, including the information relating to compliance with the Integrity Provisions, through independent research, use of the resources of any Governmental Authority or by contacting third parties.
- (e) Project Co certifies that neither Project Co or any of its Affiliates have directly or indirectly, paid or agreed to pay, and will not, directly or indirectly, pay a contingency fee to any individual for the solicitation, negotiation or obtaining of this Agreement if the payment of the fee would require the individual to file a return under Section 4 of the *Lobbying Act*, RSC 1985, c 43 (4<sup>th</sup> Supp).

Project Co also certifies that no person who is in breach of the Integrity Provisions or who is ineligible, debarred or suspended under the Integrity Provisions will receive any benefit under this Agreement during the period of such ineligibility, debarment or suspension.

- (f) Project Co must ensure that all contracts entered into by a Subcontractor engaged by or on behalf of Project Co to undertake any part of the work in the Project Agreement include integrity provisions no less favorable to WDBA than those imposed in this Section 57.2.

### 57.3 Prohibited Acts

The term "**Prohibited Act**" means:

- (a) offering, giving or agreeing to give or agrees to give WDBA or any WDBA Party or any Governmental Authority (or anyone employed by or acting on their behalf), or to any family member of such person, any gift or consideration of any kind as an inducement or reward:
  - (i) for doing or not doing, or for having done or not having done, any act in relation to the obtaining or performance of this Agreement or any other agreement with WDBA or a WDBA Party or any Governmental Authority in connection with the Project; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with WDBA or a WDBA Party or any Governmental Authority in connection with the Project;

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provided that this Section 57.3(a) shall not apply to Project Co or any Project Co Person (or anyone employed by or acting on their behalf) providing consideration to WDBA or any Governmental Authority in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Agreement or any other agreement with WDBA or any Governmental Authority in connection with the Project;

- (b) entering into this Agreement or any other agreement with WDBA, a WDBA Party or any Governmental Authority in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by Project Co, or on behalf or to its knowledge, to WDBA, a WDBA Party or any Governmental Authority (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to WDBA, provided that this Section 57.3(b) shall not apply to a fee or commission paid by Project Co or any Project Co Person (or anyone employed by or acting on their behalf) to WDBA, a WDBA Party or any Governmental Authority pursuant to an agreement where such fee or commission is paid in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities Project Co under this Agreement or any other agreement with WDBA, a WDBA Party or any Governmental Authority in connection with the Project without contravening the intent of this Section 57;
- (c) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this Agreement or any other agreement with WDBA or any Governmental Authority in connection with the Project; or
- (d) defrauding or attempting to defraud or conspiring to defraud WDBA, a WDBA Party or any other Governmental Authority.

#### **57.4 WDBA Remedies For Prohibited Act**

- (a) If Project Co or any Project Co Person (or anyone employed by or acting on their behalf) commits any Prohibited Act, then the following shall apply.
  - (i) If the Prohibited Act is committed by Project Co or an employee acting under the direction of a director or officer of Project Co, then such Prohibited Act shall be a Project Co Event of Default under Section 46.1(r) (*Project Co Default and WDBA Remedies*).
  - (ii) If the Prohibited Act is committed by an employee of Project Co acting independently of a direction of a director or officer of Project Co, then unless within 30 days of receipt of a Notice from WDBA setting out the particulars of such Prohibited Act, Project Co terminates the employee's employment and ensures that the relevant part of the Project Work shall thereafter be performed by another person, such Prohibited Act shall be a Project Co Event of Default under Section 46.1(r) (*Project Co Default and WDBA Remedies*).
  - (iii) If a Prohibited Act is committed by a Subcontractor or by an employee of that Subcontractor not acting independently of a direction of a director or officer of that Subcontractor, then unless within 30 days of receipt of a Notice from WDBA setting out the particulars of such Prohibited Act, Project Co terminates the relevant Subcontract with such Project Co Person and ensures that the relevant part of the Project Work shall thereafter be performed by another person, where relevant, in accordance with Section 55.9 (*Subcontracting*), such Prohibited Act

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shall be a Project Co Event of Default under Section 46.1(r) (*Project Co Default and WDBA Remedies*).

- (iv) If the Prohibited Act is committed by an employee of a Project Co Person acting independently of a direction of a director or officer of that Project Co Person, then unless within 30 days of receipt of a Notice from WDBA setting out the particulars of such Prohibited Act, Project Co causes the termination of the employee's employment and ensures that the relevant part of the Project Work shall thereafter be performed by another person, such Prohibited Act shall be a Project Co Event of Default under Section 46.1(r) (*Project Co Default and WDBA Remedies*).
  - (v) If the Prohibited Act is committed on behalf of Project Co or a Project Co Person by a person not specified in Sections 57.4(a)(i) to 57.4(a)(iv) then unless within 30 days of receipt of a Notice from WDBA setting out the particulars of such Prohibited Act, Project Co causes the termination of such person's employment or the appointment of their employer and, if necessary, ensures that the relevant part of the Project Work shall thereafter be performed by another person, such Prohibited Act shall be a Project Co Event of Default under Section 46.1(r) (*Project Co Default and WDBA Remedies*).
- (b) Any Notice of termination under this Section 57.4 shall specify:
- (i) the nature of the Prohibited Act;
  - (ii) the identity of the person whom WDBA believes has committed the Prohibited Act; and
  - (iii) the date of termination in accordance with the applicable provisions of this Agreement.
- (c) Without prejudice to its other rights or remedies under this Section 57.4, WDBA shall be entitled to recover from Project Co any Loss sustained in consequence of any breach of this Section 57.
- (d) Project Co acknowledges that any Prohibited Act may be referred to Governmental Authorities and may result in Project Co's suspension or debarment by such Governmental Authorities and the application of civil penalties.

### **57.5 Permitted Payments**

Nothing contained in this Section 57 shall prevent Project Co or any other person from paying any proper commission, fee or bonus whether to its employees within the agreed terms of their employment or otherwise, and such commission fee or bonus shall not constitute a Prohibited Act.

### **57.6 Notification**

Project Co shall notify WDBA of the occurrence of any Prohibited Act and the particulars thereof forthwith upon having knowledge of such occurrence.

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### **57.7 Replacement of Project Co Person**

Where Project Co is required to replace any Project Co Person pursuant to this Section 57, the party replacing such Project Co Person shall from the time of the replacement be deemed to be a Project Co Person and the provisions of this Agreement shall be construed accordingly.

## **58. REVIEW PROCEDURE AND NO RELIEF EFFECT**

### **58.1 Review Procedure**

Project Co shall comply with the Review Procedure. Any Review Submittal which Project Co is required to submit under this Agreement shall be dealt with in accordance with the Review Procedure.

### **58.2 No Relief Effect**

Project Co shall not be relieved from any obligations or liability under this Agreement as a result of any review, audit, inspection, approval, comment, modification, objection or rejection, or lack thereof, by or on behalf of WDBA, the Independent Certifier or the Handback Independent Certifier, as the case may be, of any documents, course of action, review submitted or any other information provided pursuant to this Agreement including any drawing, calculation or details relating to the design, construction, completion, commissioning, testing, maintenance, operation or rehabilitation of the Project Infrastructure or other Project Work, whether pursuant to the Review Procedure or otherwise.

## **59. MANDATORY REPORTS, RECORDS, AUDIT AND INFORMATION**

### **59.1 Mandatory Reports**

Project Co shall submit to WDBA all Mandatory Reports in compliance with the Technical Requirements and the requirements set out in Schedule 8 [*Records and Mandatory Reports*].

### **59.2 Comments on Mandatory Reports**

Unless otherwise provided in this Agreement, if WDBA considers that any Mandatory Report has not been prepared in accordance with the provisions of this Agreement or has been based on erroneous information or data, it shall notify Project Co thereof within 30 days of receipt of such Mandatory Report. If WDBA and Project Co fail to reach an agreement concerning such Notice within 10 Business Days of the Notice, either of them may refer the matter to the Dispute Resolution Procedure.

### **59.3 Revisions to Mandatory Reports**

If the resolution of any comment made pursuant to Section 59.2 requires any revision or adjustment to any Mandatory Report, then Project Co shall, as soon as practicable, issue revised versions of each affected Mandatory Report and such revised Mandatory Report shall, for the purposes of this Agreement, take the place of the original Mandatory Report.

### **59.4 Records**

Project Co shall maintain, update and provide to WDBA, and shall cause each Subcontractor to maintain, update and provide to WDBA, all information, reports, records, plans, drawings, forms and other documents required to be created, maintained, updated, submitted or delivered pursuant to this Agreement and its schedules, including by Schedule 8 [*Records and Mandatory Reports*] (collectively, the "**Required Records**"). Project Co shall, for such purpose, include in all

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Subcontracts it enters into relevant terms to this effect, as well as terms requiring that any Subcontract concluded thereunder contain such relevant terms.

#### **59.5 Audit and Inspection**

All Required Records shall at all times be available for audit or inspection by WDBA in accordance with Schedule 8 [*Records and Mandatory Reports*]. An audit or inspection may be carried out by electronic means for records that are maintained in an electronic format.

#### **59.6 Management and Retention of Records**

Project Co shall establish, institute and maintain a records management protocol which complies with the requirements set out in Schedule 8 [*Records and Mandatory Reports*] and with all Applicable Law, policies and requirements that apply to the creation, maintenance, management, retention and disposal of the Required Records as if they were maintained by WDBA (the "**Records Management Protocol**"). Project Co shall comply with such Records Management Protocol in connection with all Required Records it keeps in accordance with this Agreement. The Records Management Protocol shall be submitted to WDBA and the Independent Certifier in accordance with the Review Procedure within 45 days of the Commencement Date. Project Co shall, where necessary or as required by WDBA or the Independent Certifier from time to time, submit updates to the Records Management Protocol in accordance with the Review Procedure to ensure that the Records Management Protocol continues to meet the requirements of this Section.

#### **59.7 Information**

Project Co shall promptly notify WDBA of any Claims or investigations commenced, pending or threatened against Project Co or, to Project Co's knowledge, any Prime Contractor, before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or such Prime Contractor or in any impairment of Project Co's ability to perform its obligations under this Agreement.

### **60. RELATIONSHIP BETWEEN THE PARTIES**

#### **60.1 Independent Contractors**

The parties are independent contractors. This Agreement is not intended to and does not create or establish between the parties, or between WDBA and any Project Co Person any relationship as partners, joint venturers, employer and employee, master and servant, or (except as provided in this Agreement), of principal and agent, and does not create or establish any relationship whatsoever between WDBA and any representative or employee of Project Co or any Project Co Person.

#### **60.2 No Agency**

The parties agree that, save and except as otherwise expressly provided in this Agreement, Project Co shall not be or be deemed to be a representative, agent or delegate of WDBA or any WDBA Party, and Project Co shall not hold itself out as having authority or power to bind WDBA, a WDBA Party or a WDBA Person in any way. Project Co shall not enter into any contract or agreement, or make any representations or warranties of any kind to any person, or assume or create any obligation, express or deemed, on behalf of or binding, or purportedly binding upon, WDBA, a WDBA Party or a WDBA Person.

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**60.3 No Immunity**

Project Co shall not have the benefit of any immunity applicable to WDBA or a WDBA Party.

**60.4 No Delegation**

Unless a statutory power, function, right or authority is properly and duly delegated or sub-delegated as expressly provided in this Agreement, no provision of this Agreement shall be construed as a delegation or sub-delegation to Project Co of any statutory power, function, right or authority by (i) WDBA, a WDBA Party or a WDBA Person or (ii) any person to whom a power or right has been conferred by or pursuant to a statute or regulation to make a decision, deciding or prescribing the legal rights, powers, privileges, immunities, duties or liabilities of a person, or the eligibility of a person to receive or to continue to receive a benefit or license (whether or not the person is legally entitled to it).

**61. DISPUTE RESOLUTION PROCEDURE**

Except as expressly provided in any other provision of this Agreement, all Disputes shall be resolved in accordance with the provisions set out in Schedule 23 [*Dispute Resolution Procedure*], notwithstanding and disregarding the fact that certain provisions of this Agreement specify that certain matters, subjects or questions are subject to the Dispute Resolution Procedure while others do not specify it. Pending the resolution of any Dispute, Project Co and WDBA shall continue to observe and perform all their obligations under this Agreement. The parties shall forthwith give effect to and comply with any decision rendered in accordance with the Dispute Resolution Procedure.

**62. NOTICES****62.1 Requirement for Writing**

Wherever in this Agreement provision is made for the giving, making or issuing of any notice, endorsement, consent, confirmation, request, approval, Mandatory Report or other report or determination (a "**Notice**") by any person, unless otherwise specified, such Notice shall be in writing. Writing shall include any text which is conveyed in electronic or digital form.

**62.2 Addresses**

- (a) Any Notice shall be deemed duly given if it is (i) signed by a duly authorized representative of the person giving the Notice, or by a person acting on its behalf, and (ii) personally delivered, sent through a secure document-sharing site approved by WDBA, sent by a recognized courier service (with delivery receipt requested), or sent by confirmed facsimile or e-mail transmission, to the following addresses:

To WDBA

100 Ouellette Avenue, Suite 400  
Windsor, Ontario N9A 6T3

Telephone: [REDACTED]  
Facsimile: [REDACTED]  
E-mail: [REDACTED]  
Attention: [REDACTED]

With a copy to:

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100 Ouellette Avenue, Suite 400  
Windsor, Ontario N9A 6T3

Telephone: [REDACTED]  
Facsimile: [REDACTED]  
E-mail: [REDACTED]  
Attention: [REDACTED]

To Project Co

[REDACTED]

Telephone: [REDACTED]  
Facsimile: [REDACTED]  
E-mail: [REDACTED]  
Attention: [REDACTED]

With a copy to:

[REDACTED]

Telephone: [REDACTED]  
Facsimile: [REDACTED]  
E-mail: [REDACTED]  
Attention: [REDACTED]

With a copy to:

[REDACTED]

Telephone: [REDACTED]  
Facsimile: [REDACTED]  
E-mail: [REDACTED]  
Attention: [REDACTED]

With a copy to:

[REDACTED]

Telephone: [REDACTED]  
Facsimile: [REDACTED]  
E-mail: [REDACTED]  
Attention: [REDACTED]

- (b) Where any Notice is sent to a party through a secure document-sharing site, or by facsimile or email, an original of the Notice, if requested by the addressee, shall also be personally delivered or sent by a recognized courier service (with delivery receipt requested) within 5 Business Days of such request by the addressee.

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**62.3 Change of Address**

Any party may change its address for Notice to a new address, a new facsimile number or a new email address by Notice to the other party.

**62.4 Deemed Receipt**

Any Notice shall be deemed to have been received:

- (a) if sent by personal delivery or by a courier service, upon delivery;
- (b) if sent through a secure document-sharing site, by facsimile or e-mail:
  - (i) on a Business Day prior to 4:00 p.m., upon sending;
  - (ii) on a Business Day after 4:00 p.m. or on a day which is not a Business Day, at 9:00 a.m. on the next Business Day; and

in the case of a Notice set by facsimile or email, subject to:

- (iii) confirmation of transmission or acknowledgement of receipt; and
- (iv) there having been no voice communication by the recipient to the sender (any such voice communication to be confirmed in writing) that the facsimile or the email has not been received in legible form:
  - (A) within three hours after sending, if sent on a Business Day before 2:00 p.m.; or
  - (B) by noon on the following Business Day if sent after 2:00 p.m. on a Business Day or if sent on a day which is not a Business Day.

**63. GENERAL PROVISIONS****63.1 General Duty to Mitigate Damages**

- (a) WDBA and Project Co shall at all times use every reasonable means available to minimize and mitigate any Loss for which a party is entitled to bring a Claim against the other party pursuant to this Agreement. Upon request by a party, the other party shall promptly deliver a detailed description of the measures taken to meet this obligation together with all related documentation.
- (b) If Project Co fails in its duty to mitigate damages, in whole or in part, pursuant to the provisions of Section 63.1(a) or another provision of the Agreement, its right to claim or receive additional compensation from WDBA or extensions of time, shall be reduced accordingly.

**63.2 WDBA's Statutory Emergency Powers**

The exercise by WDBA of the rights, powers or authorities provided to it under Applicable Law or under any emergency management plan prepared pursuant to Applicable Law to compel the provision to itself or to Governmental Authorities of facilities, equipment and/or employees to respond to emergency events shall, where such exercise by WDBA is directed at Project Co or a Project Co Person, constitute a Compensation Event and the provisions of Section 43 (*Supervening Events*) shall apply.

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**63.3 Communications Protocol**

- (a) Project Co shall comply with all requirements set out in Schedule 18 [*Communications Protocol*].
- (b) Unless expressly provided in this Agreement and subject to the provisions of Section 53 (*Confidentiality*), Project Co shall not and it shall ensure that no Project Co Person makes or permits to be made any public announcement or disclosure whether for publication in the press, radio, television, internet or any other communication facility.

**63.4 Waiver**

Failure by any party at any time to enforce any provision of this Agreement or to require performance by any other party of any of the provisions of this Agreement shall not be construed as a waiver of any such provision and shall not affect the validity of this Agreement or any part thereof or the right of any party to enforce any provision in accordance with its terms.

**63.5 Amendments**

This Agreement may not be varied, amended or supplemented except by an agreement in writing signed by the duly authorized representative of each of the parties hereto and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Agreement.

**63.6 Entire Agreement**

Except where provided otherwise in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement.

**63.7 Further Assurances**

The parties shall do, execute and deliver, or shall cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the parties' respective obligations under this Agreement. [REDACTED]

**63.8 Binding Effect**

Subject to the provisions of Section 55 (*Assignment, Change in Control and Subcontracting*) of this Agreement, this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

**63.9 Cumulative Remedies**

Except as otherwise set out in this Agreement, the rights, powers and remedies of each party set out in this Agreement are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such party under this Agreement.

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**63.10 Governing Law and Jurisdiction**

- (a) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, without regard to any choice of law rules that might direct the application of the Laws of another jurisdiction.
- (b) Subject to the provisions of Section 61 (*Dispute Resolution Procedure*) of this Agreement, the courts of the Province of Ontario shall have exclusive jurisdiction (subject to any court or tribunal of federal jurisdiction in Canada) with respect to any matter or issue which the Dispute Resolution Procedure permits to be submitted to the courts.

**63.11 Liquidated Damages**

Where any provision of this Agreement specifies an amount as liquidated damages, the parties agree that such amount represents their genuine mutual pre-estimate of the particular damages arising from the particular event and that such amount shall not constitute a penalty. Project Co agrees that any liquidated damages will be payable whether or not WDBA incurs or mitigates damages and that, notwithstanding Section 63.1(a), WDBA shall have no obligation to mitigate such damages.

**63.12 Counterparts**

This Agreement is executed in one or more counterparts, each of which contains one original signature. Any single counterpart or a set of counterparts executed, in either case, by all of the parties shall constitute a full, original and binding agreement for all purposes.

**63.13 Electronic Execution**

This Agreement may be executed by a party and then sent to the other party by e-mail in Portable Document File (PDF) format. The execution of this Agreement by such party shall be effective on the date that such e-mail is received by the other party. If email delivery is used, first party shall forthwith thereafter deliver to the other party the original executed copy of this Agreement.

**TO EVIDENCE THEIR AGREEMENT** the parties have duly executed this Agreement.

[Signatures on the Next Pages]

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**WINDSOR-DETROIT BRIDGE AUTHORITY**

By: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

By: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

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**BRIDGING NORTH AMERICA GENERAL  
PARTNERSHIP, by its partners,**

**[REDACTED]**

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: Authorized Signatory

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: Authorized Signatory

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: Authorized Signatory

We have authority to bind the corporation.

**[REDACTED]**

Per: \_\_\_\_\_  
Name **[REDACTED]**  
Title: Authorized Signatory

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: Authorized Signatory

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: Authorized Signatory

We have authority to bind the corporation.

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## SCHEDULE 1 DEFINITIONS AND INTERPRETATION

### 1. DEFINITIONS AND ACRONYMS

#### 1.1 Definitions

In this Agreement, unless the context otherwise requires, the following words and expressions have the meanings set out in this Section 1.1. Definitions for terms which are defined and used only in one schedule are found in that schedule. Terms which are defined and used in more than one schedule are found in this Schedule 1. Definitions in this Schedule 1 may be repeated in another schedule if they are key to the understanding of that schedule.

All references to a Section number in this Schedule mean a Section number of the body of this Project Agreement, unless such Section number clearly refers to a Section of a schedule or part of a schedule of this Project Agreement.

**24/7/365** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**AASHTO Agency** means an AASHTO Member Department or AASHTO Associate Member Department or Agency.

**Account Trustee** means [REDACTED] or any successor or replacement made in accordance with the terms of the Insurance Trust Agreement.

**Accounting Principles** means either, as the case may be, the generally accepted accounting principles, from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute applicable as at the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles, as such principles may be amended or varied by International Financial Reporting Standards then in effect in Canada, in any case consistently applied from one period to the next.

**Actual Total Lane Closure** has the meaning set out in Part 19 [*Traffic Management - Deductions*] of Schedule 10 [*Design and Construction Specifications*].

**Aesthetic Design Guidelines** means the guidelines for the aesthetic design of the Facility, set out in Appendix 10-17-1 [*Aesthetic Design Guidelines*] to Part 17 [*Visual Quality*] of Schedule 10 [*Design and Construction Specifications*].

**Affiliate** means,

- (a) in respect of a person, any other person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first person; and
- (b) in the case of a partnership or a joint venture, each person that is a member, unitholder, shareholder, partner or owner of such partnership or joint venture and each person who Controls, is Controlled by or is under common Control with any such member, unitholder, shareholder, partner or owner.

**Aggregate Energy Model** has the meaning set out in Schedule 38 [*Energy Management*].

**Agreement** or **Project Agreement** means this project agreement including the Recitals, the schedules and appendices to schedules, as it may be amended, supplemented or restated from time to time.

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**Amico** has the meaning set out in Schedule 20 [*WDBA Early Works*].

**Ancillary Structures** has the meaning set out in Part 11 [*Roadway Structures, Miscellaneous*] of Schedule 10 [*Design and Construction Specifications*].

**Annual Consultation Plan** has the meaning set out in Schedule 18 [*Communications Protocol*].

**Annual Traffic Management Communications Plan** has the meaning set out in Schedule 18 [*Communications Protocol*].

**Applicable Canadian Taxes** means the Goods and Services Tax (GST), the Harmonized Sales Tax (HST), and any provincial sales tax.

**Applicable Law** means, in respect of any person, property, transaction, event, or other matter, as applicable, all Law relating to or applicable to that person, property, transaction, event, or other matter, unless otherwise expressly stated.

**Applicable US Taxes** means any sales, use or excise tax of a Governmental Authority in the United States.

**Applicant** has the meaning set out in Section 43.1(a)(ii) (*Supervening Events, General Provision*).

**Application** has the meaning set out in Schedule 21 [*Certification Procedure*].

**As-Built Durability Report** has the meaning set out in Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*].

**Assessed Traffic Payment Adjustments** has the meaning set out in Part 19 [*Traffic Management - Deductions*] of Schedule 10 [*Design and Construction Specifications*].

**Asset Information Management System** or **AIM** has the meaning set out in Part 1 [*General*] of Schedule 6 [*Project Management*].

**Assign** means to assign, transfer, dispose, alienate, hypothecate, encumber, mortgage or otherwise create or allow to subsist any Encumbrance against or otherwise convey, but excludes any Change in Control or Change in Ownership, and **Assignment** shall have a similar extended meaning.

**ATI/FOI Legislation** means the *Access to Information Act* (Canada), the *Privacy Act* (Canada), the *Freedom of Information Act* (Michigan), the *United States Freedom of Information Act*, and any other Applicable Law, if any, in Canada or the US pertaining to access to information, freedom of information, or the disclosure of information to the public or any persons.

**Availability Failure** has the meaning set out in Schedule 25 [*Payment Mechanism (OMR)*].

**Availability Failure Deduction** means the availability failure deduction that may be applied by WDBA pursuant to Schedule 25 [*Payment Mechanism (OMR)*].

**Average Rate** has the meaning set out in Section 37.7(a)(i) (*Interest on Overdue Amounts*).

**Background Information** means any and all drawings, reports, studies, data, documents or other information made available by WDBA to Project Co, for information purposes, on or before the Reference Date, through the Data Room accessible to all proponents pursuant to the RFP Process but excluding the Guaranteed Engineering Data.

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**Bank Rate** has the meaning set out in Section 37.7(a)(ii) (*Interest on Overdue Amounts*) of this Agreement.

**Bare Pavement** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Base Date** means May 8, 2018.

**Base Specification** has the meaning set out in Part 2 [*Review Procedure*] of Schedule 6 [*Project Management*].

**Baseline Schedule** has the meaning set out in Schedule 9 [*Project Schedule*].

**Bedding-In Period** means the period from the commencement of the OMR Period to the end of the 6th full Contract Month of the OMR Period.

**Beneficiary** has the meaning set out in Section 44.3(a) (*Conduct of Third Party Claims*).

**Bridge** means the Main Bridge and the Bridge Approaches.

**Bridge Access Report** has the meaning set out in Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*].

**Bridge Analysis Assumptions and Summary Form** has the meaning set out in Part 5 [*Structures*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*].

**Bridge Approach** means each of the Canadian and US approaches to the Main Bridge from the Canadian POE and the US POE abutments respectively, to but not including the last supporting element of the Main Bridge, all as more specifically described in Part 20 [*Bridges*] and Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*].

**Bridge B1** has the meaning set out in Schedule 20 [*WDBA Early Works*].

**Bridge Capital Payment** has the meaning set out in Schedule 26 [*Construction Period Payments*].

**Bridge Corridor** has the meaning set out in Schedule 4 [*Lands and Site*].

**Bridge Design Criteria Report** has the meaning set out in Part 20 [*Bridges*] of Schedule 10 [*Design and Construction Specifications*].

**Bridge Element** means each element of the Bridge and each element of each Bridge Structure, all as more specifically described in Part 20 [*Bridges*] and Part 21 [*The Bridge*], of Schedule 10 [*Design and Construction Specifications*] and Part 5 [*Structures*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*].

**Bridge Evaluation Report** has the meaning set out in Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*].

**Bridge Handover** has the meaning set out in Schedule 21 [*Certification Procedure*].

**Bridge Protection Plan** has the meaning set out in Part 5 [*Security*] of Schedule 10 [*Design and Construction Specifications*].

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**Bridge Structure** has the meaning set out in Part 20 [*Bridges*] of Schedule 10 [*Design and Construction Specifications*].

**Broadway Drain** has the meaning set out in Schedule 4 [*Lands and Site*].

**Building Automation System** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Building Code** has the meaning set out in Part 8 [*Buildings - Canadian POE*] of Schedule 10 [*Design and Construction Specifications*].

**Buildings** and **Building** have the meaning set out in Part 8 [*Buildings - Canadian POE*] of Schedule 10 [*Design and Construction Specifications*].

**Business Day** means a day other than a Saturday, Sunday or statutory holiday in Michigan or the Province of Ontario or a day on which banks are otherwise closed for business in the City of Lansing, Michigan or the City of Windsor, Ontario.

**Business Opportunities** has the meaning set out in Section 2.8(a) (*Business Opportunities*).

**Cable System** means cable stays, main cable, suspenders, saddles, cable anchors and all associated Elements.

**Canada** means (i) Her Majesty the Queen in Right of Canada, as represented by the Minister of Infrastructure, Communities and Intergovernmental Affairs or any successor Minister (ii) the Government of Canada and each department, ministry, board, commission, corporation or other body that is an agent of Her Majesty in Right of Canada (other than WDBA), or (iii) the country of Canada, as the context requires.

**Canada Lease** means the lease dated June 30, 2017 between Canada and WDBA with respect to the Canadian Lands.

**Canadian Bridge Design Standards** has the meaning set out in Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*].

**Canadian Crossing** has the meaning set out in the Crossing Agreement.

**Canadian Escalation Factor** or **CESC** has the meaning set out in Schedule 25 [*Payment Mechanism (OMR)*].

**Canadian Indigenous Peoples** has the meaning set out in Schedule 36 [*Community Benefits*].

**Canadian Infrastructure** has the meaning set out in Section 12(a) (*Title and Risk of Loss*).

**Canadian Lands** means the Lands located in Canada.

**Canadian Parcel** means any parcel of the Canadian Lands.

**Canadian Parcel Project Ready** means [REDACTED].

**Canadian Perimeter Access Road** or **PAR** has the meaning set out in Schedule 4 [*Lands and Site*].

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**Canadian POE** means the lands and premises shown in Appendix 4-2 of Schedule 4 [*Lands and Site*], including the Canadian POE Agency Buildings and any Infrastructure located thereon, including the Tolling Infrastructure.

**Canadian POE Agency Buildings** means the buildings forming part of the Canadian POE and related lands and premises, which require security in accordance with CBSA or other Canadian Governmental Authority security requirements.

**Canadian POE Agency Buildings Handover** has the meaning set out in Schedule 21 [*Certification Procedure*].

**Canadian POE Agency Buildings Handover Date** means the date when the Canadian POE Agency Buildings Handover occurs.

**Canadian POE Capital Payment** has the meaning set out in Schedule 26 [*Construction Period Payments*].

**Canadian POE Bridges** has the meaning set out in Part 20 [*Bridges*] of Schedule 10 [*Design and Construction Specifications*].

**Canadian POE Buildings** means all buildings to be located in the Canadian POE including the Canadian POE Agency Buildings, all as more particularly described in Part 8 [*Buildings - Canadian POE*] of Schedule 10 [*Design and Construction Specifications*].

**Canadian POE - Transportation Management Plan** has the meaning set out in Part 15 [*Traffic Management - Construction*] of Schedule 10 [*Design and Construction Specifications*].

**Canadian Roads** means all Infrastructure constructed (i) as part of the WDBA Early Works Contract, (ii) as part of Part 2 [*Sandwich Street South of Ojibway Reconstruction*] and (iii) as part of Part 3 [*Sandwich Street Improvements*] of Schedule 43 [*Canadian Roads*].

**Canadian Roads Warranty** has the meaning set out in Section 27.3(b).

**Canadian Roads Warranty Period** has the meaning set out in Section 27.3(b).

**Canadian Roads Warranty Work** has the meaning set out in Section 27.3(f).

**CAN Track** has the meaning set out in Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*].

**Capital Expenditures** means all expenditures made to acquire or improve capital assets; acquisition includes the design, development, construction or purchase of capital assets; also included are capital leases or rental agreements; improvements include any alterations or renovations that significantly increase the performance, value or capability of a capital asset or extend its useful or economic life by more than a year.

**Cash Handling Procedure** has the meaning set out in Schedule 13 [*Tolling Operations*].

**Category 1 Defect** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Category I Soil** has the meaning set out in Schedule 16 [*Environmental*].

**Category 2 Defect** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

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**Category II Soil** has the meaning set out in Schedule 16 [*Environmental*].

**Category III Soil** has the meaning set out in Schedule 16 [*Environmental*].

**Category Defect** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Category Defect Response** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Category Defect Response Period** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**CBSA** means the Canada Border Services Agency.

**CCTV System** has the meaning set out in Part 5 [*Security*] of Schedule 10 [*Design and Construction Specifications*].

**Certificate** means any certificate to be issued by the Independent Certifier or the Handback Independent Certifier, as the case may be, in accordance with the terms of this Agreement, the Independent Certifier Agreement, the Review Procedure or the Certification Procedure.

**Certification Event** has the meaning set out in Schedule 21 [*Certification Procedure*].

**Certification Procedure** means the procedure set out in Schedule 21 [*Certification Procedure*].

**CFIA Inspection Area** has the meaning set out in Part 8 [*Buildings - Canadian POE*] of Schedule 10 [*Design and Construction Specifications*].

**Change** means a WDBA Change or a Project Co Change, as applicable.

**Change Appraisal** has the meaning set out in Schedule 22 [*Change Procedure*].

**Change in Control** of a person means a change, directly or indirectly, in the persons having Control of such person, including as a result of a Change in Ownership.

**Change in Law** means public notice of the coming into force, amendment, variation or repeal (without re-enactment or consolidation) after the Reference Date, of any law, statute, regulation, treaty, order-in-council, by-law, court order, judgment, or decree, (including the Crossing Agreement and the *Bridge to Strengthen Trade Act* as well as designations and orders under that Act), and including any judgment of a court of law having jurisdiction which changes binding precedent.

**Change in Ownership** means, with respect to a person, any direct or indirect change in any Ownership Interest in such person, including as a result of an acquisition or disposition of existing Ownership Interests, issuance of new Ownership Interests or amalgamation, merger, consolidation, arrangement, amendment of a partnership agreement or other reorganization of such person.

**Change Procedure** means the procedure set out in Section 41 (*Changes*) of this Agreement and Schedule 22 [*Change Procedure*].

**CISD** has the meaning set out in Section 56.3(a) (*Security Requirements*) of this Agreement.

**Claim** means any claim, demand, motion, action, cause of action, suit, arbitration or proceeding.

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**CNTS Assignment** means the assignment of the Covenant Not to Sue between MDOT and the Michigan Department of Environmental Quality (MDEQ Reference No. CNTS-RRD-16-001) that WDBA presents to Project Co for signature in a form substantially similar to the draft assignment made available in Background Information.

**Collateral Trustee** means [REDACTED] or any successor or replacement made in accordance with the terms of the Lenders' Direct Agreement.

**Commencement Date** means the date of Financial Close.

**Commission** means any of Commission #1, Commission #2 or Commission #3.

**Commission #1** means the commissioned art as further described in Appendix 10-17-1 [Aesthetic Design Guidelines] of Part 17 [Visual Quality] of Schedule 10 [Design and Construction Specifications] and referred to therein as "Commission # 1".

**Commission #2** means the commissioned art as further described in Appendix 10-17-1 [Aesthetic Design Guidelines] of Part 17 [Visual Quality] of Schedule 10 [Design and Construction Specifications] and referred to therein as "Commission # 2".

**Commission #3** means the commissioned art as further described in Appendix 10-17-1 [Aesthetic Design Guidelines] of Part 17 [Visual Quality] of Schedule 10 [Design and Construction Specifications] and referred to therein as "Commission # 3".

**Commissioned** has the meaning set out in Part 25 [Commissioning] of Schedule 10 [Design and Construction Specifications].

**Commissioning** has the meaning set out in Part 25 [Commissioning] of Schedule 10 [Design and Construction Specifications].

**Commissioning Plan** has the meaning set out in Part 25 [Commissioning] of Schedule 10 [Design and Construction Specifications].

**Communications Plans** has the meaning set out in Schedule 18 [Communications Protocol].

**Committed Standby Facility** means any credit facility established by or for the benefit of Project Co committed by the Senior Lenders as at Commencement Date for the sole purpose of financing any cost overruns, increases in expenses or loss of revenue incurred by Project Co in connection with the Project, provided that funds advanced under any such facility are not to be used in substitution for other sources of committed funding and designated for those purposes.

**Common Bridge Design Standards** has the meaning set out in Part 21 [The Bridge] of Schedule 10 [Design and Construction Specifications].

**Communications Committee** means the committee described in Schedule 18 [Communications Protocol].

**Community Benefits** has the meaning set out in Schedule 36 [Community Benefits].

**Community Benefits Certification** has the meaning set out in Schedule 21 [Certification Procedure].

**Community Benefits Committee** means the committee described in Schedule 36 [Community Benefits].

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**Community Benefits Plan** has the meaning set out in Schedule 36 [*Community Benefits*].

**Community Benefits Working Group** has the meaning set out in Schedule 36 [*Community Benefits*].

**Compensation Event** has the meaning set out in Section 43.3 (*Compensation Event*).

**Component** means each of the following components of the Facility:

- (a) the Bridge;
- (b) the Canadian POE;
- (c) the US POE; and
- (d) the Michigan Interchange.

**Confidential Information** means all confidential or non-public proprietary information of a party that, whether before or after the Commencement Date, is supplied, or to which access is granted, to or on behalf of another party pursuant to or relating to the Project (including the terms of this Agreement and any documents or information supplied in the course of the Dispute Resolution Procedure), either in writing, or in any other form, directly or indirectly, pursuant to discussions with another party, and includes, all design, operational and financial information, together with all analyses, compilations, data, studies, photographs, specifications, manuals, memoranda, notes, reports, maps, documents, computer records or other information, whether in hard copy, electronic or digital form or any other form, whether prepared by or on behalf of a party which contain or otherwise reflect or are derived from such information, and expressly includes Personal Information.

**Connecting Ramp** has the meaning set out in Schedule 4 [*Lands and Site*].

**Connecting Ramp Bridges** has the meaning set out in Part 5 [*Structures*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*].

**Construction Contractor** means [REDACTED], or any assignee or replacement of such general partnership as may be appointed in accordance with the provisions of this Agreement.

**Construction Contractor Agreement** means the agreement executed on the Commencement Date between the Construction Contractor and Project Co pursuant to which the Construction Contractor agrees to perform all or a majority of the DB Work and a portion of the Interim OM Work.

**Construction Contractor Direct Agreement** means the agreement entered into on the Commencement Date between WDBA, the Construction Contractor, the Construction Contractor Guarantors and Project Co, substantially in the form attached hereto as Schedule 31 [*Form of Prime Contractor Direct Agreement*].

**Construction Costs** has the meaning set out in Schedule 26 [*Construction Period Payments*].

**Construction Management Plan** has the meaning set out in Part 1 [*General*] of Schedule 6 [*Project Management*].

**Construction Manager** means the specific individual filling the role of "Construction Manager" as identified in Schedule 3 [*Key Individuals*].

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**Construction Period Payment** means any payment to be made by WDBA to Project Co as set out in Schedule 26 [*Construction Period Payments*].

**Construction Period** means the period from and including the Commencement Date to and including the Substantial Completion Date.

**Construction Quality Management Plan** has the meaning set out in Part 1 [*General*] of Schedule 7 [*Quality Management*].

**Construction Quality Manager** has the meaning set out in Part 1 [*General*] of Schedule 7 [*Quality Management*].

**Construction Work** means the performance of:

- (a) all construction, reconstruction, deconstruction, demolition, widening, completion, testing, commissioning and other services and activities required to construct and complete the Project Infrastructure or deconstruct or demolish, as the case may be, any Existing Infrastructure, in accordance with their detailed design in order to achieve Canadian POE Agency Buildings Handover, US POE Agency Buildings Handover and Substantial Completion or, as the case may be, to perform Reinstatement Work, Rehabilitation Work or Handback Work;
- (b) the performance of all project management, quality management, environmental management, communications management and other management services and activities required for the carrying out of the foregoing, the supply of all workers and of all materials, tools, implements, equipment, machinery, vehicles, buildings, structures and other property necessary for or used or to be used in the performance of the Project Work, including those which form part of the Project Infrastructure or are otherwise incorporated into or permanently affixed to any relevant structure; and
- (c) all other work, services and activities to be provided by Project Co in respect of the foregoing, all as set out and described in the applicable Technical Requirements and any other applicable Project Requirements.

**Contamination** means the presence of any Hazardous Material in any soil, groundwater, surface water or other environmental media, and any media containing such Hazardous Materials, except where such Hazardous Materials are present in or at quantities, concentrations, or locations such that they do not require special handling or management under applicable Environmental Laws and any Environmental Permits.

**Contaminated Soil** has the meaning set out in Schedule 16 [*Environmental*].

**Contingent Funding Obligation** has the meaning set out in Schedule 27 [*Compensation on Termination*].

**Contract Month** has the meaning set out in Schedule 25 [*Payment Mechanism (OMR)*].

**Contract Year** means each period of 12 months commencing on April 1<sup>st</sup> of each calendar year and ending on the next ensuing March 31<sup>st</sup>, provided that:

- (a) the first Contract Year shall be the period starting on the Commencement Date and ending on the next ensuing March 31<sup>st</sup>; and

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- (b) the last Contract Year shall be the period starting on April 1<sup>st</sup> of the year that precedes the date on which this Agreement expires or is terminated, for whatever reason, and ends on the expiry or termination of this Agreement.

**Contracting Affiliate** means each Equity Member or Prime Contractor, and their respective Affiliates and any Affiliate of Project Co who is a party to a Project Document.

**Control** with respect to a specified person shall mean the ability to direct or to cause the direction of the affairs or management of such specified person, and such specified person shall be deemed to be controlled by another person if controlled in any manner whatsoever that results in control in fact by that other person (or that other person and any person or persons with whom that other person is acting jointly or in concert), whether directly or indirectly, and whether through the ownership of securities, a trust, a contract or otherwise, and **Controlling** shall have a similar extended meaning.

**Convertible Securities** means securities of a person that are exchangeable for, convertible into or which carry a right or obligation to purchase or to acquire control of, an Equity Interest in such person.

**CPI** or **Consumer Price Index** means the consumer price index (all items) for Ontario, as published by Statistics Canada from time to time, or failing such publication, such other index as the parties may agree, or as may be determined in accordance with Schedule 23 [*Dispute Resolution Procedure*], which most closely resembles such index.

**CPI<sub>y-1</sub>** means the CPI as of December of the Contract Year y-1.

**CPI<sub>0</sub>** means the CPI as at the Base Date.

**Critical NCR** means a report describing a Critical Non-Compliance that is issued by Project Co or by WDBA to Project Co, in accordance with Part 2 [*Non-Compliance*] of Schedule 7 [*Quality Management*].

**Critical Non-Compliance** has the meaning set out in Part 2 [*Non-Compliance*] of Schedule 7 [*Quality Management*].

**Crossing Agreement** means the Crossing Agreement dated June 15, 2012 among Her Majesty the Queen in Right of Canada, as represented by the Minister of Transport, Michigan in its own right, as represented by its Governor and by and through MDOT, a department of Michigan and the Michigan Strategic Fund, including its recitals and schedules, as it may be amended, supplemented or restated from time to time.

**Crossing Availability Failure** has the meaning set out in Schedule 25 [*Payment Mechanism (OMR)*].

**Crossing Availability Failure Deduction** has the meaning set out in Schedule 25 [*Payment Mechanism (OMR)*].

**Crossing Section** has the meaning set out in Schedule 25 [*Payment Mechanism (OMR)*].

**Culvert** has the meaning set out in Part 4 [*Drainage*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*].

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**Custodian** means the person appointed as custodian under the Custody Agreement, as such person may be replaced from time to time in accordance with the terms of the Custody Agreement.

**Custody Agreement** means the agreement dated the date hereof between WDBA, Project Co, the Lenders' Agent and the Custodian, in the form of Schedule 39 [*Form of Custody Agreement*].

**Customer Webpages** has the meaning set out in Schedule 13 [*Tolling Operations*].

**Damage** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Data Room** has the meaning set out in the RFP.

**Date of Payment** has the meaning set out in Section 37.7(a)(iii) (*Interest on Overdue Amounts*) of this Agreement.

**DB Committee** has the meaning set out in Section 10.1(a)(i) (*Committees - Establishment and Members*).

**DB Costs** has the meaning set out in Schedule 26 [*Construction Period Payments*].

**DB Field Office** has the meaning set out in Part 1 [*General*] of Schedule 6 [*Project Management*].

**DB Schedule** has the meaning set out in Schedule 9 [*Project Schedule*].

**DB Period** means the period commencing on the Commencement Date and ending on the Final Completion Date.

**DB Specifications** means the minimum requirements and specifications regarding design and construction that are set out in Schedule 10 [*Design and Construction Specifications*] and Schedule 15 [*Michigan Interchange Design and Construction Specifications*].

**DB Work** means collectively the Design Work and the Construction Work which is required to be performed during the DB Period.

**Debris** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Deduction** has the meaning set out in Schedule 25 [*Payment Mechanism (OMR)*].

**Deduction Amount** has the meaning set out in Schedule 25 [*Payment Mechanism (OMR)*].

**Default Interest** means any increased interest that, pursuant to the Senior Lending Agreements is payable to the Senior Lenders or that accrues as a result of any payment of Senior Debt due to the Senior Lenders under the Senior Lending Agreements not being made on the date on which it is due.

**Defect** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Design Check** has the meaning set out in Part 2 [*Review Procedure*] of Schedule 6 [*Project Management*].

**Design Data** means all data, reports, calculations, drawings, design basis reports, design or construction information, standards, technical characteristics, plans, graphic representations, sketches, models, surveys, borings, presentations, mock-ups, reports, studies and other

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documents, including all eye readable or computer or other machine readable data and including all design submissions required under this Agreement, used, acquired or prepared or to be prepared by Project Co or by any Project Co Person relating to the Project Work.

**Design Development Stages** has the meaning set out in Part 2 [*Review Procedure*] of Schedule 6 [*Project Management*].

**Design Documents** has the meaning set out in Part 2 [*Review Procedure*] of Schedule 6 [*Project Management*].

**Design Life** has the meaning set out in Part 20 [*Bridges*] of Schedule 10 [*Design and Construction Specifications*].

**Design Management Plan** has the meaning set out in Part 1 [*General*] of Schedule 6 [*Project Management*].

**Design Quality Management Plan** has the meaning set out in Part 1 [*General*] of Schedule 7 [*Quality Management*].

**Design Quality Manager** has the meaning set out in Part 1 [*General*] of Schedule 7 [*Quality Management*].

**Design Review** has the meaning set out in Part 2 [*Review Procedure*] of Schedule 6 [*Project Management*].

**Design Unit** has the meaning set out in Part 2 [*Review Procedure*] of Schedule 6 [*Project Management*].

**Design Work** means all design work required to perform any Construction Work throughout the Term, including all preliminary design and all detailed design and the preparation of all construction drawings and final plans or survey plans and it includes the performance of all project management, quality management, environmental management, communications management and other management services and activities required for the carrying out of the foregoing, the supply of all workers and the supply of all other materials, tools, implements, equipment, machinery, and other property and all other work, services and activities to be provided by Project Co in respect of the foregoing, all as set out and described in the applicable Technical Requirements and any other applicable Project Requirements.

**Designer** means Aecom Canada Ltd. or any assignee or replacement as may be appointed in accordance with the provisions of this Agreement.

**Designer Agreement** means the agreement executed on the Commencement Date between the Designer and the Construction Contractor relating to the Design Work.

**Designer Direct Agreement** means the agreement entered into on the Commencement Date between WDBA, the Designer and the Construction Contractor substantially in the form attached hereto as Schedule 31 [*Form of Prime Contractor Direct Agreement*].

**Detroit** means the City of Detroit.

**Detroit Road Segments** has the meaning set out in Schedule 4 [*Lands and Site*].

**Direct Costs** has the meaning set out in Schedule 22 [*Change Procedure*].

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**Disclosed Data** means the Background Information and Guaranteed Engineering Data, together with any additional information of the nature of reference materials disclosed as Background Information which may be provided by WDBA after the Commencement Date.

**Discriminatory Change in Law** means any Change in Law the effect of which is to discriminate directly against or impose additional Taxes on, which applies specifically to:

- (a) the Project and not to other bridge, highway, roadway or port of entry projects whose design, construction, financing, operation, maintenance and rehabilitation are procured on a basis similar to the basis on which the Project is procured;
- (b) Project Co and not to other persons;
- (c) persons that have contracted with a Governmental Authority in order to provide design, construction, financing, operations, maintenance and rehabilitation services that are procured by a contract similar to this Agreement and not to other persons undertaking similar projects procured on a different basis;

except that such Change in Law shall not be a Discriminatory Change in Law;

- (d) where it is in response to an act or omission on the part of Project Co which contravenes Applicable Law;
- (e) solely on the basis that its effect on Project Co or any Project Co Person is greater than its effect on other persons;
- (f) where it is in response to and consistent with a decision related to a Dispute that has been finally resolved pursuant to the Dispute Resolution Procedure;
- (g) where it is in response to a Project Co Event of Default;
- (h) where resulting costs are costs that would have been otherwise incurred by Project Co in performing the Project Work notwithstanding the occurrence of what would otherwise have been a Discriminatory Change In Law; or
- (i) where it relates to Taxes that affect persons generally.

**Dispute** means a dispute, controversy, claim, disagreement or other dispute of any nature whatsoever between the parties, arising out of or relating to any provision of this Agreement or its interpretation and includes disputes as to the enforceability of this Agreement.

**Dispute Resolution Procedure** means the dispute resolution procedure set out in Schedule 23 [*Dispute Resolution Procedure*].

**Distribution** means:

- (a) any of the following:
  - (i) payment or declaration of any dividend, return of principal, deduction or the making of any distribution, of any kind or nature whatsoever (in cash or in property) for the benefit of the Equity Members or any other distribution in respect of the Equity Interests in Project Co;
  - (ii) purchase or redemption or other acquisition or cancellation for value of an Equity Interest in Project Co or any option or warrant or right to acquire an Equity

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Interest in Project Co, or any other reorganization or conversion of or variation to the share or unit capital of Project Co having an effect similar to the ones described in this clause (ii);

- (iii) repayment of capital or payment of interest or the payment of any other amounts in respect of Junior Debt (whether of fees, principal, interest, breakage costs or otherwise and whether or not such payments are included in or excluded from the definition of Junior Debt), as the case may be;
  - (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 it is made or put in place or entered into or undertaken by Project Co or an Equity Member after the Commencement Date and that was not in the ordinary course of business and on reasonable terms, including to or with any Equity Member or any of its Affiliates;
  - (v) any other payment, of any nature whatsoever, to any Equity Member or any of its Affiliates howsoever arising and whether made pursuant to the terms of an agreement or otherwise or in respect of any class of Equity Interest in Project Co or other securities of or interests in Project Co if, in any such case, such payment would not have been made were it not for the occurrence of a Refinancing, or any Change in Control of Project Co; or
  - (vi) the giving or conferring by Project Co or an Equity Member of any other benefit that is not given or conferred in the ordinary course of business or is not given or conferred on reasonable commercial terms,
- (b) the early release of any Contingent Funding Obligations, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain,

and where any such Distribution is not in cash, the equivalent cash value of such Distribution will be calculated.

**Drainage Design Report** has the meaning set out in Part 12 [*Drainage and Stormwater Management*] of Schedule 10 [*Design and Construction Specifications*].

**Drainage Overview Map** has the meaning set out in Part 12 [*Drainage and Stormwater Management*] of Schedule 10 [*Design and Construction Specifications*].

**DRIC Study** has the meaning set out in Schedule 36 [*Community Benefits*].

**Due Care Plan** or **Documentation of Due Care Compliance** has the meaning set out in Schedule 16 [*Environmental*].

**Durability Plan** has the meaning set out in Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*].

**Early Works** has the meaning set out in Schedule 20 [*WDBA Early Works*].

**Effective Time** has the meaning set out in Section 2.2 (*Term*) of this Agreement.

**Electronic Project Collaboration System** has the meaning set out in Part 1 [*General*] of Schedule 6 [*Project Management*].

**Elements** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

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**Eligible Insurer** means an insurance company duly authorized to conduct business in Ontario or Michigan. In addition, to be eligible, an insurance company must be able to provide the particular insurance required under this Agreement and satisfy one of the following conditions:

- (a) the insurer shall have and maintain a minimum rating of “A-”, as established by A.M. Best Company or the equivalent credit rating by Standard & Poor’s; or
- (b) if it does not satisfy the foregoing condition, or if the insurer is rated by a substitute or equivalent credit rating agency the insurer shall be otherwise approved by WDBA.

**Emergency** means any situation, event, condition, occurrence or circumstance that:

- (a) causes or may cause a serious threat or risk to the health or safety of any person (including users of the Project Infrastructure), to the environment or to the safety or integrity of the Project Infrastructure or any property adjacent to or in the vicinity of the Site which would impact on the Project Infrastructure or the Site;
- (b) materially prevents or interferes with the use of any part of the Project Infrastructure or its safe operation;
- (c) prevents any Relevant Authority from carrying out any function or duty that it is required by Applicable Law to carry out in respect of the Project Infrastructure or the Site; or
- (d) constitutes a state of emergency as determined by any Governmental Authority;

and requires immediate action to prevent and/or mitigate the occurrence or risk of occurrence of the foregoing.

**Emergency Response Plan** has the meaning set out in Part 5 [*Security*] of Schedule 10 [*Design and Construction Specifications*].

**Emergency Service Providers** means any Police service, fire-fighting service, ambulance service, armed forces or other authority with emergency service authority pursuant to Applicable Law which may require access to the Site or Facility from time to time.

**Encumbrance** means any encumbrance of any kind whatever (registered or unregistered) and includes

- (a) any security interest, mortgage, conditional sale, lien, hypothec, pledge, hypothecation, assignment, charge, trust or deemed trust (whether contractual, statutory or otherwise arising), a voting trust or pooling agreement with respect to securities, any adverse claim or joint ownership interest, any grant of any exclusive licence or sole licence;
- (b) any other right, option or claim of others of any kind whatever, affecting property or the use thereof; and
- (c) any covenant or agreement, restriction or limitation on the transfer of property or the use thereof, or a deposit by way of security or an easement, restrictive covenant, limitation, agreement or right of way, restriction, preferential arrangement, encroachment, burden or title reservation of any kind, or any rights or privileges capable of becoming any of the foregoing.

**Energy Analysis Report** has the meaning set out in Schedule 38 [*Energy Management*].

**Energy Utilities** has the meaning set out in Schedule 38 [*Energy Management*].

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**Engineer of Record** means the professional engineer that signs and stamps Design Documents.

**Environmental Assessments** means:

- (a) *Canadian Environmental Assessment Act* Screening Report (including all appendices thereto) – CEAR No: 06-01-18170. Detroit River International Crossing Environmental Assessment Study (November 2009);
- (b) *Canadian Environmental Assessment Act* Screening Report – CEAR No: 06-01-18170. Detroit River International Crossing Study CEAA Screening Report – Notice of Decision (December 2009);
- (c) Detroit River International Crossing Study Environmental Assessment Report (including all appendices thereto) (December 2008), W.O. 04-33-002;
- (d) Minister of the Environment (Ontario) Notice of Approval, Detroit River International Crossing Study Environmental Assessment Report (August 2009);
- (e) Detroit River International Crossing Study Environmental Assessment Report – Final Response to Comments Received on Ministry of Environment Review (April 2009); and
- (f) Detroit River International Crossing Study Environmental Assessment Report –Response to Comments Received on Environmental Assessment Report (March 31, 2009), and any amendment or supplement to the documents listed in (a) to (f) as may be issued after the Effective Time or required in connection with the Project from time to time during the Term;
- (g) Final Environmental Impact Statement and Final Section 4(f) Evaluation, FHWA-MI-05-01-F (December 2008), including all appendices and technical reports; and
- (h) U.S. Federal Highway Administration Record of Decision for the Proposed Detroit River International Crossing, FHWA-MI-EIS-05-01-R (January 14, 2009), including all appendices.

**Environmental Laws** means all Applicable Law relating to environmental assessment, the protection or assessment of the human or natural environment, the protection of plant, animal or human health, and the protection of land, water, atmosphere and air quality, including those relating to management of waste and Hazardous Materials, and the safety and transportation of Hazardous Materials, and includes any applicable guidelines and recommendations of the Canadian Council of Ministers of the Environment, any Applicable Law administered by the U.S. Environmental Protection Agency, any Applicable Law administered by the Michigan Department of Environmental Quality, the *Canadian Environmental Protection Act*, SC 1999, c 33, the *Fisheries Act*, RSC. 1985, c F-14, the *Transportation of Dangerous Goods Act*, SC 1992, c 34, the *Canada Water Act*, RSC 1985, c C-11, the *Migratory Birds Convention Act*, SC 1994, c 22, the *Comprehensive Environmental Response, Compensation, and Liability Act* (42 U.S.C. § 9601 et seq.), the *Emergency Planning and Community Right to Know Act* (42 U.S.C. § 1101 et seq.), the *Resource Conservation and Recovery Act* (42 U.S.C. § 6901 et seq.), the *Toxic Substances Control Act* (16 U.S.C. § 2601 et seq.), the *National Environmental Policy Act* (42 U.S.C. § 4321 et seq.), the *Endangered Species Act* (16 U.S.C. § 1531 et seq.), the *Clean Air Act* (42 U.S.C. § 7401 et seq.), the *Clean Water Act* (33 U.S.C. § 1251 et seq.), the *Rivers and Harbors Act* (33 U.S.C. § 403), Part 115 of Title 33 of the Code of Federal Regulations (33 C.F.R. Part 115), and Parts 31, 55, 91, 111, 115, 201, 211, 213, 301, 303, and 365, of Michigan's *Natural Resources and Environmental Protection Act* (*Public Act 451 of 1994*).

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**Environmental Management and Monitoring Plan** or **EMMP** has the meaning set out in Schedule 16 [*Environmental*].

**Environmental Management Plan** has the meaning set out in Schedule 16 [*Environmental*].

**Environmental Management System** or **EMS** has the meaning set out in Schedule 16 [*Environmental*].

**Environmental Obligation** has the meaning set out in Schedule 16 [*Environmental*].

**Environmental Permits** has the meaning set out in Schedule 16 [*Environmental*].

**Environmental Quality Management Plan** has the meaning set out in Part 1 [*General*] of Schedule 7 [*Quality Management*].

**Envision** means the “**Envision Rating System for Sustainable Infrastructure**”.

**EnWin** means Enwin Utilities Ltd.

**Equity Investment** with respect to any person at any time, means the amount actually paid in cash for an Equity Interest in such person at that time.

**Equity Interest** means, as the case may be, shares, units or other similar equity or ownership interests, however they are named, constituting in whole or in part, the capital of a legal person, including common or preferred interests or units in a limited liability company, a general partnership, limited partnership or a trust, or any other equivalent interest, including any Convertible Securities.

**Equity Member** means each person referred to in Section [REDACTED], and any person who subsequently acquires a direct Equity Interest in Project Co or any such person.

**Equity Sale Amount** means the gross amount, without taking into account any transaction costs and fees, received in consideration of the disposition of a percentage of Ownership Interest in Project Co by an Equity Member or a Related Owner.

**Equity Sale IRR** means the Projected Equity Internal Rate of Return calculated to the date of any sale of Equity Interest and calculated by taking into account the full Implied Equity Value, together with all Distributions paid in respect of the Equity Interest, and the actual timing of payment of all such amounts.

**Erection Procedure Report** has the meaning set out in Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*].

**Exacerbate** or **Exacerbation** means to cause the spreading or migration of Contamination or to cause a change in conditions that results in an increase of the cost of Remedial Action.

**Excess Equity Gain** means an amount equal to the greater of zero and the difference between (i) the Equity Sale Amount; and (ii) the Threshold Equity Sale Amount.

**Excise Tax Act** means the *Excise Tax Act*, RSC 1985, c E-15.

**Exempt Refinancing** means any of the following:

- (a) any Refinancing that was approved by WDBA prior to the execution of this Agreement and fully taken into account in the calculation of the Construction Period Payments and

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Monthly Payments, which occurs within six months prior to or six months after the date set out in the initial Financial Model (as at the Commencement Date) and which does not increase the liability or the obligations of WDBA to an extent greater than contemplated in the initial Financial Model (as at the Commencement Date) nor result in the financial position, liquidity or solvency of Project Co being worse than contemplated in the initial Financial Model (as at the Commencement Date);

- (b) a change in taxation or change in accounting treatment pursuant to a Change in Law or a change in Accounting Principles;
- (c) the exercise under Senior Lending Agreements of rights, waivers, consents and similar actions which relate to day-to-day administrative and supervisory matters (including conditions to advances) under Senior Lending Agreements, that do not provide a financial benefit to Project Co under those agreements;
- (d) any sale of an Equity Interest or securitization of the existing rights or interests attaching to such Equity Interest, unless such sale or securitization increases any liability of WDBA, whether actual or potential, or involves increasing the Senior Debt Amount or the Junior Debt Amount, as applicable, or amending the Senior Debt Makewhole or the Junior Debt Makewhole, as applicable, on terms more favourable to Project Co than those contained in the original Lending Agreements;
- (e) any amendment or supplement to any Senior Lending Agreement approved by WDBA as part of any Supervening Event or Change under this Agreement;
- (f) any Rescue Refinancing;
- (g) any Qualifying Financial Institution Transaction; or
- (h) a disposition on the secondary market by a Senior Lender of its rights or participation in the Senior Lending Agreements where such disposition is a trade of bonds issued as provided for under a book based/book entry system of a depository pursuant to a trust indenture that comprises a portion of the financing of the Senior Debt;

provided that

- (i) a Refinancing mentioned in clauses (a), (d) and (f) must not involve an Ineligible Person; and
- (j) in the case of a Rescue Refinancing that involves new performance and payment guarantees, such guarantees comply with the same requirements that the initial Performance and Payment Support complied with in accordance with this Agreement.

**Existing Infrastructure** has the meaning set out in Part 9 [*Project Maintenance*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*].

**Expiry Date** means the date ending 30 years following the Scheduled Substantial Completion Date.

**Extraordinary Measures** means one or more, and any combination of, such measures which are necessary to expedite the progress of construction, including, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) other similar measures.

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**Facility** includes all of the Components, and all site services, systems, Utilities, roadways and parking areas whether over or under the surface of the Lands or the Detroit River, together with all related improvements and amenities, including all buildings, structures, intelligent traffic systems, paved areas, equipment, fences and barriers, curbs, culverts, drainage systems, grassed areas, sidewalks, hedges and trees, planted areas, footways, road markings, road traffic signs, road traffic signals, road and bridge lighting, communications installations, weigh stations, washrooms and rest areas, picnic sites, pullouts, embankments and retaining walls required to support such infrastructure and all other works, improvements, and demolitions to occur on, over or under the Lands or on, over or under the Detroit River, in each case, required to be constructed, developed or provided by Project Co in accordance with the terms of this Agreement, provided that the Michigan Interchange shall be excluded from this definition in respect of the provision of OMR Work by Project Co.

**FAER Minor Deficiency** has the meaning set out in Section 25.4(b).

**Failure Event** has the meaning set out in Schedule 25 [*Payment Mechanism(OMR)*].

**Fair Market Value** means the amount for which an asset or liability would be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale.

**Federal Aid Eligibility Requirements or FAER** means all requirements under US federal law, as provided in the Stewardship and Oversight Agreement, necessary for expenditures on a project to be eligible as the non-federal share for federal aid matching purposes under the FHWA's Federal Aid Highway Program; provided that, (a) in replacement of the "**Buy American**" provisions otherwise applicable under the FHWA's Federal Aid Highway Program, it shall be required that all iron and steel used in Federal Aid Highway Project Activities must be produced in only the US and Canada, and (b) there shall be no discrimination in favour of the US over Canada or in favour of Canada over the US with respect to any products, materials, supplies, labour or services under any Federal Aid Eligibility Requirements.

**Federal Aid Highway Project Activities** means all activities and works related to the Michigan portion of the Bridge, the US Bridge Approach, the US Bridge Plaza, or the Michigan Interchange.

**Field Benchmark Sample** has the meaning set out in Part 21[*The Bridge*] of Schedule 10 [*Design and Construction Specifications*].

**Final Completion** means the satisfactory full and final completion of all DB Work in accordance with the Technical Requirements, including the Certification Procedure, and in full compliance with all Applicable Law, Permits and other relevant Project Requirements, including rectification of all Minor Deficiencies related thereto and completion of all Off-Season Commissioning activities.

**Final Completion Certificate** means the certificate to be issued by the Independent Certifier in accordance with Section 25.4(b) (*Final Completion*).

**Final Completion Date** means the date on which the Final Completion Certificate is issued by the Independent Certifier.

**Financial Close** means the time when this Agreement, the other Project Documents and all other documents described in Schedule 2 [*Closing Deliveries and Ownership Information*] have been executed and delivered and all conditions to the effectiveness of this Agreement and related agreements, including with respect to financing (including, in the event of issuance of securities evidencing Senior Debt, the settlement thereof), have been satisfied and the funds required to execute the Project Work are available to Project Co.

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**Financial Institution** means:

- (a) a bank listed in Schedule I, II or III of the *Bank Act* (Canada);
- (b) a corporation, association and federation incorporated or organized as a credit union or co-operative credit society that conforms to the requirements of a credit union which are more particularly described in Section 137(6) of the *Income Tax Act*;
- (c) a Canadian trust company, insurance company, investment company, pension fund or other institution which manages funds in excess of one billion dollars, including persons wholly owned by any of the foregoing and which are regulated by a Canadian or provincial financial or capital markets regulator including Canadian public pension funds which for this purposes are deemed to be regulated by a Canadian or provincial financial or capital markets regulator;
- (d) an investment fund managed by a professional fund manager that directly manages funds in excess of one billion dollars and which fund, and its professional manager, are regulated by a financial or capital markets regulator in the European Economic Area or the Organization for Economic Cooperation and Development;
- (e) a bank regulated by the Board of Governors of the Federal Reserve System of the United States, US bank, saving and loan institution, insurance company, investment company, employee benefit plan or other institution that, in any such case, manages at least one billion dollars in assets and would be a “**qualified institutional buyer**” under U.S. securities legislation, including persons wholly owned by any of the foregoing;
- (f) an institution which is recognised or permitted under the law of any member state of the European Economic Area or the Organization for Economic Cooperation and Development to carry on the business of a credit institution within Organization for Economic Cooperation and Development member states or, in the case of the European Economic Area, to carry on the business of a credit institution pursuant to Council Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other European Economic Area member state; or
- (g) any other institution consented to in writing by WDBA as a “**Financial Institution**” for the purposes of this definition;

provided that any such entity previously mentioned in this definition, is not an Ineligible Person.

**Financial Model** means the computer spreadsheet model and software for the Project incorporating statements of Project Co’s cash flows including all expenditures and revenues (including on a gross basis), financing and taxation of the Project Work together with the profit and loss accounts and balance sheets for Project Co throughout the Term, accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model, as attached to this Agreement in printed and electronic form as Schedule 24 [*Financial Model*]. If there are updates to such model from time to time issued after the Commencement Date, references to the “**Financial Model**” shall mean the model as so updated unless a contrary intention is indicated. Such model shall include the DB Schedule.

**Financial Model Auditor** means [REDACTED].

**FKTS Easement** has the meaning set out in Schedule 4 [*Lands and Site*].

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**FKTS Lands** has the meaning set out in Schedule 4 [*Lands and Site*].

**Force Majeure Event** has the meaning set out in Section 43.7 (*Force Majeure Event*).

**Foreign Exchange Contract** has the meaning set out in Schedule 27 [*Compensation on Termination*].

**Foundation Analysis and Design Report** has the meaning set out in Part 4 [*Geotechnical*] of Schedule 10 [*Design and Construction Specifications*].

**Functional** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Functional Unit** has the meaning set out in Schedule 25 [*Payment Mechanism(OMR)*].

[REDACTED]

[REDACTED]

**Future Configuration** has the meaning set out in Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*].

**Gainshare Adjustment** has the meaning set out in Schedule 38 [*Energy Management*].

**Geotechnical Instrumentation and Monitoring Plan** has the meaning set out in Part 4 [*Geotechnical*] of Schedule 10 [*Design and Construction Specifications*].

**GHIB Committees** has the meaning set out in Section 10.1(a) (*Committees - Establishment and Members*) of this Agreement.

**Good Industry Practice** means using generally accepted standards, practices, methods and procedures, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.

**Governmental Activity** means the provision of any governmental services and the conduct of any activities provided in connection with or otherwise associated with the Lands, the Site and the Facility by any Governmental Authority or Emergency Service Provider.

**Governmental Authority** means any Canadian federal, United States federal, provincial, state, territorial, regional, municipal or local government or governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, office, board, regulatory administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of the performance of the Project Agreement, the Site or the Infrastructure located thereon, or any part of thereof or any aspect of the Project Work, and includes WDBA.

**Ground Lease** has the meaning contemplated in Schedule 19 [*Material Agreements*].

**GSA Sublease** has the meaning contemplated in Schedule 19 [*Material Agreements*].

**Guaranteed Engineering Data** means: [REDACTED]

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**Guarantor** means any person who provides a guarantee of, or provides security for the performance of the obligations of any Equity Member or a Prime Contractor under any Project Document.

**H&S Conviction** has the meaning set out in Section 46.1(x) (*Project Co Events of Default*).

**Hammerhead Pier** has the meaning set out in Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*].

**Handback** has the meaning set out in Schedule 14 [*Handback*].

**Handback Independent Certifier** means the person jointly selected by WDBA and Project to carry out the duties described in Schedule 14 [*Handback*].

**Handback Plan** has the meaning set out in Schedule 14 [*Handback*].

**Handback Procedure** means the procedure to be complied with for the Handback of the Project Infrastructure to WDBA, as set out in Schedule 14 [*Handback*].

**Handback Requirements** means the specifications and requirements set out in Schedule 14 [*Handback*] and Schedule 11 [*Operations, Maintenance and Rehabilitation*], which are imposed for the Handback to WDBA of the Project Infrastructure on the Expiry Date.

**Handback Useful Life** has the meaning set out in Schedule 14 [*Handback*].

**Handback Work** has the meaning set out in Schedule 14 [*Handback*].

**Handover** has the meaning set out in Schedule 21 [*Certification Procedures*].

**Handover Application** means individually or collectively any one of the Bridge Handover Application, Michigan Handover Application, POE Agency Buildings Handover Application, POE Handover Application or Sandwich Street Handover Application, as defined in Schedule 26 [*Construction Period Payments*].

**Hazardous Material** means (i) any solid, liquid, gas, odour, heat, sound, vibration, radiation, micro-organism, emission or any combination of the foregoing or other substance, material, waste, or emission the storage, manufacture, handling disposal, treatment, generation, transportation, use, or the Release of which into or presence in the environment is prohibited, controlled, or regulated under Environmental Laws or OHSAs; (ii) any such substance which may or could pose a hazard to any real property, persons or the environment on or about any real property, or causes any real property to be in violation of any Environmental Laws or OHSAs; (iii) any petroleum product or by-product, chlorinated solvents, lead, ozone depleting substance asbestos in any form which is or could become friable radon gas, urea formaldehyde foam insulation, mold, transformers or other equipment which contains dielectric fluid containing levels of polychlorinated biphenyls in excess of limits prescribed by any Environmental Laws; and (iv) any material, substance or thing which, pursuant to Environmental Laws, is, or is deemed to be, ignitable, reactive, explosive, gaseous, flammable, toxic, radioactive, corrosive, combusive or leachable, as well as any material, substance or thing defined as or included in the definitions of "contaminant", "dangerous goods", "deleterious substance", "hazardous substances", "pollutant", "hazardous waste", "hazardous materials", "extremely hazardous waste", "restricted hazardous waste", "toxic substances", "special waste", "waste", "release", "substances", "dangerous products" or words of similar import under Environmental Laws or OHSAs.

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**Hazardous Waste** with respect to US Parcels means, collectively, (i) "hazardous waste" as defined by each of 42 U.S.C. § 6903, 40 C.F.R. Part 261, and Mich. Admin. Code 299.9102 et seq., and (ii) "liquid industrial by-products" as defined by Mich. Comp. Laws § 324.12101(n).

**Hazard Mitigation** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Hedge Termination Amounts** has the meaning set out in Schedule 27 [*Compensation on Termination*].

**Hedging Agreements** means the agreements and instruments described in Section 2.1(k) of Schedule 2 [*Closing Deliveries and Ownership Information*] and any other currency or interest rate hedging agreements referred to in paragraph (b) of the definition of Lending Agreements entered into after the Commencement Date in conformity with this Agreement, as supplemented and amended in accordance with this Agreement.

**Hedge Provider** means any Senior Lender who is a party to a Hedging Agreement.

**Holiday Period** has the meaning set out in Schedule 25 [*Payment Mechanism (OMR)*].

**Hydro One** means Hydro One Networks Inc.

**Hydrologic Report** has the meaning set out in Part 12 [*Drainage and Stormwater Management*] of Schedule 10 [*Design and Construction Specifications*].

**I-75** means the US interstate highway named I-75.

**I-75 Concrete Inlay Project** has the meaning set out in Part 8 [*Maintenance of Traffic*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*].

**I-75 Corridor** has the meaning set out in Schedule 4 [*Lands and Site*].

**I-75 Service Drives** has the meaning set out in Schedule 4 [*Lands and Site*].

**IBTA** means the *International Bridges and Tunnels Act* (Canada).

**IC Progress Ratio** has the meaning set out in Schedule 26 [*Construction Period Payments*].

**Implied Equity Value** with respect to the sale of an Equity Interest, means the Equity Sale Amount for such Equity Interest, divided by the percentage of Equity Interest (calculated as of Financial Close) sold in a particular sale of Equity Interest.

**Income Tax Act** means the *Income Tax Act*, RSC 1985, c 1 (5<sup>th</sup> Supp).

**Indemnifier** has the meaning set out in Section 44.3(a) (*Conduct of Third Party Claims*) of this Agreement.

**Independent Certifier** means the person appointed as Independent Certifier to carry out the duties described in the Independent Certifier Agreement and this Agreement and any person who succeeds to such role in accordance with Independent Certifier Agreement.

**Independent Certifier Agreement** means the agreement entered into between WDBA and the Independent Certifier, substantially in the form of Schedule 32 [*Form of Independent Certifier Agreement*].

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**Independent Design Checker** has the meaning set out in Part 2 [*Review Procedure*] of Schedule 6 [*Project Management*].

**Independent Third Party** has the meaning set out in Schedule 29 [*Insurance Requirements*].

**Indirect Losses** has the meaning set out in Section 45.1 (*No Liability for Indirect Losses*).

**Ineligible Person** means (i) a Restricted Person, or (ii) a person who could not comply with Section 56.3 (*Security Requirements*) or (iii) a person whose standing or activities, in the opinion of WDBA: (A) are incompatible with WDBA's role, or the role of a WDBA Party or any other Governmental Authority; or (B) may compromise the reputation or integrity of WDBA, a WDBA Party or any other Governmental Authority; or (C) could undermine public trust in WDBA, a WDBA Party or any other Governmental Authority; or (D) are inconsistent with the nature of the Project, so as to adversely affect public perception of the Project; or (E) could result in a breach of Section 57.2 (*Integrity Provisions*) or Section 57.3 (*Prohibited Acts*) or (iv) **[REDACTED]**.

**Infrastructure** means all buildings, plazas, bridges, bridge approaches, tolling, road, highway and landscape infrastructure including roadways, hard shoulders, slip roads, side roads, access roads, cul-de-sacs, pavement, water crossing structures, tunnels, overpasses, sign structures, and other bridge and highway structures or other structures whether over or under the travelled surface, together with all related buildings, equipment, appurtenances, electrical infrastructure, mechanical infrastructure, supporting infrastructure, Utilities, improvements and amenities, including all intelligent traffic systems and equipment, fences and barriers, guardrail, guide rail, traffic safety barriers, curbs, culverts, drainage systems including outfalls and storm water management ponds, grassed areas, sidewalks, cycling lanes, hedges and trees, planted areas, footways, recreational equipment and facilities, road markings, road traffic signs, road traffic signals, road lighting, communications installations, embankments, retaining walls, paved lots, truck lay-bys, maintenance yards, and signage, sculpture or decorative objects.

**Infrastructure Component Consultation Period** has the meaning set out in Schedule 18 [*Communications Protocol*].

**Inspection Agency Buildings** has the meaning set out in Part 8 [*Buildings - Canadian POE*] of Schedule 10 [*Design and Construction Specifications*].

**Inspection and Test Plan** has the meaning set out in Part 1 [*General*] of Schedule 7 [*Quality Management*].

**Insurance Proceeds** means any and all proceeds (i) received or receivable by Project Co pursuant to any Project Co Insurance Policy or (ii) which would have been receivable had Project Co complied with its obligations under Section 40 of this Agreement or any Project Co Insurance Policy.

**Insurance Trust Agreement** means the agreement entered into between WDBA, Project Co, the Lenders' Agent and the Account Trustee substantially in the form of Schedule 33 [*Insurance Trust Agreement*].

**Integrity Provisions** means:

- (a) the integrity regime published by Public Services and Procurement Canada which consists of (i) The Ineligibility and Suspension Policy found at <http://www.tpsgc-pwgsc.gc.ca/ci-if/politique-policy-eng.html>, and (ii) Standard Instructions - Goods and Services - Competitive Requirements, Sections 01 to 20 ("**Code of Conduct - Integrity Provisions**") found at <https://buyandsell.gc.ca/policy-and-guidelines/standard->

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acquisition-clauses-and-conditions-manual/1/2003/22, along with related policies and rules; and

- (b) the United States federal suspension and debarment list found at <https://www.sam.gov/portal/SAM/>, and the 1980 *Public Act 278* (180 PA 278), Michigan Compiled Law (MCL) 423.321 et seq. which requires that no contract may be entered into with a subcontractor, manufacturer, or supplier listed in the register maintained by the United States Department of Labor of employers who have been found in contempt of court by a federal court of appeals on not less than 3 occasions involving different violations during the preceding 7 years for failure to correct an unfair labor practice, as prohibited by Section 8 of Chapter 372 of the *National Labor Relations Act*, 29 USC 158, and any similar or comparable provisions of the Federal Aid Eligibility Requirements including any false statements regarding highway projects,

each as they may be amended, supplemented or restated from time to time, or replaced by policies or Applicable Law for substantially the same purpose or to the same effect from time to time.

**Intellectual Property** means all access codes, algorithms, application programming interfaces, apparatus, circuit designs and assemblies, concepts, data, databases and data collections, designs, diagrams, documentation, drawings, equipment designs, flow charts, formulae, ideas and inventions (whether or not patentable or reduced to practice), IP cores, know-how, materials, marks (including brand names, product names, logos and slogans), methods, models, net lists, network configurations and architectures, procedures, processes, protocols, schematics, semiconductor devices, software code (in any form including source code and executable or object code), specifications, subroutines, techniques, test vectors, tools, uniform resource identifiers including uniform resource locators, user interfaces, web sites, works of authorship, and other forms of technology.

**Intellectual Property Rights** means all past, present and future rights of the following types, which may exist or be created under the laws of any jurisdiction in the world in respect of any Intellectual Property:

- (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights and mask work rights;
- (b) business or trade secret rights;
- (c) patent, industrial design and industrial property rights;
- (d) other proprietary rights in Intellectual Property of every kind and nature; and
- (e) rights in or relating to registrations, renewals, extensions, combinations, divisions and reissues of, and applications for, any of the rights referred to in subsections (a) through (d) of this definition.

**Interest Rate** has the meaning set out in Section 37.7(c) (*Interest on Overdue Amounts*) of this Agreement.

**Interim OM Payments** has the meaning set out in Schedule 26 [*Construction Period Payments*].

**Interim OM Period** means the period commencing on the earlier of (i) the Canadian POE Agency Buildings Handover Date and (ii) the US POE Agency Buildings Handover Date, and terminating on the Substantial Completion Date.

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**Interim OM Work** means the operations and maintenance work to be carried out during the Interim OM Period on the OM Infrastructure, as such work is described in Schedule 11 [*Operations, Maintenance and Rehabilitation*] and as set out and described in the OM Specifications and any other applicable Project Requirements.

**Interim Remedy** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**International Authority** has the meaning set out in the Crossing Agreement.

**International Crossing** has the meaning set out in the Crossing Agreement.

**Irrecoverable Tax** has the meaning set out in Section 38.3(b) (*Changes in Recoverability of Tax Credits*) of this Agreement.

**ITS or ITS Systems** means intelligent transportation systems.

**Investment Fund** means a limited partnership, pension fund or investment fund which is (i) managed and controlled by a partner, manager, trustee or similar entity which is not an Ineligible Person, (ii) has as one of its mandates, the investment of funds in persons which directly or indirectly derive revenues from infrastructure projects and (iii) has complete discretion over the investments it makes without direction or advice from its limited partners, unit holders, beneficiaries or other investors.

**Junior Debt** means any or all of the debt of Project Co under the Junior Lending Agreements pursuant to and in accordance with the Junior Lending Agreements, the repayment of which is subordinated to the repayment of the Senior Debt but excluding:

- (a) all amounts not actually paid to Project Co by cash advance;
- (b) all fees, including commitment fees, standby fees or other fees, paid or to be paid by Project Co; and
- (c) capitalized interest, and interest on overdue interest;
- (d) any indebtedness of any kind of Project Co to an Equity Member or any other Project Co Person, or any Affiliate of any of them.

**Junior Debt Amount** means, at any time, the then outstanding principal amount of Junior Debt funded under the terms of the Junior Lending Agreements by the Junior Lenders to Project Co, together with all interest accrued thereon at that time, but excluding the Junior Debt Makewhole.

**Junior Debt Makewhole** means, at any time, any amount (other than the Junior Debt Amount) then due and payable to the Junior Lenders under the Junior Lending Agreements, including any “**make whole**” payments, breakage fees (less any breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which materially reflect similar payments required to be made in financings of this size and nature, and which Project Co is obligated to pay to the Junior Lenders pursuant to the Junior Lending Agreements.

**Junior Debt Service Amount** means, for any period, the principal and interest payable by Project Co to the Junior Lenders on the Junior Debt in respect of that period.

**Junior Lenders** means all or any of the persons who provide Junior Debt financing in respect of the Project under the Junior Lending Agreements.

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**Junior Lending Agreements** means the agreements and instruments described in Schedule 2 [*Closing Deliveries and Ownership Information*] each as supplemented, amended or replaced from time to time in accordance with this Agreement.

**Jurisdictional Transfer Agreement** has the meaning set out in Schedule 19 [*Material Agreements*].

**Key Individuals** means each of the individuals listed in Schedule 3 [*Key Individuals*], who were appointed to hold the positions indicated opposite their respective names, as they may be replaced from time to time in accordance with the provisions of Section 9.4 (*Key Individuals*) of this Agreement.

**Known Canadian Contamination** means Contamination on, in or under the Canadian Lands that was (i) described in, or was properly inferable, readily apparent or readily discoverable from the Background Information and the Guaranteed Engineering Data, but does not include Contamination that has migrated from the Canadian Lands or (ii) that could have been properly inferable, readily apparent or readily discoverable on the basis of reasonable, normal course and industry standard investigations, inspections or other due diligence.

**Known Shared Responsibility Contamination** means Contamination, other than Contaminated Soil, on, in or under the US Lands other than the Specified US Parcels that (i) was described in or was properly inferable, readily apparent or readily discoverable from the Background Information and the Guaranteed Engineering Data, except for Project Co Contamination migrating from the Specified US Parcels, and (ii) could have been properly inferable, readily apparent or readily discoverable on the basis of reasonable, normal course and industry standard investigations, inspections or other due diligence.

**Known Specified Parcels Contamination** means Contamination on, in or under the Specified US Parcels that (i) was described in or was properly inferable, readily apparent or readily discoverable from the Background Information and the Guaranteed Engineering Data, except for Project Co Contamination migrating from the Specified US Parcels, or (ii) could have been properly inferable, readily apparent or readily discoverable on the basis of reasonable, normal course and industry standard investigations, inspections or other due diligence.

**Lands** means at any time and from time to time, those lands in Canada and the United States described in Schedule 4 [*Lands and Site*].

**Lane Clearance** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Lane Clearance Rectification Time** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Lane Closure** means any partial or total closure, stoppage, obstruction, blockage or other restriction or interference (howsoever arising), for whatever duration, impeding the flow of traffic or preventing or affecting the ability to drive on any lane located on the Site, which arises in connection with the Project Work (including traffic lane and dedicated transit lane), including those:

- (a) instigated by Project Co in compliance with the Traffic Management provisions of Part 15 [*Traffic Management - Construction*] of Schedule 10 [*Design and Construction Specifications*] and Part 8 [*Maintenance of Traffic*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*];

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- (b) required for work by a Relevant Authority or for an inspection, investigation or survey carried out by Project Co, WDBA or any other Relevant Authority;
- (c) resulting from an accident, vehicle breakdown, illegal parking, Emergency or other incident;
- (d) instigated by any Emergency Service Provider; or
- (e) resulting from the build-up of snow, ice, sleet, freezing rain or water, or from any other natural event physically affecting the road or part thereof and materially affecting the ability to safely use the road or such part thereof, to the extent the same does not result from a Non-Excusable Event of Project Co.

For purposes of this definition, traffic congestion or slow moving traffic that stems from speed restrictions properly imposed from time to time due to adverse weather conditions or seasonal restrictions affecting the road or part thereof will not in and of itself be deemed to fall within this definition, except where the standards of construction and/or standards of maintenance have contributed to the need for such speed restrictions. Notwithstanding any provision to the contrary, any build-up of ice on bridge cables or the falling or dropping of ice build-up on bridge cables on the road or part thereof and materially affecting the ability to safely use the road or such part thereof, shall not constitute a “**Lane Closure**”.

**Lane Closure Targets** has the meaning set out in Part 19 [*Traffic Management - Deductions*] of Schedule 10 [*Design and Construction Specifications*].

**Large Scale Imaging Building** or **LSI Building** has the meaning set out in Part 8 [*Buildings - Canadian POE*] of Schedule 10 [*Design and Construction Specifications*].

**Law** means any:

- (a) law (including common law), statute, regulation, treaty, order-in-council, ministerial order, code, by-law, ordinance, rule, court order, judgment, decree, immunity, or writ, including the Crossing Agreement and any US Executive Order;
- (b) any directive, guideline, policy, rule, Standard, notice, approval, order, decision or other requirement of any Governmental Authority; and
- (c) any administrative interpretation of any of the foregoing,

having the force of law.

**LCS** means Lane Control Sign.

**Lead Communications, Community Liaison and Consultation Manager** has the meaning set out in Schedule 18 [*Communications Protocol*].

**Lead Independent Bridge Engineer** has the meaning set out in Part 2 [*Review Procedure*] of Schedule 6 [*Project Management*].

**Lead Security Officer** has the meaning set out in Part 5 [*Security*] of Schedule 10 [*Design and Construction Specifications*].

**Lender Advance Documentation** has the meaning set out in Schedule 26 [*Construction Period Payments*].

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**Lenders** means all or any of the persons who provide financing to Project Co in respect of the Project Work under the Lending Agreements, including the Senior Lenders and the Junior Lenders, and, where the context so permits, prospective financiers or lenders.

**Lenders' Agent** means the agent for the Senior Lenders under the Senior Lending Agreements appointed by the Senior Lenders to act as their agent in relation to the Lenders' Direct Agreement and the other Senior Lending Agreements, the Senior Debt and the security for the Senior Debt from time to time in accordance with the Senior Lending Agreements. Such agent shall be a "financial institution" as defined in the *Bank Act*, SC 1991, c. 46 (excluding the financial institutions covered by paragraphs (g) and (h) of such definition) and shall include any replacement as may be appointed from time to time in accordance with the Lenders' Direct Agreement and notified to WDBA in writing.

**Lenders' Direct Agreement** means the agreement to be entered into between WDBA, Project Co and the Lenders' Agent on the Commencement Date, substantially in the form of the agreement set out in Schedule 30 [*Form of Lenders' Direct Agreement*].

**Lenders' Technical Advisor** means the technical advisor appointed by the Senior Lenders from time to time, to provide advice to the Senior Lenders with respect to the Project.

**Lending Agreement** means all or any of the agreements or instruments entered into or to be entered into by Project Co relating to the financing of the Project Work, including:

- (a) the Senior Lending Agreements, the Junior Lending Agreements (including any agreement or instruments creating or evidencing security interests in respect of the obligations owed or owing in respect of Senior Debt or Junior Debt from time to time) and any agreements or instruments entered into by Project Co or any of its Affiliates to raise additional or supplemental financing or financing facilities in any form, or relating to rescheduling its indebtedness or refinancing the Project Work;
- (b) any of the agreements or instruments entered into by Project Co or any of its Affiliates for the purpose of facilitating the hedging of any exposure to interest rate or currency fluctuations under any of the agreements or instruments referred to in paragraph (a), as well as any agreements or instruments entered into by Project Co to make additional or substitute currency or interest rate hedging arrangements as permitted by this Agreement; and
- (c) any of the documents or agreements entered into in order to enhance the credit of Project Co or any other person involved in the Project Work or any person providing a guarantee of the obligations of Project Co or any other person involved in the Project Work.

**Liability Payment** has the meaning set out in Section 44.4 (*Third Party Recovery*) of this Agreement.

**Load Rating Report** has the meaning set out in Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*].

**Local Canadian Workforce Goal** has the meaning set out in Schedule 36 [*Community Benefits*].

**Losses** means all damage, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the reasonable cost of legal or professional services, legal costs being on a solicitor and his own client basis), proceedings, demands and charges, however they arise, but does not include Indirect Losses.

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**LSI** means large scale imaging unit.

**LTA Report** has the meaning set out in Schedule 26 [*Construction Period Payments*].

**Main Bridge** means the cable stayed span crossing the Detroit River including any adjacent spans integrally connected to the main span, any spans supported by cables, and any adjacent spans integrally connected to spans supported by cables, including all substructures supporting associated superstructure Elements and cable anchorages, all as more specifically described in Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*].

**Main Building** means (i) with respect to the Canadian POE, the building defined as such in Section 3.2(a) of Part 8 [*Buildings - Canadian POE*] of Schedule 10 [*Design and Construction Specifications*] and (ii) with respect of the US POE, the building defined as such in Section 1 of Part 9 [*Buildings - US POE*] of Schedule 10 [*Design and Construction Specifications*].

**Maintenance Building** has the meaning set out in Part 8 [*Buildings - Canadian POE*] of Schedule 10 [*Design and Construction Specifications*].

**Maintenance Management Plan** has the meaning set out in Part 9 [*Project Maintenance*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*].

**Maintenance Management System** or **MMS** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Maintenance Online Management System** or **MOMS** has the meaning set out in Schedule 13 [*Tolling Operations*].

**Maintenance Plan** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Maintenance Work Report** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Major Temporary Work** has the meaning set out in Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*].

**Mandatory Report** means the reports listed in Schedule 8 [*Records and Mandatory Reports*].

**Material Agreement** means any agreement described in Schedule 19 [*Material Agreements*].

**Material Damage** has the meaning set out in Section 31.1(a) (*Reinstatement Work on the Occurrence of Material Damage*) of this Agreement.

**McKee Street Lands** has the meaning set out in Schedule 4 [*Lands and Site*].

**Material Subcontract** has the meaning set out in Section 3.4(b).

**Material Subcontractor** means a Subcontractor which is a party to a Material Subcontract.

**MDOT** means the Michigan Department of Transportation.

**MDOT Standard Specifications for Construction** means the MDOT published document entitled “**2012 Standard Specifications for Construction**” and associated Frequently Used Special Provisions as they may be supplemented, amended or replaced from time to time.

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**Medium NCR** is a report describing a Medium Non-Compliance that is issued by Project Co or by WDBA to Project Co, in accordance with Part 2 [*Non-Compliance*] of Schedule 7 [*Quality Management*].

**Medium Non-Compliance** has the meaning set out in Part 2 [*Non-Compliance*] of Schedule 7 [*Quality Management*].

**Michigan** means the State of Michigan.

**Michigan Capital Payment** has the meaning set out in Schedule 26 [*Construction Period Payments*].

**Michigan Crossing** has the meaning set out in the Crossing Agreement.

**Michigan Handover** has the meaning set out in Schedule 21 [*Certification Procedure*]

**Michigan Interchange** means (i) those parts of I-75 and the Michigan Local Roads on which Project Work is to be performed; and (ii) the Michigan Interchange Ramps and all related Project Work to be performed in the Michigan Interchange Area pursuant to this Agreement.

**Michigan Interchange Area** has the meaning set out in Schedule 4 [*Lands and Site*].

**Michigan Interchange Buy-Down Amount** has the meaning set out in Schedule 26 [*Construction Period Payments*].

**Michigan Interchange Buy-Down Process** has the meaning set out in Schedule 26 [*Construction Period Payments*].

**Michigan Interchange Handover Date** has the meaning set out in Section 26.2(a) (*Transfer of Michigan Interchange*).

**Michigan Interchange Ramp Bridges** has the meaning set out in Part 5 [*Structures*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*].

**Michigan Interchange Ramps** has the meaning set out in Schedule 4 [*Lands and Site*], and are further described in Part 3 [*Roadway and Grading*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*].

**Michigan Interchange - Transportation Management Plan** has the meaning set out in Part 8 [*Maintenance of Traffic*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*].

**Michigan Interchange Warranties** has the meaning set out in Section 27.2(a)(i).

**Michigan Interchange Warranty Period** has the meaning set out in Section 27.2(b)

**Michigan Interchange Warranty Work** has the meaning set out in Section 27.2(b).

**Michigan Interchange Work** means all Project Work required to be done with respect to the Michigan Interchange.

**Michigan Local Roads** has the meaning set out in Schedule 4 [*Lands and Site*].

**Michigan Master Lease** has the meaning set out in Schedule 19 [*Material Agreements*].

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**Michigan Party** means one or more of Michigan, MDOT and the Michigan Strategic Fund.

**Minimum Performance Criteria** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Minor Deficiencies** means any defects, deficiencies and items of outstanding DB Work arising from or related to the work required to achieve a POE Handover, POE Agency Buildings Handover, Bridge Handover, Michigan Handover, Sandwich Street Handover or Substantial Completion and which alone or in combination, would not materially impair:

- (a) the public's, WDBA's or any other Relevant Authority's use and enjoyment of the Facility;
- (b) the performance, conduct or provision of any Governmental Activity;
- (c) the performance of the Interim OM Work or the OMR Work by Project Co; or
- (d) safety or traffic flow on any Project Infrastructure in any relevant respect,

provided that outstanding Medium Non-Compliances, Critical Non-Compliances and items subject to the Michigan Interchange Buy-Down Process do not fall within the scope of this definition.

**Minor Deficiencies Holdback Amount** has the meaning set out in Schedule 26 [*Construction Period Payments*].

**Minor Deficiency List** means the list prepared by the Independent Certifier in accordance with (i) the Certification Procedure for POE Handovers and (ii) Section 25.3(*Final Minor Deficiency List*) of this Project Agreement regarding Minor Deficiencies and Section 25.4(b) (*FAER Minor Deficiencies*) of this Project Agreement regarding FAER Minor Deficiencies, which have not been remedied as at the date of the list.

**Minor Maintenance Issue** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Minor Work** has the meaning set out in Schedule 22 [*Change Procedure*].

**Monitoring Notice** has the meaning set out in Section 32.5(a) (*Increased Monitoring*) of this Agreement.

**Monthly Payment** has the meaning set out in Schedule 25 [*Payment Mechanism (OMR)*].

**Monthly Progress Report** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Monthly Report** means collectively the reports published in accordance with Schedule 8 [*Records and Mandatory Reports*].

**Net Present Value** means, in the context of a Refinancing, the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Projected Equity Internal Rate of Return.

**New Project Agreement** has the meaning set out in Schedule 27 [*Compensation on Termination*].

**NEXUS** has the meaning set out in Part 23 [*Intelligent Transportation System*] of Schedule 10 [*Design and Construction Specifications*].

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**NHPA** has the meaning set out in Section 17.1(a).

**Non-Agency Building** means (i) with respect to the Canadian POE, the building defined as such in Part 8 [*Buildings - Canadian POE*] of Schedule 10 [*Design and Construction Specifications*] and (ii) with respect to the US POE, the buildings Project Co elects to construct for its own operations and do not include US POE Agency Buildings.

**Non-Compliance** means any failure by Project Co to comply with the Technical Requirements.

**Non-Compliance Report** or **NCR** means a report describing a Non-Compliance that is issued by Project Co or by WDBA to Project Co, in accordance with Part 2 [*Non-Compliance*] of Schedule 7 [*Quality Management*].

**Non-Compliance Tracking System** has the meaning set out in Part 2 [*Review Procedure*] of Schedule 6 [*Project Management*].

**Non-Default Termination Sum** has the meaning set out in Schedule 27 [*Compensation on Termination*].

**Non-Excusable Event** means in relation to WDBA or Project Co, as the case may be, any fault, wrongful act, wrongful omission, negligent act, negligent omission or willful misconduct, or any failure to observe or perform any of the covenants or obligations under this Agreement or any other Project Document, of or by WDBA, any WDBA Party or any WDBA Person or Project Co or any Project Co Person, as the case may be.

**Notice** has the meaning set out in Section 62.1 (*Requirement for Writing*) of this Agreement.

**Obstruction** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Off-Season Commissioning** has the meaning set out in Part 25 [*Commissioning*] of Schedule 10 [*Design and Construction Specifications*].

**OHS Laws** means all Applicable Law relating to health and safety, including the *Occupational Health and Safety Act* (Ontario) and all regulations thereto, the *Michigan Occupational Safety and Health Act* and all regulations thereto, Part 2 of the *Canada Labour Code*, and the *Occupational Health and Safety Act of 1970* (US) and all regulations thereto, as applicable and any other legislation and regulations of similar effect.

**OM** means operations and maintenance.

**OM Infrastructure** means (i) the Canadian POE Agency Buildings, and any other buildings or structures required by the Project Agreement to be handed over to CBSA on the Canadian POE Agency Buildings Handover Date and (ii) the US POE Agency Buildings and any other buildings or structures required by the Project Agreement to be handed over to GSA on the US POE Agency Buildings Handover Date.

**OM Payment** has the meaning set out in Schedule 25 [*Payment Mechanism (OMR)*].

**OM Specifications** means the performance requirements and specifications regarding operation and routine maintenance of the OM Infrastructure that are set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*], including Appendix 11-2.

**OMR** means operation, maintenance and rehabilitation.

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**OMR Committee** has the meaning set out in Section 10.1(a)(v) (*Committees - Establishment and Members*) of this Agreement.

**OMR Five Year Plan** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**OMR Limits** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**OMR Contract** means the operating, maintenance and rehabilitation agreement executed on the Commencement Date between the OMR Contractor and Project Co with respect to a portion of the Interim OM Work and the OMR Work.

**OMR Contractor** means BNA O&M General Partnership or any assignee or replacement as may be appointed in accordance the provisions of this Agreement.

**OMR Contractor Direct Agreement** means the agreement executed on the Commencement Date between WDBA, the OMR Contractor, the OMR Contractor Guarantors and Project Co, substantially in the form of Schedule 31 [*Form of Prime Contractor Direct Agreement*].

**OMR Manager** means the individual appointed by Project Co from time to time, to manage the OMR Work.

**OMR Period** means the period commencing on the Substantial Completion Date and ending on the Termination Date.

**OMR Quality Management Plan** has the meaning set out in Part 1 [*General*] of Schedule 7 [*Quality Management*].

**OMR Ramps** has the meaning set out in Schedule 4 [*Lands and Site*].

**OMR Specifications** means the performance requirements and specifications regarding operations, maintenance and rehabilitation of the Project Infrastructure that are set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*], including Appendix 11-1 to such Schedule.

**OMR Work** means (i) the operation of the Project Infrastructure, including the Tolling Operations, and the maintenance and repair of the same and (ii) the Rehabilitation Work, all as described in Schedule 11 [*Operations, Maintenance and Rehabilitation*], Appendix 11-1 to Schedule 11 [*Operations, Maintenance and Rehabilitation*] and Schedule 14 [*Handback*], including the performance of all project management, quality management, environmental management, communications management and other management services and activities required for the carrying out of the foregoing, the supply of all workers and the supply of all other materials, tools, implements, equipment, machinery, vehicles, buildings, structures and other property necessary for or used or to be used in the performance of the Project Work and all other work, services and activities to be provided by Project Co in respect of the foregoing, all as set out and described in the OMR Specifications and any other applicable Project Requirements.

**Ontario** means the Province of Ontario or the government of the Province of Ontario, as the context requires.

**Operating Costs** means any expenditure, whether recurrent or not, which is not a Capital Expenditure within the meaning of Accounting Principles.

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**Operational** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Operations Centre** has the meaning set out in Part 8 [*Buildings - Canadian POE*] of Schedule 10 [*Design and Construction Specifications*].

**Operations and Maintenance Plan** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Operations Report** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Original Senior Commitment** means the amount committed under the Senior Lending Agreements as at the Commencement Date as adjusted to take into account any additional financing provided by the Senior Lenders for any Compensation Event or Change and in the case of a bond financing, only the amount of principal issued and outstanding in respect of the bonds as at the Commencement Date is part of such committed amount.

**Other Agencies** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Owner's Engineer** means Parsons, Inc. as appointed by WDBA to carry out certain duties of WDBA under this Agreement and any assignee or replacement as may be appointed by WDBA.

**Ownership Interest** means, with respect to an entity, (i) any ownership, whether direct, indirect, legal, beneficial or otherwise, of any of the Equity Interests of such entity or (ii) the direct or indirect power to exercise the Voting Power attached to the Equity Interests of such entity, whether through a contract, proxy or otherwise, and for the purposes of this definition a person shall be deemed to beneficially own, Equity Interests in Project Co or an Equity Member which are owned by any intermediaries in which it holds a direct or indirect Equity Interest.

**Painshare Adjustment** has the meaning set out in Schedule 38 [*Energy Management*].

**PAR SWM Pond** has the meaning set out in Schedule 4 [*Lands and Site*].

**Parcel Project Ready** means [REDACTED].

**Parent Entities** means:

- (a) [REDACTED];
- (b) [REDACTED]; and
- (c) [REDACTED]

**Parkway** means the Rt. Hon. Herb Gray Parkway.

**Partnership Agreements** means:

- (a) the amended and restated partnership agreement of Bridging North America General Partnership dated on or about [REDACTED] between the [REDACTED] and [REDACTED], as the same may be further amended, restated, supplemented or otherwise modified from time to time in accordance with Section 3.4 (*Amendments/Termination of Project Documents*); and

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- (b) the executed unanimous shareholder agreement dated on or about **[REDACTED]** among **[REDACTED]**, **[REDACTED]**, and **[REDACTED]**, as the same may be further amended, restated, supplemented or otherwise modified from time to time in accordance with Section 3.4 (*Amendments/Termination of Project Documents*).

**Passive Ownership Interest** means the ownership of a share, unit or other security of an Investment Fund.

**Pass-Through Costs During Construction** has the meaning set out in Schedule 26 [*Construction Period Payments*].

**Pavement Design Report** has the meaning set out in Part 10 [*Roadways*] of Schedule 10 [*Design and Construction Specifications*].

**Paying Party** has the meaning set out in Section 44.4 (*Third Party Recovery*).

**Payment Mechanism** means the payment mechanism set out in Schedule 25 [*Payment Mechanism (OMR)*] and Schedule 26 [*Construction Period Payments*].

**Payment Periods** means the payment periods of one calendar month established by WDBA for each Contract Year.

**Payment Report** means the report to be provided by Project Co pursuant to Section 37.2 (*Invoicing and Payment Reports*) of this Agreement.

**Ped/Bike Processing Building** has the meaning set out in Part 9 [*Buildings - US POE*] of Schedule 10 [*Design and Construction Specifications*].

**Performance and Payment Support** means the guarantees, bonds, letters of credit and other instruments described in Schedule 41 [*Payment and Performance Support*].

**Performance Requirements** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Permanent Element** has the meaning set out in Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*].

**Permanent Repair** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Permanent Road Segments** has the meaning set out in Schedule 4 [*Lands and Site*].

**Permanent Work** means all or any part of the Project Work that, regardless of its Design Life, has a permanent function.

**Permits** means all the certificates, permits, licenses, permissions, decisions, consents, approvals, waivers, orders-in-council, orders, attestations, authorizations and notices of non-objection (i) required under Applicable Law or from a Relevant Authority and (ii) which are necessary for the Project Work, including WDBA Permits and the Environmental Permits.

**Permitted Borrowing** means, without duplication,

- (a) any advance to Project Co under the Lending Agreements, other than one made under a Committed Standby Facility;

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- (b) any additional financing approved by WDBA, acting reasonably, in connection with a WDBA Change, pursuant to Section 2.9 of Schedule 22 [*Change Procedure*];
- (c) any additional financing approved by WDBA in connection with the Contingency Fund pursuant to Schedule 36 [*Community Benefits*]; or
- (d) any advance to Project Co under a Committed Standby Facility.

**Permitted Closures** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Persistent Breach** means a breach or series of breaches by Project Co of any of its obligations under this Agreement, other than a breach for which Availability Failure Deductions or Service Failure Deductions can be made, for which a Monitoring Notice is sent to Project Co by WDBA and:

- (a) which remains unremedied for more than 60 days; or
- (b) reoccurs four times or more in a 12 month period;

in each case, following the date such Monitoring Notice was received by Project Co, and which demonstrates either a persistent inability, or a persistent unwillingness of Project Co, to comply with its obligations under this Agreement.

**Personal Information** means any information about an identifiable individual, in the custody or control of Project Co or any Project Co Person other than personal information of the employees of Project Co or Project Co Persons and other than personal information that is wholly unrelated to the Project Work and not derived directly or indirectly from WDBA or a WDBA Party in respect of the Project.

**Plan** means any plan which Project Co is required to prepare under or pursuant to this Agreement.

**Planned Maintenance** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**POE Buildings** means collectively or individually any of the buildings or Buildings described, contemplated or defined in Part 8 [*Buildings - Canadian POE*] or Part 9 [*Buildings - US POE*] of Schedule 10 [*Design and Construction Specifications*].

**POE Buildings Availability Failure Deduction** has the meaning set out in Schedule 25 [*Payment Mechanism (OMR)*].

**POE Facilities** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**POE Handover** has the meaning set out in Schedule 21 [*Certification Procedure*].

**Police** includes any provincial, state, Canadian federal, United States federal, regional or municipal police force, police department or other law enforcement body having, from time to time, territorial jurisdiction over or in respect of the Site, or a highway controller, as the case may be.

**Preferred Proponent** has the meaning set out in the RFP.

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**Preliminary Aesthetic Design Submittal** has the meaning set out in Part 17 [*Visual Quality*] of Schedule 10 [*Design and Construction Specifications*].

**Primary Inspection Booths** has the meaning set out in Part 8 [*Buildings - Canadian POE*] of Schedule 10 [*Design and Construction Specifications*].

**Prime Contract** means any agreement between Project Co and one or more Prime Contractors, and any Subcontract between a Prime Contractor and one or more Prime Contractors, for or relating to the provision of all or part of the Project Work, each as amended, supplemented or replaced from time to time in accordance with the terms of this Agreement.

**Prime Contractor** means the Construction Contractor, the Designer, the OMR Contractor, the Subcontractor retained to perform the Construction Work in the US, the Subcontractor retained to perform the Interim OM Work and the OMR Work in the US and any other contractor or subcontractor whose appointment could be considered significant due to the fact that: it will either perform (i) at least [REDACTED]% of the value of the Design Work; (ii) [REDACTED]% of the value of the Construction Work; (iii) [REDACTED]% of the value of the Tolling Operations or (iv) [REDACTED]% of the value of the OMR Work, and any other person with whom Project Co contracts directly to perform Project Work during the Interim OM Period or the OMR Period having a value of at least \$[REDACTED].

**Prime Contractor Direct Agreement** means individually or collectively any one of the Designer Direct Agreement, the Construction Contractor Direct Agreement, the OMR Contractor Direct Agreement, any other direct agreement with a Prime Contractor and any other direct agreement with a new or substitute Prime Contractor required by WDBA in accordance with the terms of this Agreement.

**Privacy Laws** means any Applicable Law pertaining to or governing the gathering, use, disclosure, communication, access to or storage of personal information including, as applicable, the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, the *Privacy Act*, RSC 1985, c P-21 and any similar Laws of the United States and Michigan.

**Progress** has the meaning set out in Schedule 21 [*Certification Procedure*].

**Progress Payment** has the meaning set out in Schedule 26 [*Construction Period Payments*].

**Progress Payment Application** has the meaning set out in Schedule 26 [*Construction Period Payments*].

**Prohibited Act** has the meaning set out in Section 57.3 (*Prohibited Acts*) of this Agreement.

**Project** means all of the operations already underway or completed or to commence or to be completed by Project Co, WDBA or any other person for purposes of constructing and developing the Facility, including technical and environmental studies, land acquisitions and land use agreements, traffic flow maintenance, relocation of Utilities and the performance of the Project Work and its financing.

**Project Co** means Bridging North America General Partnership, a general partnership constituted under the laws of Ontario, and any successor or permitted assign.

**Project Co Change** has the meaning set out in Schedule 22 [*Change Procedure*].

**Project Co Commissioning Coordinator** has the meaning set out in Part 25 [*Commissioning*] of Schedule 10 [*Design and Construction Specifications*].

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**Project Co Contamination** means Contamination caused by Project Co's or any Project Co Person's negligence or violation of Environmental Law, Section 16 (*Environmental Matters*) of this Agreement or applicable provisions of the CNTS or the Soil and Water Management Plan, in each case, in connection with the US Site Work and Canadian Site Work, including:

- (a) any Contamination resulting from such negligence or violations regarding Hazardous Materials brought on Site, used or Released in the course of the Project Work by Project Co or any Project Co Person; and
- (b) any Contamination, such as illicit dumping, resulting from Hazardous Material brought or Released on or from the Site by third parties during the Construction Period, including as a result of Project Co failing to adequately secure the Site or allowing any unauthorized access to the Site during the Construction Period, except that in no event shall Project Co Contamination include:
  - (i) Contamination to the extent Exacerbated by WDBA, WDBA Parties, WDBA Persons or any Relevant Authority;
  - (ii) Contamination to the extent Exacerbated by any third party following the transfer of responsibility of the Michigan Interchange or such Project Infrastructure;
  - (iii) Contamination migrating to the Site from another location not under Project Co's control; or
  - (iv) Contamination to the extent arising or Exacerbated as a consequence of a failure of the existing caps or remediation systems to function as intended, save to the extent caused by Project Co's or any Project Co Person's negligence or violation of Environmental Law, Section 16 (*Environmental Matters*) of this Agreement or applicable provisions of the CNTS or the Soil and Water Management Plan, in each case, in connection with the US Site Work or Canadian Site Work.

**Project Co Default Termination Sum** has the meaning set out in Schedule 27 [*Compensation on Termination*].

**Project Co Early Work** has the meaning set out in the Project Co Early Work Agreement.

**Project Co Early Work Agreement** means the agreement between WDBA, [REDACTED] and [REDACTED] dated the 4<sup>th</sup> day of July, 2018 which provides for the performance of the Project Co Early Work.

**Project Co Event of Default** has the meaning set out in Section 46.1 (*Project Co Events of Default*) of this Agreement.

**Project Co Funds** has the meaning set out in Schedule 21 [*Certification Procedure*].

**Project Co FX Hedge Amount** has the meaning given to it in Schedule 27 [*Compensation on Termination*].

**Project Co Insurance Policy** means each insurance policy required to be obtained by Project Co pursuant to Schedule 29 [*Insurance Requirements*].

**Project Co Persons** means Project Co, any Subcontractors and their respective representatives involved in the Project Work and, as applicable in the context, their respective directors, officers and employees, and any other person for whom they are respectively responsible under this

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Agreement or under Applicable Law, but excludes the Independent Certifier and the Handback Independent Certifier, the Envision™ verifier, the Envision™ authenticator and the EMS auditor.

**Project Co Quality Manager** has the meaning set out in Part 1 [*General*] of Schedule 7 [*Quality Management*].

**Project Co Representative** means the person designated as such by Project Co on or prior to the Commencement Date or such substitute as may be appointed pursuant to Section 9.5 (*Replacement of Key Individuals and Project Co Representative by WDBA*) of this Agreement.

**Project Data** means all Project information that is collected, modified, gathered or produced (including all traffic incident details, operator logins and actions, weather information from RWIS, bridge condition information from the SHMS, vehicle classification data from the tolling systems, tolling transaction data, tolling revenue data and client account data) by the Tolling Infrastructure or the Project Infrastructure, and includes the Design Data and Traffic Data.

**Project Documents** means this Agreement, the Prime Contracts, the Partnership Agreements, the Prime Contractor Direct Agreements, any Material Agreements, the Performance and Payment Support, each Subcontract, the Independent Certifier Agreement, the Insurance Trust Agreement, the Custody Agreement, the Lending Agreements, the Lenders' Direct Agreement, the Project Co Early Work Agreement and the documents listed in Section 1.1(l) of Schedule 2 [*Closing Deliveries and Ownership Information*], as they may be amended or replaced from time to time in accordance with the terms of this Agreement.

**Project Infrastructure** means all Infrastructure which Project Co will design, build, alter or improve and on which Project Co will also carry out the Interim OM Work and OMR Work, as provided in this Agreement including all POE Buildings and all Tolling Infrastructure, but excludes the Michigan Interchange, the Michigan Interchange Area and the Michigan Interchange Ramps after the Substantial Completion Date.

**Project IP** has the meaning set out in Section 52.2 (*License to Project IP*).

**Project Management and Execution Plan** has the meaning set out in Part 1 [*General*] of Schedule 6 [*Project Management*].

**Project Manager** means the individual named as such in Schedule 3 [*Key Individuals*] and any replacement of such individual made in accordance with this Agreement from time to time.

**Project Office** has the meaning set out in Part 1 [*General*] of Schedule 6 [*Project Management*].

**Project Requirements** means collectively all Standards, codes, specifications, procedures, criteria, guidelines, drawings, sketches and other requirements applicable to the Project Work, as set out in this Agreement, including all Technical Requirements.

**Project Special Provisions** has the meaning set out in Part 2 [*Review Procedure*] of Schedule 6 [*Project Management*].

**Project Website** has the meaning set out in Schedule 18 [*Communications Protocol*].

**Project Work** means all work and activities performed by Project Co or any Project Co Person in connection with the performance of any obligations of Project Co under this Agreement, and the conduct of all work and operations of Project Co or any Project Co Person in relation to the Project, the Site or the Project Infrastructure including the DB Work, any Utility Work carried out

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by Project Co, the Interim OM Work, the OMR Work, the Handback Work and the Reinstatement Work.

**Projected Equity Internal Rate of Return** means the nominal projected blended rate of return of the Equity Interest in Project Co, held by the Equity Members over the full term of this Agreement, having regard to Distributions projected to be made and taking into account income taxes of Project Co, calculated according to the Financial Model as at the Commencement Date, as [REDACTED].

**Proponent RFP Participation Agreement** has the meaning set out in the RFP.

**Proposal** means the final proposal submitted by the Preferred Proponent pursuant to the RFP Process, together with all amendments and supplements to such proposal made after May 8, 2018 and prior to Financial Close which have been consented to by WDBA.

**Proposal Agreements** means (i) the technical submission agreements of the Preferred Proponent submitted along with its Proposal, (ii) the technical submission agreements of the Preferred Proponent's team members submitted along with its Proposal, (iii) the financial submission agreements of the Preferred Proponent submitted along with its Proposal, (iv) the financial submission agreements of the Preferred Proponent's team members submitted along with its Proposal, and (v) the agreement dated August 13, 2018 between WDBA, the Preferred Proponent, Project Co, [REDACTED], [REDACTED], [REDACTED].

**Proposal Extracts** means [REDACTED].

**Protester** means a person participating in civil disobedience, demonstration or protest action, except when such participation results from a strike or other labour dispute which does not constitute a Relief Event.

**Public Art** has the meaning set out in Part 18 [*Landscape Architecture and Urban Design*] of Schedule 10 [*Design and Construction Specifications*].

**Public Art Program** has the meaning set out in Part 18 [*Landscape Architecture and Urban Design*] of Schedule 10 [*Design and Construction Specifications*].

**Public Art Program Budget** has the meaning set out in Part 18 [*Landscape Architecture and Urban Design*] of Schedule 10 [*Design and Construction Specifications*].

**Publicly Traded Person** means any person whose Ownership Interests are listed and traded on a recognized stock exchange.

**Qualifying Financial Institution Transaction** means:

- (a) the assignment, transfer or syndication by a Senior Lender, of any of its rights, obligations or interests in the Senior Lending Agreements to a Financial Institution;
- (b) the grant by a Senior Lender to a Financial Institution of any participation rights in respect of the Senior Lending Agreements; or
- (c) the grant by a Lender to a Financial Institution of any other form of benefit or interest in either the Lending Agreements or the revenues or assets of Project Co, whether by way of security or otherwise.

**Qualifying Refinancing** means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing.

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**Quality Documentation** means the reports, plans, documentation and information to be submitted by Project Co to WDBA pursuant to Part 1 [*General*] of Schedule 7 [*Quality Management*].

**Quality Management Plan** has the meaning set out in Part 1 [*General*] of Schedule 7 [*Quality Management*].

**Quality Management System** has the meaning set out in Part 1 [*General*] of Schedule 7 [*Quality Management*].

**Ramp A, Ramp B, Ramp C, Ramp D, Ramp E and Ramp F** have the respective meanings set out in Part 3 [*Roadway and Grading*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*].

**Ramp AC, Ramp AC1, Ramp AC2 and Ramp BD** have the respective meanings set out in Part 3 [*Roadway and Grading*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*].

**Receiving Party** has the meaning set out in Section 44.4 (*Third Party Recovery*).

**Record Drawings** has the meaning set out in Part 2 [*Review Procedure*] of Schedule 6 [*Project Management*].

**Record Durability Report** has the meaning set out in Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*].

**Records Management Protocol** has the meaning set out in Section 59.6 (*Management and Retention of Records*) of this Agreement.

**Recoverable Tax** has the meaning set out in Section 38.3(c) (*Changes in Recoverability of Tax Credits*) of this Agreement.

**Rectification** has the meaning set out in Schedule 25 [*Payment Mechanism (OMR)*].

**Rectification Time** has the meaning set out in Schedule 25 [*Payment Mechanism (OMR)*].

**Redundancy Report** has the meaning set out in Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*].

**Reference Date** means March 20, 2018.

**Reference Design** means the concept design drawings of the Facility and its Components provided by WDBA as part of the Background Information.

**Refinancing** means any of the following:

- (a) any amendment, variation, assignment, novation, supplement or replacement of any Lending Agreement, other than the Junior Lending Agreements;
- (b) the exercise of any right, or the grant of any waiver, consent or approval, under any Lending Agreement, other than the Junior Lending Agreements;
- (c) the disposition of any rights in, or the granting of any participation in respect of, the Lending Agreements, other than the Junior Lending Agreements, or the creation or granting of any other form of benefit or interest in the Lending Agreements, other than the

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Junior Lending Agreements, or the contracts, revenues or assets of Project Co, whether by way of security or otherwise; or

- (d) any other arrangement put in place by Project Co or another person which has an effect which is similar to any of the foregoing sub-paragraphs or which has the effect of limiting Project Co's ability to carry out any of the foregoing provisions.

**Refinancing Gain** has the meaning given to it in Schedule 28 [*Refinancing*]

**Regular NCR** is a report describing a Regular Non-Compliance that is issued by Project Co or by WDBA to Project Co, in accordance with Part 2 [*Non-Compliance*] of Schedule 7 [*Quality Management*].

**Regular Non-Compliance** has the meaning set out in Part 2 [*Non-Compliance*] of Schedule 7 [*Quality Management*].

**Rehabilitation Payment** means individually or collectively any one of the Canadian Rehabilitation Payment, Roadway Rehabilitation Payment or US Rehabilitation Payment set out in Schedule 25 [*Payment Mechanism (OMR)*].

**Rehabilitation Work** means all rehabilitation work required during the OMR Period to ensure that the Project Infrastructure is repaired and rehabilitated to meet the requirements set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*] and includes all design, including the preparation of all construction drawings, final plans and survey plans, and all construction required for the carrying out of the rehabilitation, including the performance of all project management, quality management, environmental management, communications management and other management services and activities required for the carrying out of the foregoing, the supply of all workers and the supply of all other materials, tools, implements, equipment, machinery, vehicles, buildings, structures and other property necessary for or used or to be used in the performance of the Project Work and all other work, services and activities to be provided by Project Co in respect of the foregoing, all as set out and described in the OMR Specifications and any other applicable Project Requirements but does not include Handback Work which is specifically covered in Schedule 14 [*Handback*].

**Reimbursement Event** has the meaning set out in Section 32.6(g) (*Remedial Rights*) of this Agreement.

**Reinstatement Funds Deficiency** has the meaning set out in Section 31.5 (*Termination for Reinstatement Funds Deficiency*) of this Agreement.

**Reinstatement Plan** has the meaning set out in Section 31.2(a) (*Reinstatement Plan*) of this Agreement.

**Reinstatement Work** has the meaning set out in Section 31.1 (*Reinstatement Work on the Occurrence of Material Damage*) of this Agreement.

**Related Owner** means any person who has an Ownership Interest in an Equity Member.

**Release** means any spill, leak, deposit, pumping, pouring, emission, emptying, discharging, injecting, escape, leaching, migration, disposal, dumping or other form of release of a Hazardous Material, or permitting of any of the foregoing.

**Relevant Authority** means any person or entity, including any Governmental Authority and any Utility Supplier exercising any control, jurisdiction or power over the carrying out of all or any part

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of the Project Work or over the Site or any part thereof under any Applicable Law or under any Material Agreement.

**Relief Event** has the meaning set out in Section 43.5 (*Relief Event*) of this Agreement.

**Remedial Action** means removal, response, and remedy under 42 U.S.C. § 9601, (without regard to references therein to “hazardous substances”) and includes the monitoring, evaluation, investigation, cleanup, removal, containment, isolation, destruction, mitigation, or treatment of a Hazardous Material that was Released or is threatened to be Released into the environment.

**Remnant Properties** has the meaning set out in Schedule 4 [*Lands and Site*].

**Replaceable Element** has the meaning set out in Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*].

**Representatives** means any one or more of the Project Co Representative or the WDBA Representative.

**Request for Proposals** or **RFP** means the request for proposals in respect of the Project, issued by WDBA on November 10, 2016, together with all addenda, amendments and supplements thereto and any replacements thereof.

**Request for Qualifications** or **RFQ** means the request for qualifications in respect of the Project issued by WDBA on July 20, 2015, as amended and restated on October 5, 2015.

**Required Records** has the meaning set out in Section 59.4 (*Records*) of this Agreement.

**Rescue Refinancing** means any Refinancing which takes place due to the failure or prospective failure of Project Co to comply with any material financial obligation under the Senior Lending Agreements, or any of them, and which does not increase any liability or obligation of WDBA, whether actual or potential.

**Residual Life** has the meaning set out in Schedule 14 [*Handback*].

**Residual Life Methodology** or **RLM** has the meaning set out in Schedule 14 [*Handback*].

**Restricted Person** means any person who, or any member of a group of persons acting together, any one of which:

- (a) by its or their involvement in the Project, would run contrary to any economic or political sanctions imposed by Canada or the US;
- (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
- (c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of its board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence or for any offence under any provincial statute or state statute, other than offences under the *Highway Traffic Act* (Ontario) or similar legislation in any other jurisdiction, or under any municipal laws, less than five years prior to the date at which the determination of whether such individual falls within the ambit of this definition;

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- (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
- (e) is subject to a material claim of WDBA, a WDBA Party or any Governmental Authority under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether such person falls within the ambit of this definition is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in WDBA's view, in either case, be reasonably likely materially to affect the ability of Project Co to perform its obligations under this Agreement; or
- (f) has a material interest in the production of tobacco products.

**Resolvable Deficiencies** has the meaning set out in Schedule 6 [*Technical Submission*] of the RFP.

**Revenue Shortfall** has the meaning set out in Schedule 13 [*Tolling Operations*].

**Review Procedure** means the procedure set out in Part 2 [*Review Procedure*] of Schedule 6 [*Project Management*] whereby certain documents or certain questions must be submitted to WDBA for its review or consent.

**Review Submittal** means any and all items, documents and matters required to be submitted to, reviewed or otherwise processed by WDBA in accordance with the Review Procedure, including any and all subsequent revisions, amendments and changes thereto.

**RFC** means released for construction.

**RFC Documents** has the meaning set out in Part 2 [*Review Procedure*] of Schedule 6 [*Project Management*].

**RFP Process** means the issuance of the RFP and the selection of a Preferred Proponent pursuant to and in accordance with the terms of the RFP and the Crossing Agreement.

**Roadway Classification** has the meaning set out in Part 19 [*Traffic Management - Deductions*] of Schedule 10 [*Design and Construction Specifications*].

**Roadway Preliminary Plans** has the meaning set out in Part 2 [*Review Procedure*] of Schedule 6 [*Project Management*].

**Roadway System** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Room Data Sheets** means the room data sheets provided to Project Co under this Project Agreement including those Room Data Sheets for the Canadian POE set out in Part 8 [*Buildings - Canadian POE*] of Schedule 10 [*Design and Construction Specifications*], and for the US POE, set out in Part 9 [*Buildings - US POE*] of Schedule 10 [*Design and Construction Specifications*].

**Routine Maintenance** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Safety Management Plan** has the meaning set out in Part 1 [*General*] of Schedule 6 [*Project Management*].

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**Sandwich Street Handover** has the meaning set out in Schedule 21 [*Certification Procedure*].

**Schedule of Values** has the meaning set out in Schedule 21 [*Certification Procedure*].

**Scheduled Bridge Handover Date** means November 28, 2023, as such date may be adjusted pursuant to this Agreement.

**Scheduled Canadian POE Agency Buildings Handover Date** means November 6, 2023, as such date may be adjusted pursuant to this Agreement.

**Scheduled Michigan Interchange Handover Date** means November 1, 2023, as such date may be adjusted pursuant to this Agreement.

**Scheduled POE Handover Date** means either of the Scheduled Canadian POE Agency Buildings Handover Date or the Scheduled US POE Agency Buildings Handover Date, as applicable.

**Scheduled Substantial Completion Date** means November 30, 2024, as such date may be adjusted pursuant to this Agreement.

**Scheduled US POE Agency Buildings Handover Date** means May 31, 2024, as such date may be adjusted pursuant to this Agreement.

**Security Monitoring System** has the meaning set out in Part 5 [*Security*] of Schedule 10 [*Design and Construction Specifications*].

**Security Requirements** has the meaning set out in Section 56.3(a).

**Security System** has the meaning set out in Part 8 [*Buildings - Canadian POE*] of Schedule 10 [*Design and Construction Specifications*].

**Security System OMR Manual** has the meaning set out in Part 5 [*Security*] of Schedule 10 [*Design and Construction Specifications*].

**Senior Debt** means:

- (a) the principal of all amounts advanced from time to time by the Senior Lenders under the Senior Lending Agreements, to the extent such principal amounts remain outstanding and unpaid to the Senior Lenders; and
- (b) accrued interest and Default Interest and other amounts owing from time to time to the Senior Lenders under the Senior Lending Agreements in respect of the principal amounts referred to in clause (a) of this definition.

**Senior Debt Amount** means, at any time, all Senior Debt owing and outstanding from Project Co to the Senior Lenders under the Senior Lending Agreements in respect of Permitted Borrowing, but excluding the Senior Debt Makewhole.

**Senior Debt Makewhole** means, at any time, any amount (other than the Senior Debt Amount) then due and payable to the Senior Lenders under the Senior Lending Agreements, including any make whole payments, breakage fees (less any breakage benefits), including any breakage fees or benefits associated with currency hedging products, and all other fees, costs and expenses reasonably and properly incurred which materially reflect similar payments required to be made in financings of this size and nature, and which Project Co is obligated to pay to the Senior Lenders

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pursuant to the Senior Lending Agreements including Hedge Termination Amounts relating to Senior Lending Agreements.

**Senior Debt Service Amount** means, for any period, (a) the principal and interest payable by Project Co to the Senior Lenders in the normal course under the Senior Lending Agreements, (b) fees and costs incurred pursuant to currency hedging agreements and (c) commitment fees that become payable to the Senior Lenders during such period.

**Senior Lenders** means all or any of the persons who provide financing to Project Co in respect of the Project Work under the Senior Lending Agreements, which person or persons may not be an Affiliate of Project Co or any Equity Member of Project Co.

**Senior Lending Agreements** means the agreements and instruments described in Section 1.1 of Schedule 2 [*Closing Deliveries and Ownership Information*] (including any initial Hedging Agreements relating to Senior Debt and the Foreign Exchange Contract), as supplemented, amended or replaced from time to time in accordance with this Agreement.

**Service Failure** has the meaning set out in Schedule 25 [*Payment Mechanism (OMR)*].

**Service Failure Deduction** has the meaning set out in Schedule 25 [*Payment Mechanism (OMR)*].

**Service Life** means the period of time that an element of Project Infrastructure is expected to be in operation under this Agreement.

**Shared Responsibility Contamination** means Contaminated Soil on US Lands that is outside the Specified US Parcels and is not Project Co Contamination.

**Site** has the meaning set out in Schedule 4 [*Lands and Site*].

**Site Conditions** means the conditions of the Site, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.

**Site Security Plan** has the meaning set out in Part 5 [*Security*] of Schedule 10 [*Design and Construction Specifications*].

**Slip Ramps** has the meaning set out in Schedule 4 [*Lands and Site*].

**Snow and Ice Control Plan** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Software Code** means software code, in any form, including source code and executable or object code, in respect of any database or software required to generate, maintain or reproduce the applicable software, including any and all instructions, macroinstructions, manuals, settings or any other information allowing a user to adequately operate and maintain such software.

**Soil and Water Management Plan** has the meaning set out in Schedule 16 [*Environmental*].

**Specified US Parcels** means [REDACTED].

**Stage 1 Design Plan** has the meaning set out in Part 2 [*Review Procedure*] of Schedule 6 [*Project Management*].

**Stage 2 Design Plan** has the meaning set out in Part 2 [*Review Procedure*] of Schedule 6 [*Project Management*].

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**Standards** means, at the applicable time those standards, practices, methods and procedures applicable to Good Industry Practice and includes standards developed and published by WDBA and by recognized associations, societies, institutes and other persons for design, construction, testing, inspection, operation, maintenance and rehabilitation.

**Stewardship and Oversight Agreement** means the Stewardship and Oversight Agreement dated May 20, 2015 between FHWA and MDOT, as amended from time to time, including pursuant to the Supplement to Stewardship and Oversight Agreement Applicable to the New International Trade Crossing dated October 5, 2014.

**Structures** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Subcomponent** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Subcontract** means any contract entered into by a Subcontractor in relation to the carrying out of any Project Work and includes a Prime Contract.

**Subcontractor** means any subcontractor of Project Co engaged by or on behalf of Project Co to perform any Project Work including Prime Contractors or any subcontractor of any tier, but excludes the Independent Certifier and the Handback Independent Certifier.

**Substantial Completion** means the point at which the Facility has been completed in accordance with this Agreement and all requirements for Substantial Completion described in the Technical Requirements, and in full compliance with all Applicable Law, Permits and other relevant Project Requirements, other than Minor Deficiencies, have been satisfied in respect of the Facility as a whole and the Facility may be operated for the safe, uninterrupted and unobstructed use of the public.

**Substantial Completion Certificate** means the certificate with respect to Substantial Completion to be issued by the Independent Certifier pursuant to Schedule 21 [*Certification*].

**Substantial Completion Date** means the date on which Substantial Completion is stated as having been achieved in the Substantial Completion Certificate issued by the Independent Certifier.

**Substantial Completion Payment** has the meaning set out in Schedule 26 [*Construction Period Payments*].

**Substitute Project Co** has the meaning set out in the Lenders' Direct Agreement.

**Subsurface Investigation Plan** has the meaning set out in Part 4 [*Geotechnical*] of Schedule 10 [*Design and Construction Specifications*].

**Supervening Event** means a Compensation Event, a Relief Event or a Force Majeure Event.

**Supervening Event Notice** has the meaning set out in Section 43.2(a) (*Supervening Events Procedure*) of this Agreement.

**Sustainability Management Policy** or **SMP** has the meaning set out in Schedule 37 [*Sustainability*].

**Sustainability Team** has the meaning set out in Schedule 37 [*Sustainability*].

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**Systems Acceptance Deduction** or **SAD** has the meaning set out in Schedule 25 [*Payment Mechanism (OMR)*].

**System Operation Manual** has the meaning set out in Part 25 [*Commissioning*] of Schedule 10 [*Design and Construction Specifications*].

**Tax** or **Taxes** means any and all taxes, levies, imposts, tariffs, duties, fees, withholdings, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any Governmental Authority or paid to any Governmental Authority pursuant to any tax sharing agreement, together with interest thereon and penalties with respect thereto, and includes all Applicable Canadian Taxes and Applicable US Taxes except where stated to the contrary.

**Team Member** means any person who signed a Team Member RFP Participation Agreement or a Proposal Agreement and who is listed as a Subcontractor on the list provided by Project Co to WDBA on Financial Close pursuant to Section 3.4(b) (*Amendments/Termination of Project Documents*).

**Team Member RFP Participation Agreement** has the meaning set out in the RFP.

**Technical Requirements** means collectively the requirements provided in Schedule 6 [*Project Management*], Schedule 7 [*Quality Management*], Schedule 10 [*Design and Construction Specifications*], Schedule 11 [*Operations, Maintenance and Rehabilitation*], Schedule 14 [*Handback*] Schedule 15 [*Michigan Interchange Design and Construction Specifications*], Schedule 16 [*Environmental*], Schedule 17 [*Utilities Requirements*] and Schedule 21 [*Certification Procedure*].

**Temporary Absence** has the meaning set out in Section 9 (*Representatives and Key Individuals*).

**Temporary Earth Retaining System Design and Groundwater Control Plan** has the meaning set out in Part 4 [*Geotechnical*] of Schedule 10 [*Design and Construction Specifications*].

**Temporary Road Segments** has the meaning set out in Schedule 4 [*Lands and Site*].

**Temporary Work** means all or part of the Project Work of a temporary nature that is necessary for the Permanent Work or for other purposes.

**Term** means the period commencing on the Commencement Date and ending on the Termination Date.

**Termination Date** means the earlier of the Expiry Date and such earlier date on which this Agreement is terminated in accordance with its terms and conditions.

**Thermal Control Plan** has the meaning set out in Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*].

**Third Parties** has the meaning set out in Section 1.5 (*Third Party Relief*).

**Threshold Amount** has the meaning set out in Schedule 26 [*Construction Period Payments*].

**Threshold Application** has the meaning set out in Schedule 21 [*Certification Procedure*].

**Threshold Certification** has the meaning set out in Schedule 21 [*Certification Procedure*].

**Threshold Date** has the meaning set out in Schedule 26 [*Construction Period Payments*].

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**Threshold Equity Sale Amount** means the amount which, if paid in consideration of the percentage of Ownership Interest (as at Financial Close) sold in a particular disposition of an Ownership Interest, would result in an Implied Equity Value that, if received in full on the day of the disposition of such Ownership Interest, taken together with all Distributions paid in respect of the Ownership Interest, and taking account of the actual timing of payment of all such amounts, would result in an Equity Sale IRR equal to the Threshold Equity Sale IRR.

**Threshold Equity Sale IRR** means [REDACTED].

**Threshold Requirement** has the meaning set out in Schedule 21 [*Certification Procedure*].

**Title Encumbrance** means an Encumbrance described in clause (c) of the definition of Encumbrance which affects all or any portion of the Lands, including those listed in Schedule 35 [*Land Restrictions*].

**Toll Booths** has the meaning set out in Part 8 [*Buildings - Canadian POE*] of Schedule 10 [*Design and Construction Specifications*].

**Toll Rate Structure** has the meaning set out in Part 22 [*Tolling Infrastructure*] of Schedule 10 [*Design and Construction Specifications*].

**Toll Services Operations Centre** has the meaning set out in Part 8 [*Buildings - Canadian POE*] of Schedule 10 [*Design and Construction Specifications*].

**Tolling Business Rules** has the meaning set out in Part 22 [*Tolling Infrastructure*] of Schedule 10 [*Design and Construction Specifications*].

**Tolling Committee** has the meaning set out in Section 10.1(a)(iii) (*Establishment and Members*) of this Agreement.

**Tolling Contractor** means the tolling contractor to be retained by the OMR Contractor or any assignee or replacement as may be appointed in accordance with the provisions of this Agreement.

**Tolling Infrastructure** means the tolling infrastructure located on the Canadian side of the Bridge as part of the Canadian POE and includes all infrastructure with respect to electronic toll collection system including, automatic vehicle identification systems, automatic vehicle classification systems, enforcement recognition systems, traffic auditing systems, customer service system, together with all associated hardware, software and supporting communications required or necessary to perform the Tolling Operations, including the infrastructure described in Part 22 [*Tolling Infrastructure*] of Schedule 10 [*Design and Construction Specifications*].

**Tolling Operations** means the provision of services and the conduct of activities provided in connection with or otherwise associated with the establishment, collection and enforcement of payment of tolls or similar fees or charges with respect to vehicle traffic on the Bridge, as more fully described in Schedule 13 [*Tolling Operations*].

**Tolling Revenues** means collectively the tolls, administrative fees, recovery costs and transponder rental fees or sales proceeds collected by Project Co on behalf of WDBA as part of the Tolling Operations.

**Tolling System IP** means the Intellectual Property (including all Project Data) and all Intellectual Property Rights created, brought into existence, acquired, licensed or used by Project Co or by any Project Co Person, directly or indirectly, for the purpose of the Tolling Infrastructure.

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**Traffic Data** means all the information relating to traffic and Tolling Revenues in the Mandatory Reports submitted under Schedule 8 [*Records and Mandatory Reports*] or otherwise obtained by or provided to WDBA.

**Traffic Management Activities** means the provision of services and all activities performed to monitor, manage and respond to traffic and incidents on the Site.

**Traffic Management Centre** means the facilities provided by Project Co to perform the Traffic Management Activities.

**Traffic Management Plan** has the meaning set out in Part 15 [*Traffic Management - Construction*] of Schedule 10 [*Design and Construction Specifications*].

**Traffic Management Sub-Committee** means the committee described in Schedule 12 [*Operational Traffic Management Procedure*].

**Traffic Management System** means all Infrastructure with respect to intelligent transportation systems including, traffic detection and surveillance, independent vehicle detection, device control, information dissemination, traffic data collection, security systems, weather systems, communication, together with all associated hardware, software and supporting communications required or necessary to perform the Traffic Management Activities.

**Transponder** has the meaning set out in Schedule 13 [*Tolling Operations*].

**Travelled Way** has the meaning set out in Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*].

**Tree Inventory, Replacement and Establishment Plan** has the meaning set out in Part 6 [*Landscaping*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*].

**Trespasser** means a person not entitled to be on or around the Site or any portion of it.

**Uninsurable** means, in relation to a risk, one of the following situations:

- (a) insurance is not available in the Canadian, the United States or international insurance markets from any Eligible Insurer; or
- (b) the insurance premium payable for insuring that risk with an Eligible Insurer, in the Canadian, United States or international insurance markets from time to time are such that the risk is generally not being insured against in such markets.

**Uninsurable Risk** means a risk that is not insured.

**Unintended Consequences Fund Fees** has the meaning set out in Schedule 26 [*Construction Period Payments*].

**Unknown Contamination** means Contamination which is (i) not Project Co Contamination, (ii) Contamination affecting the Canadian Lands which is not Known Canadian Contamination, (iii) Contamination affecting the Specified US Parcels which is not Known Specified Parcels Contamination, or (iv) Contamination, other than Contaminated Soil, affecting US Lands, other than the Specified US Parcels, which is not Known Shared Responsibility Contamination.

**United States** or **US** means the federal government of the United States of America and, where the context so requires, the country of the United States of America.

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**US Border Services Plaza Obligations** has the meaning set out in Schedule 19 [*Material Agreements*].

**US Border Services Plaza** means the buildings and structures and related lands and premises located within the US POE which will be subleased by WDBA to the US pursuant to the GSA Sublease.

**US Bridge Plaza** means the premises located within the US POE other than the US Border Services Plaza.

**US Contamination** means any Contamination on the US Lands other than the US Lands identified in Section [REDACTED] which was not actually known to Project Co on the Reference Date.

**US Contamination and Canadian Contamination** means any Contamination on the US or Canadian Lands as applicable.

**US Contamination Work and Canadian Contamination Work** means, as applicable:

- (a) Remedial Action, managing, handling, and disposing of any soils, water, or other media containing Contamination which are excavated, produced or released as a direct consequence of undertaking US Site Work and Canadian Site Work;
- (b) work that is necessary to prevent US Site Work and Canadian Site Work from Exacerbating any existing Contamination; and
- (c) managing, handling and disposing of Project Co Contamination.

**US Escalation Factor** or **UESC** has the meaning set out in Schedule 25 [*Payment Mechanism (OMR)*].

**US Executive Order** means an order of the President of the United States directed towards officers and agencies of the US federal government.

**US Federal Plaza Facilities** has the meaning set out in the Crossing Agreement.

**US Infrastructure** has the meaning set out in Section 12(a) (*Title and Risk of Loss*).

**US Lands** means the Lands located in the US.

**US Parcel** means any parcel of the US Lands (other than Michigan Local Roads).

**US Parcel Project Ready** means [REDACTED].

**US POE** means the lands and premises as outlined in Appendix 4-4 of Schedule 4 [*Lands and Site*], including the buildings and Infrastructure to be constructed thereon pursuant to this Agreement.

**US POE Agency Buildings** means the buildings and structures and related lands and premises located within the US POE requiring security in accordance with US Governmental Authority requirements, and which will be subleased by WDBA to the US pursuant to the GSA Sublease.

**US POE Agency Buildings Handover** has the meaning set out in Schedule 21 [*Certification Procedure*].

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**US POE Agency Buildings Handover Date** means the date when the US POE Agency Buildings Handover occurs.

**US POE Buildings** means all buildings to be located in the US POE including the US POE Agency Buildings.

**US POE Capital Payment** has the meaning set out in Schedule 26 [*Construction Period Payments*].

**US POE Handover** has the meaning set out in Schedule 21 [*Certification Procedure*].

**US POE Ramps** has the meaning set out in Schedule 4 [*Lands and Site*].

**US POE - Transportation Management Plan** has the meaning set out in Part 15 [*Traffic Management - Construction*] of Schedule 10 [*Design and Construction Specifications*].

**US Site Work and Canadian Site Work** means, as applicable, securing the Site and the construction, reconstruction, deconstruction, demolition, widening, completion, testing, and commissioning activities required on the Site to construct and complete the Project Infrastructure or deconstruct or demolish, as the case may be, any Existing Infrastructure, in accordance with their detailed design in order to achieve Handovers and Substantial Completion or, as the case may be, to perform Reinstatement Work, Rehabilitation Work or Handback Work.

**US Track** has the meaning set out in Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*].

**US Utilities Baseline Schedule** has the meaning set out in Schedule 17 [*Utilities Requirements*].

**US Utilities Location Report** has the meaning set out in Section [REDACTED].

**Users** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Useful Life** has the meaning set out in Schedule 14 [*Handback*].

**Utilities** means the lines, facilities or networks that transport or distribute water, sewage, electricity, gas, signals, communications or other similar commodity or services that supply a private entity or the public and that are not exclusively or primarily servicing the Project Infrastructure, either directly or indirectly including, the underground, surface or airborne facilities, as well as facilities that share the use of poles, conduits or pipes and the materials, apparatus and associated infrastructure, and **Utility** means any one of them.

**Utility Agreements** has the meaning set out in Schedule 17 [*Utilities Requirements*].

**Utility Status Matrix** has the meaning set out in Schedule 17 [*Utilities Requirements*].

**Utility Supplier** has the meaning set out in Schedule 17 [*Utilities Requirements*].

**Utility Work** has the meaning set out in Schedule 17 [*Utilities Requirements*].

**Video Audit Application** has the meaning set out in Part 22 [*Tolling Infrastructure*] of Schedule 10 [*Design and Construction Specifications*].

**Visual Quality Management Plan** has the meaning set out in Part 17 [*Visual Quality*] of Schedule 10 [*Design and Construction Specifications*].

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**Voting Power** with respect to any Equity Interest in a person at any time, means the number of votes attached to such Equity Interest which may be voted to elect the directors, trustees or manager of such person and in respect of Equity Interests which are Convertible Securities, the number of votes attached thereto shall be calculated as the maximum number of votes which could be attached thereto pursuant to the terms of such Convertible Securities.

**Warehouse Examination Area** has the meaning set out in Part 8 [*Buildings - Canadian POE*] of Schedule 10 [*Design and Construction Specifications*].

**Warning Notice** has the meaning given to it in Section 32.4 of this Agreement.

**Waste** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**WDBA** means the Windsor-Detroit Bridge Authority, a corporation incorporated pursuant to the *International Bridges and Tunnels Act (Canada)*.

**WDBA Change** has the meaning set out in Schedule 22 [*Change Procedure*].

**WDBA Change Confirmation** has the meaning set out in Schedule 22 [*Change Procedure*].

**WDBA Default Termination Sum** has the meaning set out in Schedule 27 [*Compensation on Termination*].

**WDBA Early Works** has the meaning set out in Schedule 20 [*WDBA Early Works*].

**WDBA Early Works Contract** has the meaning set out in Schedule 20 [*WDBA Early Works*].

**WDBA Event of Default** has the meaning set out in Section 47.1 (*WDBA Events of Default*) of this Agreement.

**WDBA Party** means Canada and any Michigan Party.

**WDBA Permits** means (i) all Permits issued to Michigan, MDOT or WDBA for the Project before the Commencement Date, the Environmental Assessments, the Presidential Permit issued to Michigan by the Department of State in April 2013, the Joint Permit issued to Michigan by the Michigan Department of Environmental Quality/US Army Corps of Engineers and the Bridge Permit issued to Michigan by the U.S. Coast Guard in June 2014, any other Permits identified as being WDBA's responsibility in Schedule 16 [*Environmental*], (ii) all Permits that may not be obtained solely by Project Co and that must be obtained (individually or jointly with Project Co) by Michigan, WDBA, or another Governmental Authority and (iii) any amendments, extensions or renewals of any such Permits.

**WDBA Person** means any of WDBA's agents, contractors and subcontractors of any tier engaged with respect to the Project and acting in the course of his or her office of appointment or employment and its or their directors, officers and employees, together with any person visiting the Site at the invitation, whether express or implied, of WDBA, but excluding Project Co and any Project Co Person.

**WDBA Representative** means the person appointed as such by WDBA on or prior to the Commencement Date or such substitute as may be appointed by WDBA pursuant to Section 9.5 (*Replacement of Key Individuals and Project Co Representative by WDBA*).

**Wildlife Species** has the meaning set out in Section 43.3 (*Compensation Event*).

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**Work Area** means any portion of the Site that contains the work activity and is closed to the public and set aside exclusively for workers, equipment, and construction materials.

**Work Breakdown Structure** or **WBS** has the meaning set out in Schedule 9 [*Project Schedule*].

**Workforce and Development Participation Strategy** has the meaning set out in Schedule 36 [*Community Benefits*].

**Working Drawings** has the meaning set out in Part 2 [*Review Procedure*] of Schedule 6 [*Project Management*].

**Works Change in Law** means a Change in Law, other than a Discriminatory Change in Law, occurring after the Reference Date and causing Project Co to perform any alteration, addition, demolition, extension of or a variation in or to the Project Work or the quality or function of the Project Infrastructure which (i) would not otherwise have been required, were it not for such change, and (ii) was not reasonably foreseeable at the Reference Date by an experienced contractor carrying out activities or performing design or other operations similar to those to be carried out or performed by Project Co in relation to the Project Work.

**Zug Island Slip Events** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

## 2. ACRONYMS

The following Acronyms are used in this Agreement. These acronyms will include any successor to any of the persons listed in this Section 2.

AAMA	American Architectural Manufacturers Association
AASHTO	American Association of State Highway Transportation Officials
ABOA SF	ANSI/BOMA Office Area
ACI	American Concrete Institute
ADA	<i>Americans with Disabilities Act</i> of 1990
ANSI	American National Standards Institute
AODA	<i>Accessibility for Ontarians with Disabilities Act</i>
APC	Automatic Passport Control
AREMA	American Railway Engineering Maintenance-of-Way Association
ASBI	American Segmental Bridge Institute
ASTM	American Society for Testing Materials
ASHRAE	American Society of Heating, Refrigerating and Air Conditioning Engineers Inc.
ATSSA	American Traffic Safety Services Association
BAS	Building Automation System
BDM	MDOT Bridge Design Manual
BMP	Best Management Practice

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BSTA	<i>Bridge to Strengthen Trade Act</i>
CAD	Computer Aided Design
CBP	US Customs and Border Protection
CBSA	Canada Border Services Agency
CCTV	Closed Circuit Television
CEAR	Detroit River International Crossing Canadian Environmental Assessment Report
CFIA	Canadian Food Inspection Agency
CFR	Code of Federal Regulations
CGGR	Canadian Guide for Greener Roads
CISD	Canadian Industrial Security Directorate of PSPC
CNSC	Canadian Nuclear Safety Commission
CPTED	Crime Prevention through Environmental Design
CSA	Canadian Standards Association
CSW / SESC	Certified Stormwater Operator & Soil Erosion & Sediment Control Individual
DB	Design Build
DBE	Disadvantaged Business Enterprise
DTE	DTE Energy Co.
DWSD	Detroit Water and Sewer Department
EEPRP	environmental emergency preparedness and response plan
EIS	Environmental Impact Statement
EMS	Environmental Management System
EORC	Environmental Owners Representative Consultant
EPA	United States Environmental Protection Agency
EPCS	Electronic Project Collaboration System
ESA	<i>Ontario Endangered Species Act (2007)</i>
FAA	Federal Aviation Administration
FCD	Final Concept Design
FDA	United States Food and Drug Administration
FEIS	Final Environmental Impact Statement
FEMA	Federal Emergency Management Administration
FSC	Facility Security Clearance
FS-LSI	Fixed site large scale imaging
FHWA	US Federal Highway Administration
FWS	Fish and Wildlife Service

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GBCI	Green Buildings Certification Institute
GHIB	Gordie Howe International Bridge
GLWA	Great Lakes Water Authority
GSA	United States General Services Administration
HVAC	Heating, Ventilating and Air Conditioning
IBC	International Building Code
IBTA	<i>International Bridges and Tunnels Act</i>
IEC	International Electrotechnical Commission
IES	Illuminating Engineering Society
IESNA	Illuminating Engineering Society of North America
IRI	International Roughness Index
ISI	Institute of Sustainable Infrastructure
ITC	ITC Holdings Corp.
ITS	Intelligent Transportation System
KPI	Key Performance Indicator
LCS	Lane Control Sign
LED	Light Emitting Diode
LEED	Leadership in Energy and Environmental Design
LPOE	Land Port of Entry
LPOEDS	Land Port of Entry Design Standard
LRFD	Load and Resistance Factor Design
MDEQ	Michigan Department of Environmental Quality
MDNR	Michigan Department of Natural Resources
MDOT	Michigan Department of Transportation
MOECC	Ministry of Environment and Climate Change (Ontario)
MMS	Maintenance Management System
MNRF	Ministry of Natural Resources (Ontario)
MOMS	Maintenance Online Management System
MMUTCD	Michigan Manual on Uniform Traffic Control Devices
MPR	LEED minimum program requirements
MTBI	Mean Time Between Interruptions
MTO	Ministry of Transportation (Ontario)
MTOD	Ministry of Transportation (Ontario) Drawings
MTRIC	Mean Time To Repair Inoperable Condition

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MTTRLF	Mean Time To Repair Limited Functionality
NBIS	National Bridge Inspection Standards
NCR	Non-Compliance Report
NEC	National Electrical Code
NECB	National Energy Code for Buildings
NEMA	National Electrical Manufacturers Association
NEMAK	Nemak of Canada Corporation
NEPA	<i>National Environmental Policy Act</i>
NEPCOAT	North East Protective Coating Committee
NFPA	National Fire Protection Association
NHPA	National Historic Preservation Act
NHS	National Highway System
NII	Non-Intrusive Inspection
NIMS	National Incident Management System
NOC	Notice of Coverage
NPDES	National Pollutant Discharge Elimination System
NPV	Net Present Value
NRCC	National Research Council of Canada
NRHP	National Register of Historic Places
NSF	Net Square Feet
OM	Operations and Maintenance
OMR	Operation, Maintenance, and Rehabilitation
OPS	Ontario Provincial Standards for Roads and Public Works
OPSD	Ontario Provincial Standards Drawing
OPSS	Ontario Provincial Standards Specification
PDF	Portable Document Format
PAR	Perimeter Access Road
PCI DSS	Payment Card Industry Data Security Standard
PDF	Portable Document Format
PG&D	Printing, Graphics and Distribution Branch
PIL	Primary Inspection Lane
PIPEDA	<i>Personal Information Protection and Electronic Documents Act (Canada)</i>
PLA	Detroit Public Lighting Authority
PLD	Detroit Public Lighting Department

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POE	Port of Entry
POR	Program of Requirements
POS	Project Output Specifications
POV	privately owned vehicle
PSPC	Public Services and Procurement Canada
QA/QC	Quality Assurance and Quality Control
QMS	Quality Management System
RFC	Released-for-Construction
RHA	<i>Rivers and Harbors Act of 1899</i>
RLM	Residual Life Methodology
ROD	Record of Decision
ROW	Right-of-Way
RWIS	road weather information systems
SAR	Species at Risk
SAT	Site Acceptance Testing
SCBG	Sustainability Considerations for Bridges Guide
SEMTOC	Southeast Michigan Transportation Operations Center
SHMS	Structural Health Monitoring System
SHPO	State Historic Preservation Office
SMP	Sustainability Management Policy
STC	Sound transmission class
TAC	Transportation Association of Canada
TAP	Transportation Alternatives Program
TTEC	Trusted Traveler Enrollment Center
UL	Underwriters Laboratory
UPS	Uninterruptable power supply
USACE	US Army Core of Engineers
USCPI	US CPI Urban Index
USDA	United States Department of Agriculture
USG	Federal Government of the United States

### 3. INTERPRETATION

This Agreement shall be interpreted in accordance with Sections 1 and 2 and the following provisions of this Schedule 1 [*Definitions and Interpretation*], save to the extent that the context or the express provisions of this Agreement otherwise require.

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

- (a) The table of contents, headings and sub headings, marginal notes and references to them in this Agreement are for convenience of reference only, and shall not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement.
- (b) The Schedules to this Agreement (including any Annexes or Appendices thereto) are an integral part of this Agreement, and a reference to this Agreement includes reference to the Schedules. A reference to any Schedule includes a reference to any Annex or Appendix to such Schedule.
- (c) Save in the event of an express reference to another document, all references to Sections and Schedules are references to Sections of and Schedules to this Agreement and all references to Annexes or Appendices are references to Annexes and Appendices found in the Schedules to this Agreement.
- (d) All defined terms used in any Schedule have the meanings given to such terms in this Schedule 1 [*Definitions and Interpretation*], unless stated otherwise in a particular Schedule, in which case such term shall have the meaning set out in that Schedule solely for the purposes of that Schedule.
- (e) Unless the context indicates otherwise, the words “**Agreement**”, “**this Agreement**”, “**the Agreement**”, “**the Project Agreement**”, “**herein**”, “**hereto**”, “**hereof**” and “**hereunder**” and other words of like import refer to this Agreement as a whole and not to the particular Section, Schedule, Part, subsection, paragraph, clause, Annex or Appendix in which such word may be used.
- (f) If there is a reference to a section of “**this Agreement**” in a Schedule, such section reference will be to the section in the main body of this Project Agreement, except where the Schedule is the form of an independent agreement such as the Lenders’ Direct Agreement.
- (g) Unless otherwise required by the context, references to “**parties**” mean the parties to this Agreement and references to a party means any one of the parties to this Agreement.
- (h) All monetary amounts are expressed in Canadian Dollars unless the word dollar or the symbol \$ is accompanied by the letters “**US**”.
- (i) Subject to any specific provision of this Agreement expressly concerning an agreement, a document, a standard or a principle, all references to any agreement, document, standard or principle in this Agreement, shall mean that agreement, document, standard or principle as amended or supplemented by any addition or supplement, or the agreement, document, standard or principle that replaces it.
- (j) Any stipulation that any obligation be performed or action be taken “**in accordance**” with or “**in compliance**” with or “**in conformity**” with any Standard, code or specification or other requirement means that such obligation or action is to exceed or at least equal that Standard, code, specification or other requirement.
- (k) A reference to any statute or statutory provision, including any subordinate legislation, includes any statute or statutory provision which amends, extends, consolidates or replaces it and includes any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute. This rule also applies to the norms, quality standards, codes and other rules established by self-regulatory bodies to which reference is made in this Agreement.

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- (l) The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of such agreement.
- (m) Words importing the singular include the plural and vice versa, and words importing gender include all genders.
- (n) Whenever the terms “**will**” or “**shall**” are used in this Agreement they are to be construed and interpreted as synonymous and are to be read as shall.
- (o) In this Agreement, the words “**including**” and “**includes**”, when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set out or to similar items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.
- (p) Generic words are not to be given a restrictive meaning:
  - (i) if they are introduced by the word “**other**”;
  - (ii) if they are preceded by words indicating a particular class of act, matter or thing; or
  - (iii) if they are followed by particular examples intended to be embraced by those general words.
- (q) No waiver of or consent to depart from the requirements of any provision of this Agreement shall be binding against a party unless it is in writing and is signed by or on behalf of such party. For all purposes of this Agreement, the terms “**writing**” or “**written**” shall include any text in an electronic or digital communication.
- (r) Any reference to a Governmental Authority shall be deemed to include a reference to any successors to such Governmental Authority or any body or entity which has taken over the functions or responsibilities of such Governmental Authority.
- (s) Except for payments made pursuant to the Schedule 25 [*Payment Mechanism (OMR)*] and Schedule 26 [*Construction Period Payments*], wherever this Agreement obliges a party to pay any amount to the other party (including pursuant to Schedule 22 [*Change Procedure*]) in respect of any costs, expenses, fees, charges, liabilities, Losses, Claims or other sums incurred by Project Co:
  - (i) such obligation shall be construed as applying only to so much of such sums as have been properly incurred on an arm’s length commercial basis or, where not incurred on an arm’s length commercial basis, including where the payment is made to an Affiliate, so much of them as are proper and reasonable; and
  - (ii) the party to which payment is made shall provide to the other party supporting evidence of such costs, expenses, fees, charges, liabilities, Losses, Claims or other sums.
- (t) For the purposes of this Agreement, WDBA will only have “knowledge” of any matter, circumstance or thing if the chief executive officer of WDBA, the WDBA Representative

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or a vice-president of WDBA with direct responsibility for matters to which the information relates, has actual knowledge of such matter, circumstance or thing.

- (u) Without limiting the extent of its actual knowledge, Project Co shall be deemed to have such knowledge of any matter, circumstance or thing (including with respect to the Project Work) as is known (or ought reasonably to be known) by any director or officer of (i) Project Co, (ii) an Equity Member or (iii) a Prime Contractor, and in respect of the Project Work by such officers or directors and by Key Individuals and other Project Co Persons responsible for carrying out the Project Work.
- (v) Any reference to anything being “in”, “on”, “under” or “over” any other thing shall, where the context permits, include the other terms.
- (w) Any reference in this Agreement or in any Schedule to any proprietary name in relation to any goods or materials shall be deemed to include the words “**as approved by WDBA**” or suitable equivalent, unless specifically stated otherwise.
- (x) Unless otherwise required by the context, the expressions “**by Project Co**” and “**by or through Project Co**” and expressions of like import are synonymous and mean by Project Co or by anyone retained or employed by or through Project Co, including Project Co Persons.
- (y) The language in this Agreement, including the Technical Requirements, may in some cases be written in the imperative for brevity. Clauses containing instructions, directions or obligations are directed to Project Co, and are to be construed and interpreted as if the words “**Project Co shall without additional compensation**” immediately preceded the instructions, directions or obligations, unless otherwise provided for in this Agreement.
- (z) All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted in accordance with the Accounting Principles consistently applied.
- (aa) All dollar amounts referred to in this Agreement are “Index Linked” unless otherwise stated. References to amounts expressed to be Index linked are references to amounts which require adjustment to reflect the effects of inflation. Such adjustment shall be calculated by applying the Canadian Escalation Factor to the amount in question. Dollar amounts referred to in Schedule 9 [*Project Schedule*], Part 18 [*Landscape Architecture and Design*] of Schedule 10 [*Design and Construction Specifications*], Part 19 [*Traffic Management Deductions*] of Schedule 10 [*Design and Construction Specifications*], Schedule 14 [*Handback*], Appendix 16-1 of Schedule 16, [*Environmental*], Schedule 21 [*Certification Procedure*], Appendix 25-1 of Schedule 25 [*Payment Mechanism (OMR)*], Schedule 26 [*Construction Period Payments*], Appendix 29-1 and 29-2 of Schedule 29 [*Insurance Requirements*], Schedule 36 [*Community Benefits*] and Schedule 40 [*Certain US Requirements*], are not Index Linked. Dollar amounts set out in the Financial Model and the Proposal are not Index Linked except to the extent that they mirror dollar amounts set out in the main body of this Agreement and the other Schedules of this Agreement, which are Index Linked.
- (bb) Where this Agreement requires the calculation of something that is calculated in the Financial Model, the calculation will be done in a manner consistent with the calculation methodology in the Financial Model.
- (cc) All of Project Co’s obligations are to be construed as separate obligations owed to WDBA and, except and to the extent otherwise expressly provided in this Agreement, are to be performed at Project Co’s own cost and expense.

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- (dd) A reference to any right, power, obligation or responsibility of any department, ministry, agency, board, commission, corporation or other entity of any Governmental Authority is to the department, ministry, agency, board, commission, corporation or other entity of the Governmental Authority which, pursuant to Applicable Law, has such right, power, obligation or responsibility at the relevant time.
- (ee) A reference to persons for whom a party is in law responsible includes that party's employees, representatives, agents, mandataries and any other persons over whom that party could reasonably be expected to exercise control.
- (ff) Where this Agreement provides that a document is to be "**certified**", that means that an authorized officer or director of the relevant legal entity shall certify that such document (i) is a true and complete copy of the original document and (ii) such original document is in full force and effect unamended as of the date of the certification.
- (gg) Unless otherwise expressly provided in this Agreement, "**associated infrastructure**" shall be interpreted to include all Infrastructure related to the safe and complete operation of the associated Project Component.
- (hh) Time is of the essence of each provision of this Agreement.
- (ii) Each reference to time of day is a reference to local Windsor time.
- (jj) Unless otherwise expressly provided in this Agreement, if the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day.
- (kk) Where this Agreement states that an obligation shall be performed "**no later than**" or "**within**" or "**by**" a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (ll) Where this Agreement states that an obligation shall be performed "**on**" a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (mm) The parties agree that if either party sends a document, request or other similar item to the other and there is no specified time for response under this Agreement, then the party receiving the document, request or similar item will respond within a reasonable time not to exceed 10 Business Days, unless another period for response is agreed by the parties, acting reasonably.
- (nn) Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement which is not material to a right or obligation of a party, is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the parties shall promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.

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- (oo) The term “**road**” shall be construed as including any road, street, lane, boulevard, parkway, highway, interchange, ramp, access road or traffic lane, including a public highway. In addition, any reference to a road on which Project Co is to perform any of the Project Work shall include, in each case, all roadways, hard shoulders, slip roads, side roads, access roads, pavement and structures, whether over or under such road, together with all related supporting infrastructure and amenities, including all fences and barriers, curbs, drainage systems including outfalls and retention basins, grassed areas, hedges and trees, planted areas, footways, road markings, road traffic signs, road traffic signals, road lighting, communications installations, the ITS, public toilets, pullouts, embankments and cuttings.
- (pp) The term “**person**” includes (i) an individual, natural person, legal person, partnership (including undeclared partnerships, general partnerships, and limited partnerships), trust, fund, association, organization or other group of persons, whether or not constituted as a legal person, including a natural person or other person acting in its capacity as trustee, liquidator, executor or legal representative, including any agency, and (ii) any public law body, administrative unit or financial unit which, pursuant to Applicable Law, has the capacity to exercise civil rights and possess property, in its own name or in the name of WDBA.
- (qq) Except as otherwise provided in this Agreement, any Project Work associated with an item designated as requiring “**approval**” shall not proceed until such approval is provided in writing by WDBA and each and every other person designated to provide such approval. Approval shall not relieve Project Co from its obligation to comply with all provisions of this Agreement.
- (rr) Any Project Work associated with an item designated as requiring “**acceptance**” may proceed at the risk of Project Co. All comments provided by WDBA and each and every other person designated to provide such acceptance to Project Co, shall be addressed to the satisfaction of WDBA and such persons prior to the item being accepted and any Project Work associated with such item being accepted. Such satisfaction shall be communicated in writing by WDBA and such persons to Project Co. Items submitted for acceptance shall be marked “**For Acceptance.**” Acceptance shall not relieve Project Co from its obligation to comply with all provisions of this Agreement.
- (ss) Acronyms, abbreviations and terms that are technical terms or terms of art in an industry which are not defined in this Agreement will be interpreted consistent with Good Industry Practice appropriate to that industry.
- (tt) The expression “**all reasonable efforts**”, and expressions of like import, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts, accrued solely to that person’s own benefit.
- (uu) All releases, waivers of liability and indemnities in this Agreement expressed to be set out in favour of a party to this Agreement are and shall be interpreted as having been set out in favour of and may be enforced by that party and its employees, directors, officers, deputies, delegates, representatives and agents and the party in whose favour any such

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release, waiver of liability or indemnity is expressed to be given may, at its option and without any obligation to do so, enforce them for and on behalf of any of its employees, directors, officers, deputies, delegates, representatives or agents.

- (vv) Where any acceptance, consent or approval is required under this Agreement from any Michigan Party, CBP, GSA, or CBSA, such acceptance, consent or approval shall be obtained by Project Co through WDBA and shall be deemed to require the acceptance, consent or approval of WDBA, unless otherwise expressly permitted or required under this Agreement. If WDBA is required to act reasonably in giving or withholding, or making a decision or determination, in respect of any such acceptance, consent or approval or any other decision or determination for which WDBA considers it necessary to consult with or obtain the acceptance, consent, approval or concurrence of any Michigan Party, CBP, GSA, or CBSA, without limitation, WDBA shall be deemed to have acted reasonably if it acts in accordance with such consultation, acceptance, consent, approval, or concurrence, provided any such Michigan Party, CBP, GSA, or CBSA is acting lawfully.
- (ww) The terms “properly inferable”, “readily apparent” and “readily discoverable” as used in the Project Agreement, shall be interpreted by taking into consideration (i) Project Co’s and any Project Co Person’s experience and the investigations, inspections and examinations of the Background Information and in respect of the Lands, carried out by Project Co or by any Project Co Person during the RFP Process or other due diligence and (ii) reasonable, normal course and industry standard investigations, inspections or other due diligence, in each case in accordance with Good Industry Practice.

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**SCHEDULE 2****CLOSING DELIVERIES AND OWNERSHIP INFORMATION****1. DEFINITIONS**

Unless defined specifically in this Schedule or unless the context otherwise requires, capitalized but other undefined terms in this Schedule shall have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of this Project Agreement.

In this Schedule, the following terms have the meanings set out in this Section 1.

**certificate, certifying, certified** and variations of such expressions mean that the relevant document is certified (for and on behalf of the relevant corporation or other entity and without personal liability) by an officer the relevant corporation or other entity as a true and complete copy in full force and effect and unamended, as of the date of the relevant certificate.

**Schedule** means this Schedule 2 [*Closing Deliveries and Ownership Information*] unless such term clearly refers to another schedule of this Project Agreement.

All references to a Section number in this Schedule means a Section number of this Schedule unless such Section number clearly refers to a Section of the body of this Project Agreement or of another schedule or part of a schedule of this Project Agreement.

**2. CLOSING DELIVERIES****2.1 DOCUMENTS TO BE DELIVERED BY PROJECT CO**

Unless an original document is specifically referred to in this Section, Project Co shall deliver a certified copy of each of the following documents, in accordance with Section 3.1 of this Project Agreement and in form and substance satisfactory to WDBA, acting reasonably:

- (a) an original of each Prime Contract, executed by all parties thereto;
- (b) the Construction Contractor Direct Agreement, executed by all parties thereto, other than WDBA;
- (c) the OMR Contractor Direct Agreement, executed by all parties thereto, other than WDBA;
- (d) the Designer Direct Agreement, executed by all parties thereto, other than WDBA, if applicable based on Preferred Proponent's structure;
- (e) an interface agreement among Project Co and the Prime Contractors, executed by all parties thereto;
- (f) Not Used;
- (g) an original of the Lenders' Direct Agreement, executed by all parties thereto, other than WDBA;
- (h) an original of the Insurance Trust Agreement, executed by all parties thereto, other than WDBA;
- (i) an original of the Custody Agreement, executed by all parties thereto, other than WDBA;
- (j) **[REDACTED]**

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- (k) the following agreements and instruments, constituting the Senior Lending Agreements as at the Commencement Date, executed by all the parties to such agreements and instruments: the following agreements and instruments, constituting the Senior Lending Agreements as at the Commencement Date, executed by all the parties to such agreements and instruments;
- (i) the Common Terms and Intercreditor Agreement dated as of the 21st, day of September, 2018 among Project Co, the general partners of Project Co, certain listed lenders and hedge providers, the Lenders' Agent, BNY Trust Company of Canada, as indenture trustee, and Royal Bank of Canada, as administrative agent (the "CTIA");
  - (ii) the Credit Agreement;
  - (iii) the Bond Indenture;
  - (iv) the Bond Underwriting Agreement;
  - (v) the Series A Bonds;
  - (vi) the Series B Bonds;
  - (vii) each of the Security Documents;
  - (viii) the Direct Agreements;
  - (ix) the Equity Support;
  - (x) the Blocked Accounts Agreements;
  - (xi) the Hedging Agreements;
  - (xii) the Insurance Trust Agreement;
  - (xiii) any Subordination Agreement in respect of Equity Provider Subordinated Debt or other Permitted Indebtedness; and
  - (xiv) any other document or agreement which the Collateral Trustee, the Administrative Agent and the Indenture Trustee agree in writing with Borrower is a Finance Document,
- as each such term is defined in the CTIA.
- (l) the following agreements and instruments, constituting the Junior Lending Agreements as at the Commencement Date, executed by all the parties to such agreements and instruments:
- (i) Not Applicable.
- (m) the Partnership Agreements executed by all parties to such agreements.
- (n) cover notes for the Insurance Policies required to be taken out by Project Co as at the Commencement Date;
- (o) original of the notice of appointment of the Project Co Representative;

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- (p) a certificate of an officer of Project Co certifying true copies of the following:
  - (i) all constating documents of Project Co;
  - (ii) incumbency of the officers and/or directors of Project Co; and
  - (iii) resolutions of the board of directors of Project Co authorizing the execution and delivery of all Project Documents to which Project Co is a party;
- (q) a certificate of an officer of each of the Equity Members, certifying true copies of the following:
  - (i) all constating documents of such Equity Member;
  - (ii) incumbency of the officers and/or directors of such Equity Member; and
  - (iii) resolutions of the board of directors or shareholders of such Equity Member authorizing the execution and delivery of all Project Documents to which such Equity Member is a party;
- (r) a certificate of an officer of each of the Prime Contractors, and each guarantor, certifying true copies of the following:
  - (i) all constating documents of such person;
  - (ii) incumbency of the officers of such person; and
  - (iii) resolution of the board of directors or shareholders of such person authorizing the execution and delivery of all Project Documents to which such person is a party;
- (s) a certificate of status or equivalent for each of the following:
  - (i) Project Co;
  - (ii) each of the Equity Members; and
  - (iii) each of the Prime Contractors, and each guarantor under the Prime Contracts;
- (t) an original of the opinion of counsel to each of the following persons as to the formation, status, power, capacity and due authorization of each such person, the execution and enforceability of all Project Documents to which such person is a party, the absence of breach or default and the granting of all regulatory approvals, in a form satisfactory to WDBA, acting reasonably:
  - (i) Project Co;
  - (ii) each of the Equity Members; and
  - (iii) each of the Prime Contractors, and each guarantor under the Prime Contracts;
- (u) evidence that Project Co and each Prime Contractor are duly licensed to carry on business in Ontario and Michigan;

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- (v) an attornment agreement executed by the Equity Members of Project Co in favour of WDBA pursuant to which such Equity Members of Project Co agree to attorn to the jurisdiction of the courts of Ontario and the applicable federal courts or tribunals of Canada in Ontario with respect to all matters arising under or related to agreements between two or more of them in respect of the Gordie Howe International Bridge Project; and
- (w) such other documents as WDBA may require, acting reasonably.

## 2.2 DOCUMENTS TO BE DELIVERED BY WDBA

Unless an original document is specifically referred to below, WDBA shall deliver a certified copy of each of the following documents in accordance with Section 3.1 of this Project Agreement:

- (a) the letters patent of WDBA issued under the *International Bridges and Tunnels Act* (Canada) and all supplementary letters patent issued in respect thereof;
- (b) an original of each Prime Contractor Direct Agreement, executed by WDBA;
- (c) an original of the Lenders' Direct Agreement, executed by WDBA;
- (d) an original of the Independent Certifier Agreement executed by WDBA and the Independent Certifier;
- (e) an original of the Insurance Trust Agreement, executed by WDBA;
- (f) an original of the Custody Agreement, executed by WDBA;
- (g) **[REDACTED]**
- (h) an original of the notice of appointment of the WDBA Representative;
- (i) a certificate of a director or director-officer of WDBA certifying:
  - (i) the incumbency of the directors and director-officers of WDBA who have signed Project Documents to which WDBA is a party;
  - (ii) as a true copy, a resolution of the board of the Directors of WDBA authorizing the execution and delivery of all Project Documents to which WDBA is a party;
- (j) a copy of the document designating WDBA as 'operator' of the Bridge under the *Bridge to Strengthen Trade Act* signed by the Minister of Infrastructure etc.;
- (k) **[REDACTED]**
- (l) **[REDACTED]**
- (m) such other customary closing documents as Project Co may request, acting reasonably.

## 3. **[REDACTED]**

### 3.1 **[REDACTED]**

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**SCHEDULE 3**

**KEY INDIVIDUALS**

**[REDACTED]**

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**SCHEDULE 4****LANDS AND SITE****1. DEFINITIONS**

Unless defined specifically in this Schedule or unless the context otherwise requires, capitalized but otherwise undefined terms in this Schedule will have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of this Project Agreement. Each Appendix to this Schedule forms an integral part of this Schedule.

In this Schedule, the following terms have the meanings set out in this Section 1.

**Bridge Corridor** has the meaning set out in Section 4.

**Broadway Drain** means the drainage lands as shown on Appendix 4-1-A.

**Canadian Perimeter Access Road** or **PAR** means the access road which encircles the Canadian POE, as shown in orange on Appendix 4-2.

**Canadian Sub-work Areas** has the meaning set out in Section 12.1.

**Connecting Ramps** means collectively, Ramp A, Ramp B, Ramp C, Ramp D, Ramp AC, and the portions of Ramp BD, Ramp AC1 and Ramp AC2, which end within the US POE at the stations described in this definition and in the Reference Design, at a height of approximately five feet above existing ground, at the expected end of retaining walls for these ramps:

- (a) Station 2188+80.00, Ramp BD;
- (b) Station 3193+34.00, Ramp AC1; and
- (c) Station 1160+02.00, Ramp AC2.

The stations shall be updated to correspond to the end of the retaining wall for each Connecting Ramp based on Project Co's RFC stage design plans.

The Connecting Ramps are owned by MDOT and are not included in the OMR Limits. Infrastructure that is located within the US POE boundary that is associated with but that does not directly constitute a portion of, the Connecting Ramps, is included in the OMR Limits, as shown in Part 3 [*Roadway and Grading*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*].

**Detroit Road Segments** means the local road segments depicted in Appendix 4-13 that will be temporarily impacted by the Project but remain under Detroit's jurisdiction and not MDOT's or WDBA's jurisdiction. Project Co may be required to obtain permits from Detroit for Project Work in, on or under the Detroit Road Segments.

**FKTS Easement** means the Hydro One Future Keith Transformer Station easement as shown on Appendix 4-1-A and Appendix 4-1-B.

**FKTS Lands** means the Hydro One Future Keith Transformer Station property as shown on Appendix 4-1-A and Appendix 4-1-B.

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**I-75 Corridor** means I-75 and the portion of the Michigan Interchange Ramps from their point of connection to I-75, including their widening to the 22 foot point, as further described in Section 6.2.

**I-75 Service Drives** means the frontage roads parallel to I-75 that connect the I-75 ramps to the local roadway system and may form part of the Permanent Road Segments, the Temporary Road Segments or the Detroit Road Segments.

**McKee Street Lands** means the McKee Street property as shown on Appendix 4-1-A.

**Michigan Interchange Area** means the area and roads described in Section 6 and includes the I-75 Corridor, the Michigan Interchange Ramps, I-75 Service Drives, portions of the Permanent Road Segments, portions of the Temporary Road Segments, portions of the Detroit Road Segments and portions of the Transverse Crossings Easements and includes all utilities, structures, roadways and all other infrastructure associated with these roadways, all as shown on Appendix 4-5 or another schedule to the Project Agreement as set out in Section 6.

**Michigan Interchange Ramps** means collectively the Connecting Ramps and the Slip Ramps.

**Michigan Local Roads** means any one or more of the I-75 Service Drives, Permanent Road Segments, Temporary Road Segments and the Detroit Road Segments.

**MTO Lands** means the lands on which Bridge B-1 will be constructed, that extend to the west of the Bridge B-1 west abutment located at the south east corner of the Canadian POE, which are owned by the Ministry of Transportation (Ontario), as shown on Appendix 4-1-A and Appendix 4-1-B.

**OMR Ramps** means the portion of the US POE Ramps that are within the OMR Limits and are subject to OMR Work, specifically, the portion of Ramp AC1 west of station 3193+34.00, the portion of Ramp AC2 south of station 1160+02.00 and the portion of Ramp BD west of station 2188+80.00. The exact stations shall be updated to correspond to the end of the retaining wall for each ramp from Project Co's final design.

**PAR SWM Ponds** means the storm water management ponds as shown on Appendix 4-1-A.

**Permanent Road Segments** means the local road and alley segments listed in Appendix 4-10-A and Appendix 4-10-B, respectively and depicted in blue (road segments) and pink (alley segments) in Appendix 4-12.

**Remnant Properties** means the properties or portions of properties described as such on Appendix 4-1-A and Appendix 4-1-B.

**Sandwich Street Lands** means the Lands in Sandwich Street between the north limits of the Canadian Perimeter Access Road and Ojibway Parkway and the Lands in Sandwich Street between the intersection of Ojibway Parkway and Sandwich Street and the Rosedale Avenue roundabout as shown on Appendix 4-1-A.

**Schedule** means this schedule 4 [*Lands and Site*] unless it is clear that such term refers to another schedule or part of a schedule to this Project Agreement.

**Site** has the meaning set out in Section 2.

**Slip Ramps** means the ramps that connect I-75 to the I-75 Service Drives.

**TC15 Lands** means the TC15 properties as shown on Appendix 4-1-A and Appendix 4-1-B.

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**TC16 Lands** means the TC16 properties as shown on Appendix 4-1-A and Appendix 4-1-B.

**Temporary Road Segments** means the local roads that are listed in Appendix 4-11 and depicted in green in Appendix 4-12.

**Transverse Crossings Easements** means the transverse crossings easements depicted on Appendix 4-14.

**US POE Ramps** means the portions of the Michigan Interchange Ramps and the OMR Ramps, specifically, Ramp AC and Ramp BD which fall inside the boundary of the US POE, as well as Ramp AC1 and Ramp AC2. The concept of the US POE Ramps is for design purposes only and is not intended to impact the OMR Limits or the OMR Work.

All references to a Section number in this Schedule means a Section number of this Schedule unless such Section number clearly refers to a Section of the body of this Project Agreement or of another schedule or part of a schedule of this Project Agreement.

## 2. SITE

The site is depicted in Appendix 4-1 (the "**Site**"). Until Substantial Completion, the Site includes the lands, waterways, shores, roads, railways, rights of way depicted on Appendix 4-1-A and the Canadian Perimeter Access Road, PAR SWM Ponds, Remnant Properties, McKee Street Lands, MTO Lands, TC15 Lands, TC16 Lands, Sandwich Street Lands, FKTS Easement, FKTS Lands, the Broadway Drain, the Michigan Local Roads and the Michigan Interchange Area. On and after Substantial Completion, the Site includes the lands, waterways, shores, roads, railways and rights of way depicted on Appendix 4-1-B, which excludes the Canadian Perimeter Access Road, Bridge B-1, Bridge B-1 retaining walls, PAR SWM Ponds, Remnant Properties illustrated in Appendix 4-1-B, McKee Street Lands, the Broadway Drain, Temporary Road Segments, Detroit Road Segments and the Michigan Interchange Area. The FKTS Lands will be removed from the Site prior to the Expiry Date. Other Lands may also be removed from the Site prior to the Expiry Date at the discretion of WDBA.

The Canadian Lands are or will be owned or controlled by Canada, except for the MTO Lands which are owned by Ontario, and the Sandwich Street Lands which are owned by the City of Windsor. WDBA has obtained from Canada, Ontario and the City of Windsor, sufficient rights over the Canadian Lands, necessary for WDBA to fulfil and perform its obligations under this Agreement in Canada. The US Lands are or will be owned or controlled by Michigan, except for the Detroit Road Segments. The Components of the Facility are described in Sections 3 to 6.

## 3. CANADIAN POE

The boundary of the Canadian POE is the whole area inside the Canadian Perimeter Access Road together with the area surrounding the Maintenance Building as shown on Appendix 4-2.

## 4. BRIDGE CORRIDOR

The boundary of the corridor for the Bridge ("**Bridge Corridor**") is the whole of the area identified in Appendix 4-3. The portion of the Bridge Corridor in Canada is described in "Canadian ROW Sketch" which forms part of the Guaranteed Engineering Data. The portion of the Bridge Corridor in the US is described in the marked final right-of-way plans which form part of the Guaranteed Engineering Data. The boundary of the Bridge Corridor in Canada and the boundary of the Bridge Corridor in the US are identified in Appendix 4-3. The Bridge Corridor delineates the land, air and water over and upon which the Main Bridge and the Bridge Approaches are to be constructed. For the purposes of the OMR Limits, the Bridge Corridor extends into the US POE and Canadian POE to its final abutments and touchdown points within the US POE and Canadian POE respectively.

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## 5. US POE

The boundary of the US POE is shown on Appendix 4-4. The US POE boundary is the area bound on the west by the east right-of-way of Post Street, on the south by the north right-of-way of Jefferson Ave, on the east by the west right-of-way of Campbell Street, and on the north by the south right-of-way of the Norfolk Southern railroad corridor. The US POE is further illustrated and described in the marked final right-of-way plans which form part of the Guaranteed Engineering Data.

The US POE also includes the US POE Ramps, which are the portions of the ramps connecting the US POE to I-75 that fall within the US POE boundary, all as illustrated in Appendix 4-4.

## 6. MICHIGAN INTERCHANGE AREA

### 6.1 Overview

The Michigan Interchange Area includes the following areas in Michigan which are outlined on Appendix 4-5 or in another schedule to the Project Agreement as set out below:

- (a) the I-75 Corridor is shown on Appendix 4-5 and includes the I-75 freeway and the Slip Ramps;
- (b) the Michigan Interchange Ramps;
- (c) locations for the dynamic message signs to be provided by Project Co, as described in Part 23 [*Intelligent Transportation System*] of Schedule 10 [*Design and Construction Specifications*];
- (d) locations for the signing works to be completed by Project Co, as described in Part 7 [*Signing, Pavement Marking, Signalization and Lighting*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*];
- (e) portions of the Permanent Road Segments, including part of the I-75 Service Drives;
- (f) portions of the Temporary Road Segments, including part of the I-75 Service Drives;
- (g) portions of the Detroit Road Segments; and
- (h) portions of the Transverse Crossings Easements.

### 6.2 I-75 Corridor

The I-75 Corridor is shown on Appendix 4-5 and includes all structures, embankments, roadways and other Michigan Interchange Ancillary Structures which are part of I-75 along with all Slip Ramps connecting I-75 with the I-75 Service Drives. The I-75 Corridor also includes the Michigan Interchange Ramps from the I-75 widening to the 22 foot point with I-75 as defined in the MDOT Geometric Design Guides, and as illustrated in Schedule 5 [*Definition Drawings*] of this Project Agreement. The I-75 Corridor is owned or controlled by MDOT.

As shown on Appendix 4-5, the limits of the I-75 Corridor extend from the furthest limits of the ramps connecting I-75 with the I-75 Service Drives, south of Springwells Avenue to the end of the taper of the southbound I-75 exit ramp to the US POE in the southbound direction and to the end of taper of the ramp from the US POE to northbound I-75 in the northbound direction.

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### **6.3 Michigan Interchange Ramps**

The Michigan Interchange Ramps include all structures, embankments, roadways, other Ancillary Structures, and associated barriers, lighting, and drainage as required, which are part of the Slip Ramps and the portions of Ramp A, Ramp B, Ramp C, Ramp D, Ramp BD, Ramp AC, Ramp AC1 and AC2 which form part of the Michigan Interchange Ramps. The limits of the Michigan Interchange Ramps include the portion of the Slip Ramps extending from their 22 foot point with I-75 as defined in the MDOT Geometric Design Guides to their connection with the I-75 Service Drives. The limits of the Michigan Interchange Ramps also include the portion of the four ramps connecting the US POE to I-75 extending from their 22 foot point with I-75 as defined in the *MDOT Geometric Design Guides*, and to the limits as described in this Section 6.3.

The Michigan Interchange Ramps are owned by MDOT and are not included in the OMR Limits. Infrastructure that is located within the US POE boundary that is associated with but that does not directly constitute a portion of, the Michigan Interchange Ramps, is included in the OMR Limits. The exact limits of the Michigan Interchange Ramps within the US POE shall be updated to correspond to the end of the retaining wall for each ramp from Project Co's final design.

### **6.4 Permanent Road Segments**

The Permanent Road Segments will be permanently impacted by the Project and accordingly have been permanently placed under MDOT jurisdiction.

Project Co's access to the Permanent Road Segments is set out in Section 12.1(b).

### **6.5 Temporary Road Segments**

The Temporary Road Segments will be temporarily impacted by the Project and accordingly have been temporarily placed under MDOT's jurisdiction and when WDBA in conjunction with Project Co determines they are no longer needed for the Project will be transferred back to Detroit.

The nature of the impact varies by road segment. Specific requirements can be found in Part 3 [*Roadway and Grading*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*] and Schedule 16 [*Environmental*].

## **7. ENVIRONMENTAL MATTERS**

Project Co's activities on the Site shall be conducted in accordance with Section 16 and Schedule 16 [*Environmental*] of the Project Agreement.

## **8. UTILITY RESTRICTIONS**

Project Co may not stockpile any materials or park any equipment over Utilities that will remain in place following construction or over any Utility that will remain active during the DB Period, unless otherwise approved by WDBA.

## **9. CONSTRUCTION EASEMENTS AND STAGING AREAS**

Temporary construction easements and/or staging areas that are not provided as part of the Site are the responsibility of Project Co to obtain. Project Co shall provide agreements for such easements and/or leases to WDBA for its review and approval. Additional lands, as depicted in Appendix 4-15, will be provided by WDBA to Project Co for construction staging during the Construction Period in accordance with this Agreement and any further agreement which may be required for such use by WDBA.

Acquisition of such areas is subject to environmental clearance review.

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In Canada, the FKTS Lands, TC15 and TC16 or other lands provided may be used by Project Co as a staging area with the approval of WDBA.

Within one year of Substantial Completion, Project Co shall restore all temporary construction easements or staging areas (including the FKTS Lands) in Canada and the US to their condition as of the date when Project Co was provided access, except for the FKTS Lands which shall be restored by Project Co not less than 90 days before the transfer date of such lands to Hydro One Networks Inc. as set out in Schedule 35 [*Land Restrictions*] and except for the land depicted in Appendix 4-15 which shall be restored by Project Co to their original condition, in all material respects.

## 10. NO-BUILD AND RESTRICTED-BUILD ZONES

There may be areas where construction activity may be restricted to certain times of the day and/or week. These areas are described in Part 15 [*Traffic Management - Construction*] of Schedule 10 [*Design and Construction Specifications*], Part 8 [*Maintenance of Traffic*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*] or as provided for in Schedule 16 [*Environmental*] and Schedule 35 [*Land Restrictions*].

## 11. NO ADDITIONAL LAND

Additional land acquisition for the Site will not be allowed as all necessary Lands for the Site have been strictly defined through the Environmental Assessments.

## 12. ACQUISITION OF LANDS

### 12.1 Land Acquisition Status

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]

<b>Table 4-1</b> [REDACTED]
--------------------------------

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**APPENDIX 4-1  
[REDACTED]**

**APPENDIX 4-1-A  
[REDACTED]**

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**APPENDIX 4-1-B**  
**[REDACTED]**

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Schedule 4 [*Lands and Site*]

**APPENDIX 4-2**  
**[REDACTED]**

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Schedule 4 [*Lands and Site*]

**APPENDIX 4-3  
[REDACTED]**

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Schedule 4 [*Lands and Site*]

**APPENDIX 4-4  
[REDACTED]**

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Schedule 4 [*Lands and Site*]



**APPENDIX 4-5  
[REDACTED]**

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Schedule 4 [*Lands and Site*]

**APPENDIX 4-6  
[REDACTED]**

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Schedule 4 [*Lands and Site*]

**APPENDIX 4-7  
[REDACTED]**

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Schedule 4 [*Lands and Site*]

**APPENDIX 4-8  
[REDACTED]**

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Schedule 4 [*Lands and Site*]

**APPENDIX 4-9  
[REDACTED]**

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Schedule 4 [*Lands and Site*]

**APPENDIX 4-10  
[REDACTED]**

**APPENDIX 4-10-A  
[REDACTED]**

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**APPENDIX 4-10-B**  
**[REDACTED]**

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Schedule 4 [*Lands and Site*]

**APPENDIX 4-11**  
**[REDACTED]**

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Schedule 4 [*Lands and Site*]



**APPENDIX 4-12**  
**[REDACTED]**

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**APPENDIX 4-13  
[REDACTED]**

**APPENDIX 4-13-A  
[REDACTED]**

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**APPENDIX 4-13-B  
[REDACTED]**

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**APPENDIX 4-13-C  
[REDACTED]**

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Schedule 4 [*Lands and Site*]

**APPENDIX 4-13-D  
[REDACTED]**

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**APPENDIX 4-14**  
**[REDACTED]**

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**APPENDIX 4-15  
[REDACTED]**

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**SCHEDULE 5**

**DEFINITION DRAWINGS**

**[REDACTED]**

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**SCHEDULE 6****PROJECT MANAGEMENT****PART 1****GENERAL****1. DEFINITIONS**

Unless defined specifically in this Part 1 or unless the context otherwise requires, capitalized but otherwise undefined terms in this Part 1 shall have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of this Project Agreement.

In Part 1 of this Schedule, the following terms have the meanings set out in this Section 1.

**Asset Information Management System** or **AIM** means [REDACTED].

**Construction Management Plan** has the meaning set out in Section 9.

**Design Management Plan** has the meaning set out in Section 8.

**Document Management Plan** has the meaning set out in Section 7.

**Electronic Project Collaboration System** has the meaning set out in Section 16.

**Interim Office** has the meaning set out in Section 4.3.

**Organization Plan** has the meaning set out in Section 4.12.

**Part 1** means part 1 of this Schedule.

**Project Management and Execution Plan** has the meaning set out in Section 4.2.

**Project Office** has the meaning set out in Section 4.4.

**Risk Management Plan** has the meaning set out in Section 13.

**Safety Management Plan** has the meaning set out in Section 11.

**Schedule** means this Schedule 6 [*Project Management*] unless such term clearly refers to another schedule of this Project Agreement.

All references to a Section number in this Part 1 means a Section number of this Part 1 unless such Section number clearly refers to a Section of the body of this Project Agreement or to another Schedule or part of a Schedule of this Project Agreement.

**2. SCOPE**

This Schedule specifies the minimum requirements for project management that will be undertaken by Project Co in connection with the Project Work during the DB Period, the Interim OM Period and the OMR Period.

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### 3. STANDARDS

Project Co shall manage the Project in accordance with Good Industry Practice, with specific reference to the best-practice approaches described in the following Standards: Project Management Institute: *A guide to the project management body of knowledge*.

### 4. REQUIREMENTS

#### 4.1 General

Project Co shall establish and maintain an organization that effectively manages all elements of the Project Work. This Project management effort will be defined and guided by the Project Management and Execution Plan. The Project Management and Execution Plan is intended to be an umbrella document that describes Project Co's managerial approach, strategy, and quality procedures to design, build, operate, and maintain the Project and achieve all requirements of the Project Agreement. The minimum requirements of the Project Management and Execution Plan are provided in Section 4.2.

#### 4.2 Project Management and Execution Plan

Project Co shall prepare, keep updated, and implement a plan to address all aspects of project organization, planning, procurement, design, construction, installation, commissioning, certification, operation, maintenance, and rehabilitation, which shall include, at a minimum, end-to-end approaches to communication, information management, quality and risk management, and environmental and safety management (the "**Project Management and Execution Plan**"). The Project Management and Execution Plan shall contain all of the Project plans listed in Table 6-1-1. Those Project plans listed in Table 6-1-1 that are not described in this Part 1 shall be included as appendices to the Project Management and Execution Plan.

The Project Management and Execution Plan shall encompass all stages of the Project Work, including DB Work, Interim OM Work and OMR Work. Unless otherwise specified in the Project Agreement, management plan documents shall clearly differentiate between the management activities during the DB Period (including the Interim OM Period) and OMR Period, and address any issues relating to transition between such periods. It is acceptable for the parts of the Project Management and Execution Plan addressing activities more than one year in the future to be less detailed than the parts addressing current and upcoming activities, but the Project Management and Execution Plan shall, at all times, address the current stage and all future stages of the Project Work.

The first version of the Project Management and Execution Plan shall be provided by Project Co to WDBA as a Review Submittal pursuant to the procedure set out in Part 2 of this Schedule. Project Co shall update and revise the Project Management and Execution Plan as required and in any event not less than once annually during the DB Period, and once annually during remainder of the Term. For all revisions to the Project Management and Execution Plan, Project Co shall provide a copy of the revised Project Management and Execution Plan to WDBA as a Review Submittal not later than 14 days after the revision date.

Project Co shall promptly propose revisions to the Project Management and Execution Plan in the event of any material change to any element of the Project Management and Execution Plan which, at a minimum, shall include the following:

- (a) the occurrence of any changes to Key Individuals, the Quality Management Plan, the Safety Management Plan, the Project Schedule which materially affects other plans

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contained in the Project Management and Execution Plan, or project administration policies, and procedures;

- (b) the occurrence of other material changes necessitating revision to the Project Management and Execution Plan; and
- (c) as otherwise directed reasonably by WDBA.

Project Co shall provide the revised Project Management and Execution Plan to WDBA for approval as a Review Submittal pursuant to the procedure set out in Part 2 of this Schedule no later than 14 days after the occurrence of the change or direction triggering the need for the revisions to the Project Management and Execution Plan.

WDBA will audit and monitor the activities described in the Project Management and Execution Plan to assess Project Co's conformance to the approved Project Management and Execution Plan. All commitments and requirements contained in the Project Management and Execution Plan shall be verifiable.

Project Co shall coordinate the contents of the Project plans listed in Table 6-1-1 to ensure they are consistent with each other and this Project Agreement.

**Table 6-1-1**  
**List of Project Plans for Project Management Activities**

Other Plans	Technical Requirements Reference
Organization Plan	Schedule 6 [ <i>Project Management</i> ] Part 1, Section 4.12
Document Management Plan	Schedule 6 [ <i>Project Management</i> ] Part 1, Section 7
Design Management Plan	Schedule 6 [ <i>Project Management</i> ] Part 1, Section 8
Construction Management Plan	Schedule 6 [ <i>Project Management</i> ] Part 1 Section 9
Safety Management Plan	Schedule 6 [ <i>Project Management</i> ] Part 1, Section 11
Risk Management Plan	Schedule 6 [ <i>Project Management</i> ] Part 1, Section 13
Quality Management Plan	Schedule 7 [ <i>Quality Management</i> ]
Site Security Plan	Schedule 10 [ <i>Design and Construction Specifications</i> ] Part 5 [ <i>Security</i> ]
Operations and Maintenance Plan	Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ]
Operations Management Plan	Schedule 13 [ <i>Tolling Operations</i> ]
Environmental Management Plan	Schedule 16 [ <i>Environmental</i> ]
Annual Consultation Plan	Schedule 18 [ <i>Communications Protocol</i> ]
Annual Traffic Management	Schedule 18 [ <i>Communications Protocol</i> ]

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Other Plans	Technical Requirements Reference
Communications Plan	
Crisis Communications Plan	Schedule 18 [ <i>Communications Protocol</i> ]

#### 4.3 Interim Office

Until the Project Office is established, Project Co shall establish an office within 30 days after the Commencement Date (the “**Interim Office**”) in order to facilitate early communications and interaction between the staff of Project Co and WDBA. [REDACTED] The amount of office space, including the accommodation of WDBA staff, in the Interim Office will be as mutually agreed to by Project Co and WDBA.

#### 4.4 Project Office During DB Period

During the DB Period, Project Co shall establish an office in Canada and at Project Co’s discretion an office in the United States within 180 Business Days of the Commencement Date and within 8 kilometres of any point of the Site in Canada and the United States (the “**Project Office**”). The purpose of the Project Office is to consolidate and co-locate Project Co’s key management, design, construction, quality, and compliance functions and WDBA’s management, oversight, and compliance staff in order to facilitate the teamwork, communications, and coordination called for by the Project Agreement and necessary to ensure a successful project. The Project Office shall remain open and fully functional as specified herein until 90 days after Final Completion.

WDBA’s section of the Project Office shall conform to the requirements of this Section 4 and the Class 1 field office described in MDOT *Standard Specifications for Construction Section 809*. Where discrepancies arise between the two documents, the larger, higher-quality, or newer technology shall be provided as determined by WDBA. Project Co shall provide office equipment, furniture, and supplies, as specified in this Schedule. WDBA may provide additional equipment, furniture, and supplies at its option. Project Co shall provide any proprietary computer systems hardware and/or software that are required to run a Project Co design or construction oversight system. Project Co shall separate the WDBA space specified herein between the Project Offices in Canada and the United States proportionally to the Project Co personnel assigned to each office.

#### 4.5 [REDACTED]

[REDACTED]

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]
- (f) [REDACTED]

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(g) [REDACTED]

(h) [REDACTED]

(i) [REDACTED]

(j) [REDACTED]

(k) [REDACTED]

(l) [REDACTED]

(m) [REDACTED]

**4.6 [REDACTED]**

[REDACTED]

(a) [REDACTED]

(b) [REDACTED]

**4.7 Project Co's Responsibilities for Project Office**

Project Co shall be responsible for the all-inclusive management, insurance, and costs of all capital, lease agreements, janitorial services, and maintenance of electrical; HVAC; plumbing; telephone systems; fax machines; copiers; computer systems; and equipment, including any maintenance contracts and utilities, described in this Schedule, to permit the efficient and uninterrupted operation of the Project Office. All facilities and build-outs/fitouts shall be constructed and maintained in accordance with all applicable Building Codes.

Project Co shall provide for the security of the Project Office, including protection of the building or space within the building against theft, 24 hours per day, and shall take responsibility for loss of property of WDBA or personal property of employees of WDBA housed therein, due to fire, theft, or related causes, except that Project Co is not responsible for non-job-related personal property. Protection shall include a continually monitored security and alarm system.

In addition to the responsibility to maintain all internal office spaces and equipment of the Project Office, Project Co shall be responsible for (either directly or through a building manager, depending on facility arrangements) the maintenance of the immediate grounds, landscaping and removal of snow and ice, including the supply and application of de-icing or ice-melting agents, from parking areas and walks in a timely manner to ensure safe passage to and from the Project Office.

Project Co shall provide a 100 Mbps ethernet network connection, providing internet access, at each WDBA desk. Office internet connectivity shall be a minimum of 45 Mbps.

**4.8 [REDACTED]**

[REDACTED]

(a) [REDACTED]

(b) [REDACTED]

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-6-

- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]
- (f) [REDACTED]
- (g) [REDACTED]
- (h) [REDACTED]
- (i) [REDACTED]

[REDACTED]

#### 4.9 Common Space and Equipment

Project Co shall provide the following shared common space and equipment, adequate and appropriate for the efficient operations of the entire Project Office, for joint use by both Project Co and WDBA personnel:

- (a) variable-size conference room space to hold all reviews and meetings (one 50-square-metre conference room in space allocated for WDBA is required for the Project Office and is desirable for the interim project office);
- (b) reception area; and
- (c) male and female restrooms each with cold and hot water or two unisex restrooms each with cold and hot water.

#### 4.10 Replacement

In case of fire, theft, or breakdown, at the Project Office, all furnishings and equipment involved shall be repaired or replaced by Project Co within 48 hours of notice of the incident. If the Project Office is destroyed or rendered unusable for any reason, Project Co shall coordinate with WDBA to replace (temporarily and permanently) the facility, furnishing, equipment, and functions as soon as commercially reasonable.

[REDACTED]

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]

**Table 6-1-2**  
[REDACTED]

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[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Project Co shall provide satisfactory space and parking to accommodate the on-site field oversight personnel of WDBA provided in the same quantity and manner as provided to Project Co’s office staff, and consistent with the operations of a field office. All costs of the field offices, including utilities, maintenance, and cleaning, shall be borne by Project Co.

**4.11 Office and Field Office Coordination Meeting**

Within two weeks after Financial Close, Project Co shall schedule a meeting with WDBA to coordinate plans for both the Interim Office and Project Office and the provision of field offices, including the integration, accommodation, and incorporation of WDBA’s requirements.

**4.12 Organization Plan**

Project Co shall prepare, keep updated, and implement a plan to describe Project Co’s organization, both contractually and operationally, for the Project Work, including Project Co’s protocols, processes, and procedures, for internal coordination and communication (the “**Organization Plan**”). Project Co shall provide the first version of the Organization Plan to WDBA as a Review Submittal pursuant to Part 2 [Review Procedure] of this Schedule 6. Project Co shall update and revise the Organization Plan as required and not less than once annually during the DB Period, and once annually during remainder of the Term. For all revisions to the Organization

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Plan, Project Co shall provide a copy of the revised plan to WDBA as a Review Submittal not later than 14 days after the revision date.

As part of the Organization Plan, Project Co shall prepare and keep updated organizational charts that, at a minimum, show the following contractual and operational organizational arrangements and interfaces:

- (a) throughout the Term, an overall team organization chart showing Project Co's team and its interfaces with WDBA, the Independent Certifier (for the duration of the Independent Certifier role), Relevant Authorities, and all third parties for which Material Agreements exist. This chart shall identify Prime Contractors, the Construction Contractor, the Designer, the OMR Contractor, Subcontractors, Key Individuals, and any other Persons that have a material role in the delivery of the Project Work. Where roles or responsibilities have yet to be established and/or procured, the chart shall state Project Co's approach to such;
- (b) during the DB Period only, a design organization chart showing Project Co's team (including lead individuals, organizations, and entities) charged with the Design Work, indicating the roles and reporting relationships of the design staff, the firms with which they are affiliated and their responsibilities on the Project, and the interfaces with the Independent Design Checker;
- (c) during the DB Period only, a construction organization chart showing Project Co's team (including lead individuals, organizations, and entities) charged with delivering the Construction Work, indicating the roles and reporting relationships of the construction staff, the firms with which they are affiliated, and their responsibilities on the Project; and
- (d) during the Interim OM Period and the OMR Period only, an operations and maintenance organization chart showing Project Co's team (including lead individuals, organizations, and entities) charged with delivering the OMR Work, indicating the roles and reporting relationships of the OMR staff, the firms with which they are affiliated, and their responsibilities on the Project.

The organizational charts shall be presented as annexes to the Organization Plan.

## **5. ANNUAL CONSULTATION PLAN**

Project Co shall prepare and comply with the Annual Consultation Plan in accordance with Schedule 18 [*Communications Protocol*].

## **6. ANNUAL TRAFFIC MANAGEMENT COMMUNICATIONS PLAN**

Project Co shall prepare and comply with the Annual Traffic Management Communications Plan in accordance with Schedule 18 [*Communications Protocol*].

## **7. DOCUMENT MANAGEMENT PLAN**

Project Co shall prepare, keep updated, and implement a document management plan that encompasses all stages of the Project Work, including DB Work, Interim OM Work, OMR Work, and Handback Work (the "**Document Management Plan**"). The Document Management Plan shall take full account of the requirements of Schedule 10 [*Design and Construction Specifications*], Section 16 of this Part 1 (specifically the requirements for the Electronic Project Collaboration System) and Schedule 8 [*Records and Mandatory Reports*].

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## 7.1 Document Management Elements

The Document Management Plan shall address the following elements, at a minimum:

- (a) a description of the electronic collaboration tools that will be used, including details of:
  - (i) access;
  - (ii) security;
- (b) the management of the flow of Project documentation throughout the life cycle of the Project, including document creation, document authentication, and a versioning plan for:
  - (i) electronic documents;
  - (ii) hard-copy documents; and
  - (iii) physical samples and models;
- (c) the implementation, operation, and management systems for monitoring the progress of document submissions;
- (d) the capture, preservation, and control of Project documentation in electronic and paper format as necessary;
- (e) the management of documents and associated metadata required to support the Project Work, Handback Work and Handback Procedure;
- (f) version control and the protocol to ensure that the correct and latest Project documentation is readily available to the appropriate parties without ambiguity;
- (g) the management of comments and mark-ups;
- (h) notification and management of electronic communications;
- (i) user training;
- (j) data back-up, storage, and recovery;
- (k) ensuring that Confidential Information is kept secure;
- (l) archiving;
- (m) management of electronic, public-facing information platforms;
- (n) the interface with the Quality Management System set out in Part 1 [*General*] of Schedule 7 [*Quality Management*]; and
- (o) the interface with the AIM as set out in Part 3 [*Spatial Information*] of Schedule 10 [*Design and Construction Specifications*].

## 7.2 Document Management Information

Information to be managed includes all documents relating to the Project including:

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- (a) contracts
- (b) certifications
- (c) Review Submittals and responses
- (d) drawings
- (e) specifications
- (f) Design Data
- (g) audits
- (h) Non-Compliance Reports
- (i) reports
- (j) calculations
- (k) condition surveys
- (l) construction records
- (m) testing data
- (n) environment records and reports
- (o) computer models
- (p) asset information
- (q) monitoring data
- (r) manuals and plans
- (s) meeting minutes
- (t) memoranda

The first version of the Document Management Plan shall be provided by Project Co to WDBA as a Review Submittal pursuant to Part 2 of this Schedule. Project Co shall update and revise the Document Management Plan as required and in any event not less than once annually during the DB Period, and once annually during remainder of the Term. For all revisions to the Document Management Plan, Project Co shall provide a copy of the revised plan to WDBA as a Review Submittal not later than 14 days after the revision date. A revised Document Management Plan shall be provided by Project Co as a Review Submittal at the end of the DB Period and shall reflect the transition to the requirements applicable for the OMR Period.

## 8. DESIGN MANAGEMENT PLAN

Project Co shall prepare, keep updated, and implement a design management plan (the “**Design Management Plan**”). The Design Management Plan shall be updated periodically for any material change at WDBA’s discretion.

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The Design Management Plan shall address all Design Work, whether during the DB Period, the Interim OM Period or the OMR Period. Parts of the Design Management Plan addressing far-future activities may be less detailed than the parts addressing current and upcoming activities, but the Design Management Plan shall, at all times, address all stages of the Project Work.

The Design Management Plan shall contain procedures for the implementation of the entire scope of the Design Work sufficient for WDBA to understand Project Co's approach to managing design of the Project Work. At a minimum, it shall include the following:

- (a) the approach to design review and approval processes;
- (b) Design checking and verification procedures;
- (c) Design software validation procedures;
- (d) the approach to labour resource management and supervision;
- (e) the approach to office and Site safety;
- (f) Design phasing and sequencing; and
- (g) Design documents and Project control procedure.

The Design Management Plan shall address both on-Site and off-Site design activities.

The first version of the Design Management Plan shall be provided by Project Co to WDBA as a Review Submittal pursuant to Part 2 of this Schedule. Project Co shall update and revise the Design Management Plan as required and not less than once every 12 months during the DB Period. For all revisions to the Design Management Plan, Project Co shall provide a copy of the revised plan to WDBA as a Review Submittal not later than 14 days after the revision date.

## 9. CONSTRUCTION MANAGEMENT PLAN

Project Co shall prepare, keep updated, and implement a construction management plan (the "**Construction Management Plan**"). The Construction Management Plan shall be updated periodically whenever a material change occurs or when requested by WDBA, acting reasonably

The Construction Management Plan shall address all Construction Work, whether during the DB Period, the Interim OM Period or the OMR Period. Parts of the Construction Management Plan addressing far-future activities (e.g., in excess of one year) may be less detailed than the parts addressing current and upcoming activities, but the Construction Management Plan shall, at all times, address all stages of the Project Work.

The Construction Management Plan shall contain procedures for the implementation of the entire scope of the Construction Work sufficient for WDBA to understand Project Co's approach to managing construction of the Project Work. At a minimum, it shall include the following:

- (a) the procedure for requests for information between the Construction Contractor and the Designer;
- (b) the approach to labour resource management and supervision;
- (c) the approach to Site safety;
- (d) details of Site access;

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- (e) Site security at boundaries and gates;
- (f) Site logistics plans, including parking, material delivery, laydown and storage, any on-Site batching, fabrication, or manufacturing provision, fire protection plans, haulage routes and on-site traffic management and waste management, including Hazardous Materials and recycling;
- (g) temporary utilities provisions, including any Utility relocations;
- (h) construction phasing and sequencing;
- (i) construction inspection and testing; and
- (j) construction recordkeeping.

The Construction Management Plan shall address both on-Site and off-Site construction activities, including any fabrication and assembly.

Project Co shall provide the first version of the Construction Management Plan to WDBA as a Review Submittal pursuant to Part 2 of this Schedule. Project Co shall update and revise the Construction Management Plan as required and not less than once every 12 months during the DB Period. For all revisions to the Construction Management Plan, Project Co shall provide a copy of the revised plan to WDBA as a Review Submittal not later than 14 days after the revision date.

#### **10. ENVIRONMENTAL MANAGEMENT AND MONITORING PLAN**

Project Co shall comply with the provisions Schedule 16 [*Environmental*] as they relate to the Environmental Management and Monitoring Plan.

#### **11. SAFETY MANAGEMENT PLAN**

Project Co shall prepare, keep updated, and implement a Project-specific safety management plan (the "**Safety Management Plan**") to address the following elements, as a minimum:

- (a) contact details and full description of the role of the Safety Officer (a Key Individual), who, at a minimum, has responsibility for the day-to-day implementation, execution, management, and oversight of Project Co's safety activities;
- (b) protocol for ensuring compliance with all Applicable Laws;
- (c) details of the programs for: (i) injury and illness prevention, (ii) communication of hazards, and (iii) safe work practices;
- (d) protocol for revising the Safety Management Plan at appropriate times to reflect relevant changes at the Project Site and in the activities underway at the Project Site;
- (e) protocol for safety inspections (at specified intervals and ad hoc) to review Site safety, including Site access control and security and protection of work areas, and to identify and to correct any unsafe conditions and/or practices at the Project Site; and
- (f) protocol for ensuring that operational safety shall be a standing agenda item during all relevant meetings throughout the Term.

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The Safety Management Plan shall address Project Co's approach to safety and for implementing Project Co's responsibilities for the health and safety of the general public and all persons working on the Project, including Project Co Persons, WDBA Persons, and others.

The Safety Management Plan shall encompass all stages of the Project Work, including DB Work, Interim OM Work, OMR Work, and Handback Work. Parts of the Safety Management Plan addressing far-future activities may be less detailed than the parts addressing current and upcoming activities, but the Safety Management Plan shall, at all times, address all stages of the Project Work.

The first version of the Safety Management Plan shall be provided by Project Co to WDBA as a Review Submittal pursuant to Part 2 of this Schedule. Project Co shall update and revise the Safety Management Plan as required and not less than once every 6 months during the DB Period. For all revisions to the Safety Management Plan, Project Co shall provide a copy of the revised plan to WDBA as a Review Submittal not later than 14 days after the revision date.

## 12. SITE SECURITY PLAN

Project Co shall comply with the provisions Part 5 [*Security*] of Schedule 10 [*Design and Construction Specifications*] as it relates to the Site Security Plan.

## 13. RISK MANAGEMENT PLAN

Project Co shall prepare, keep updated, and implement a Project-specific risk management plan (the "**Risk Management Plan**") to address the following elements, as a minimum:

- (a) Project Co personnel responsible for risk management and their roles and responsibilities;
- (b) the approach to risk identification, prioritization, profiling, and characterization;
- (c) the quantification measures and criteria by which each identified risk will be assessed;
- (d) response planning, risk mitigation strategies, and ongoing management and control measures;
- (e) protocol for recording identified risks and their actual or predicted impacts on the Project Work;
- (f) protocol for recording and communicating risks; and
- (g) WDBA's role in participating in the risk management process.

The Risk Management Plan shall address Project Co's approach and methodology to the identification and management of risk. The Risk Management Plan shall encompass the risk methodology for all stages of the Project Work, including DB Work, OMR Work, and Handback Work.

The Risk Management Plan shall be provided by Project Co to WDBA as a Review Submittal pursuant to Part 2 of this Schedule.

The Risk Management Plan is not required to include a risk register.

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**14. COMMUNICATIONS PLAN**

Project Co shall comply with the provisions of Schedule 18 [*Communications Protocol*] as they relate to the Communications Plan.

**15. OPERATIONS AND MAINTENANCE PLAN**

Project Co shall comply with the provisions of Schedule 11 [*Operations, Maintenance and Rehabilitation*] as they relate to the Operations and Maintenance Plan.

**16. REQUIREMENTS FOR ELECTRONIC PROJECT COLLABORATION SYSTEM**

WDBA will provide, maintain and use a Project-specific electronic project collaboration system (the "**Electronic Project Collaboration System**") for sharing and exchanging documentation and records between Project Co and WDBA (and including where applicable, the Independent Certifier). WDBA will use e-Builder® and will provide Project Co with up to 5 licenses.

The Electronic Project Collaboration System will be configured to facilitate project coordination, openness between parties, and a transparent approach to the management and tracking of issues and shared documents throughout the Project.

Project Co may elect to use other electronic document management systems internal to Project Co but all communication with WDBA shall be through the Electronic Project Collaboration System.

Without limitation, Project Co, WDBA and the Independent Certifier shall use the Electronic Project Collaboration System for the following:

- (a) storing Project documentation that is to be shared between Project Co, WDBA and/or the Independent Certifier;
- (b) reporting on and tracking the status of Review Submittals, requests for clarification, Non-Compliance Reports and other document-based interactions and processes;
- (c) managing Review Submittals and the Review Procedure;
- (d) managing Certificates and the Certification Procedure;
- (e) managing and processing any requests for clarification from Project Co to WDBA;
- (f) managing and processing Non-Compliance Reports and closures thereof; and
- (g) managing and processing construction records including material sampling and testing records.

WDBA will provide all users of the Electronic Project Collaboration System with the appropriate training and training documentation necessary to use the Electronic Project Collaboration System and any updates to the Electronic Project Collaboration System during the DB Period.

Project Co shall not use the Electronic Project Collaboration System for restricted information, including any security sensitive material. Document management by Project Co shall be as required under Part 5 [*Security*] of Schedule 10 [*Design and Construction Specifications*].

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- 17. [REDACTED]
- 17.1 [REDACTED]  
[REDACTED]
- 17.2 [REDACTED]  
[REDACTED]
  - (a) [REDACTED]
  - (b) [REDACTED]
  - (c) [REDACTED]
  - (d) [REDACTED]
  - (e) [REDACTED]
  - (f) [REDACTED]
- 17.3 [REDACTED]  
[REDACTED]
- 17.4 [REDACTED]  
[REDACTED]
  - (a) [REDACTED]
  - (b) [REDACTED]
- 17.5 [REDACTED]  
[REDACTED]
- 18. REVIEW SUBMITTALS (DELIVERABLES)

At a minimum, the Review Submittals pertaining to Project management shall require WDBA approval and shall include the plans listed in Table 6-1-3.

**Table 6-1-3  
List of Review Submittals for Project Management Work**

<b>Deliverable</b>	<b>Delivery schedule</b>	<b>Section:</b>
Project Management and Execution Plan	Not more than 90 days after the Commencement Date  Project plans that form part of the Project Management and Execution Plan with due dates more than 90 days after the Commencement Date	Section 4.2

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<b>Deliverable</b>	<b>Delivery schedule</b>	<b>Section:</b>
	may be added to the Project Management and Execution Plan at their due date by revision to the Project Management and Execution Plan.	
Organization Plan	Not more than 90 days after the Commencement Date	Section 4.12
Annual Consultation Plan	Within 60 Business Days after the Commencement Date	Section 5
Annual Traffic Management Communications Plan	Within 90 Business Days after the Commencement Date	Section 6
Document Management Plan	Not more than 90 days after the Commencement Date, and Not less than 90 days before Substantial Completion	Section 7
Design Management Plan	Not more than 90 days after the Commencement Date	Section 8
Construction Management Plan	Not more than 90 days after the Commencement Date	Section 9
Environmental Management Plan	Not more than 90 days after the Commencement Date	Section 10
Safety Management Plan	Not more than 60 days after the Commencement Date	Section 11
Site Security Plan	Not more than 60 days after the Commencement Date	Section 12
Risk Management Plan	Not more than 90 days after the Commencement Date	Section 13
Operations and Maintenance Plan	Not less than 120 days prior to Substantial Completion	Section 15
Design Review Plan and Schedule	Draft not less than 5 Business Days before design workshop as set out in Part 2 [Review Procedure] of this Schedule; Final within 30 Business Days of the Commencement Date	Part 2 [Review Procedure] of the Schedule
Crisis Communications Plan	Within 60 Business Days of Financial Close	Schedule 18 [Communications Protocol]

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Project Co shall create and comply with all other plans, procedures, policies, protocols, guides and reports required pursuant to this Project Agreement and shall submit all such plans, procedures, policies, protocols, guides and reports to WDBA for review and acceptance unless otherwise noted.

Project Co shall create and maintain all committees required pursuant to this Project Agreement and such committees shall provide the functions as set out in this Project Agreement.

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**SCHEDULE 6****PROJECT MANAGEMENT****PART 2****REVIEW PROCEDURE****1. DEFINITIONS**

Unless defined specifically in this Part 2 or unless the context otherwise requires, capitalized but otherwise undefined terms in this Part 2 shall have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of this Project Agreement.

In this Schedule, the following terms have the meanings set out in this Section 1.

**Base Specification** has the meaning set out in Section 4.4(a).

**Bridge Plans (70%)** means in-progress bridge plans at approximately 70% level of completion.

**Bridge Preliminary Plans** means bridge preliminary plans that have, at a minimum, met the requirements stated in the MDOT Bridge Design Manual, Section 3.02.01, however, a public hearing and preliminary estimate is not required.

**Design Check** has the meaning set out in Section 6.

**Design Check Reports** means a report provided by the Design Quality Manager for each Design Unit at the conclusion of each Design Check conducted by the Design Quality Manager, as set out in Section 6.1.

**Design Development Stages** has the meaning set out in Section 5.

**Design Documents** has the meaning set out in Section 6.

**Design Review** has the meaning set out in Section 7.

**Design Review Plan and Schedule** means a written design review plan and schedule that addresses design stages, plan completeness, and the quality assurance/quality control process for each Design Unit, as further described in Section 4.3.

**Design Units** has the meaning set out in Section 4.2.

**Independent Design Checker** means, collectively, the group of external professional engineers appointed to issue the independent design checking certificates required pursuant to this Part 2.

**Lead Independent Bridge Engineer** means the Key Individual described in Schedule 3 [*Key Individuals*] of this Project Agreement and appointed by Project Co or the Construction Contractor from time to time as the Independent Design Checker for the Bridge independent structural design as described in this Part 2 and in Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*].

**Part 2** means part 2 of this Schedule.

**Project Co Lead** means the appropriately licensed professional with signature responsibility and authority over a Design Unit and its associated Design Documents.

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**Project Special Provisions** has the meaning set out in Section 4.4.

**Record Drawings** has the meaning set out in Section 6.4.

**RFC Documents** means Design Documents that are stamped, signed and dated by the appropriate Project Co Lead and issued for the purpose of construction.

**Roadway Base Plans** means roadway base plans which shall utilize a field survey for base mapping that have, at a minimum, met the requirements stated in the *MDOT Program/Project Management System Task Manuals, Task 3360* and are in accordance with the *MDOT Road Design Manual* and *MDOT Design Wiki*, meeting the requirements of this Schedule, including Section 7.2(a)(ii).

**Roadway Preliminary Plans** means roadway base plans which shall utilize field survey for base mapping, that have, at a minimum, met the requirements stated in the *MDOT Program/Project Management System Task Manuals, Task 3580*, *MDOT Road Design Manual, Section 14.36.01*, and includes the same sheets as the Roadway Base Plans advanced to approximately 70% level of completion.

**Schedule** means this Schedule 6 [*Project Management*] unless such term clearly refers to another schedule of this Project Agreement.

**Stage 1 Design Plan** has the meaning set out in Section 7.2(a).

**Stage 2 Design Plan** means the Design Development Stage when the Design Documents for a Design Unit are sufficiently advanced from Stage 1 Design Plan and in advance of RFC Documents, meeting the requirements of this Schedule.

**Working Drawings** means drawings meeting the specifications set forth in Section 7.2(d).

All references to a Section number in this Part 2 means a Section number of this Part 2, unless such Section number clearly refers to a Section number of the body of this Project Agreement or to another schedule or part of a schedule of this Project Agreement.

## 2. SCOPE

This Part 2 sets out the minimum requirements for the review of design and construction submittals and any and all items, documents, and anything else required or specified by this Project Agreement regarding the Project Work to be submitted to, reviewed, or otherwise processed by WDBA as a Review Submittal or in accordance with the Review Procedure, including any and all subsequent revisions, amendments, and changes thereto.

## 3. REQUIREMENTS

### 3.1 General

Project Co shall be responsible for providing all Project Work in accordance with this Project Agreement. Project Co shall not be relieved of its obligation to perform the Project Work in accordance with this Project Agreement, or any of its other obligations under this Project Agreement, by oversight, spot checks, audits, reviews, tests, inspections, acceptances, or approvals by any persons, or by any failure of any person to take such action.

Project Co's time and cost impacts of revisions arising from WDBA's participation in Design Reviews or caused by Project Co's noncompliance with this Project Agreement shall be borne by Project Co and shall not form the basis of a Relief Event. This Section 3.1 does not relieve WDBA

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of responsibility for impacts arising from breach of WDBA's express obligations in this Agreement, including Section 7.1(a).

### **3.2 Review by WDBA**

Project Co acknowledges that a review of any Review Submittal may be undertaken, at WDBA's discretion and as WDBA deems necessary, by WDBA Persons, MDOT, FHWA, GSA, CBP, CBSA and/or CFIA. WDBA shall submit any comments of such persons in accordance and within the time specified in Section 7.1(a). WDBA shall use reasonable efforts to provide a single set of comments for relevant persons reviewing each Review Submittal and ensure such persons participate in any review meetings including meetings held in accordance with Section 13(a) where Project Co and WDBA mutually agree this would be beneficial to expedite the resolution of comments.

## **4. DESIGN REVIEW SUBMITTALS**

### **4.1 Design Workshop**

Project Co shall arrange a design workshop to familiarize Project Co Persons and WDBA with the design concepts, issues, status, and review procedures. The intent of the design workshop is to make the subsequent Design Reviews more effective and efficient for all parties. WDBA and Project Co shall jointly develop the agenda of the design workshop and how it is to be organized (e.g., by Design Unit and engineering discipline). The design workshop shall take place no later than 20 Business Days after the Commencement Date.

During the workshop, Project Co and WDBA's review personnel shall discuss the draft Design Review Plan and Schedule. The duration of Design Reviews may vary depending on items such as the stage of the design development, the size of the review package, the complexity of the subject for review, potential environmental implications, public safety concerns, and the need for third-party review. The agenda for the design workshop shall include a discussion of the necessary Environmental Permits and Approvals, as set out in Schedule 16 [*Environmental*], permitting processes, review times, and strategy for the mitigation of potential delays in obtaining the Environmental Permits and Approvals by Project Co.

Project Co shall consider these issues and specified review times when preparing its proposed DB Schedule. Unless agreed to in writing by WDBA, Design Review times shall not be less than the times specified in Section 7.1(a).

All agreements, schedules, and understandings reached during the design workshop shall be documented, in writing, by Project Co and submitted to WDBA for review and acceptance.

### **4.2 Design Units**

Within 30 Business Days of the Commencement Date, Project Co shall submit a written proposal to WDBA for review and acceptance which identifies and describes each proposed design unit, the scope of Design Work within each design unit, including limits and interface points; and the name of the Project Co Lead for each design unit. Each design unit shall consist of similar and coherent significant parts of the Project that can be checked and reviewed as a self-contained package with due consideration for accommodating interfaces with other Components and design units of the Project (each design unit, a "**Design Unit**"). Project Co will, acting reasonably, consider making adjustments to the proposed Design Units in accordance with WDBA comments.

Project Co shall submit any revisions to the Design Units in writing to WDBA in any monthly periodic report, in accordance with Schedule 8 [*Records and Mandatory Reports*].

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Following approval of the Stage 1 Design Plan, Project Co shall package all Design Documents for the DB Work into accepted Design Units.

#### 4.3 Design Review Plan and Schedule

Project Co shall prepare and submit a written draft Design Review Plan and Schedule no later than 5 Business Days before the design workshop described in Section 4.1. Project Co shall prepare and submit a written Design Review Plan and Schedule as a Review Submittal within 30 Business Days of the Commencement Date. The Design Review Plan and Schedule shall be a component of the DB Schedule, as described in Schedule 9 [*Project Schedule*]. The Design Review Plan and Schedule shall address design stages, plan completeness, and the quality assurance/quality control process for each Design Unit. The Design Review Plan and Schedule shall describe the level of design that Project Co shall accomplish for each of the planned stages of design development and shall provide a description and checklist for each Design Unit that clearly identifies the Design Documents that will be reviewed. A Design Unit submittal shall include all Design Documents pertaining to this Design Unit and a design level commensurate to the Design Development Stage. A Design Unit submittal shall include design drawings of a Design Unit as well as the Durability Plan, any Project Special Provisions, design calculations (if required for a Design Development Stage), and Independent Design Checker certification and calculations, as applicable. Technical reports may be submitted as standalone Review Submittals. The Design Review Plan and Schedule shall include review times for each Design Check and Design Review, including the review dates and time for Design Review by WDBA, unless noted otherwise pursuant to this Project Agreement or otherwise agreed to by WDBA at the design workshop.

If Review Submittals are not submitted in accordance with the Design Review Plan and Schedule, or if Project Co does not submit a Design Review Plan and Schedule, WDBA reserves the right to reasonably extend the review period. Project Co shall update the Design Review Plan and Schedule at the frequency specified for the DB Schedule in Schedule 9 [*Project Schedule*] for any material change as may be required by Schedule 9 [*Project Schedule*].

#### 4.4 Project Special Provisions

Project Co shall prepare and submit custom special provisions ("**Project Special Provisions**") for the Project for approval by WDBA under the following conditions:

- (a) if no specification is referenced in the Technical Requirements with respect to the proposed Construction Work, a construction specification representing Good Industry Practice and previously approved as follows ("**Base Specification**"):
  - (i) **Bridge**  
an AASHTO agency on a federal-aid project or Province, as applicable for a similar element in similar physical conditions;
  - (ii) **Michigan Interchange**  
an AASHTO agency on a federal-aid project, as applicable for a similar element in similar physical conditions;
  - (iii) **US POE**  
the applicable Governmental Authority on a federally funded project, as applicable for a similar element in similar physical conditions; and

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(iv) **Canadian POE**

the applicable Governmental Authority on a project owned by a Federal Crown Corporation as described in Part 8 [*Buildings-Canadian POE*] of Schedule 10 [*Design and Construction Specifications*], as applicable, for a similar element in similar physical conditions.

- (b) if equal-or-better modifications to a construction specification listed as a Standard or to a Base Specification are required to incorporate the Technical Requirements or to meet performance-based requirements. Equal-or-better determinations shall be approved by WDBA; and
- (c) if any modifications are required to evidence conformance with Part 2 [*Standards and Specifications*] of Schedule 10 [*Design and Construction Specifications*].

**5. DESIGN DEVELOPMENT STAGES**

The design development stages shall be as follows:

- (a) Stage 1 Design Plan;
- (b) Stage 2 Design Plan;
- (c) RFC Documents;
- (d) Working Drawings; and
- (e) Record Drawings,

collectively, the “**Design Development Stages**”).

For each individual Design Unit and for each component or element within a Design Unit, at each Design Development Stage, Project Co shall perform a Design Check and WDBA shall perform a Design Review (i) to verify that the Design Documents conform with the requirements of this Project Agreement; (ii) subject to satisfaction of the requirements set forth in this Part 2, to allow components of Design Units to be released for construction; and (iii) in the case of reviews of Working Drawings, as defined herein, allow construction to continue. The Design Check shall adhere to the requirements set out in Section 6 and the Design Review shall adhere to requirements set out in Section 7.

**6. DESIGN CHECKS AND CERTIFICATIONS**

Project Co shall check all drawings, plans, specifications, calculations, reports, and other materials (the “**Design Documents**”) in order to ensure that all Design Documents are in compliance with the applicable requirements of this Project Agreement, Good Industry Practice and as specified in this Part (such check, the “**Design Check**”). The Design Quality Manager shall certify that the Design Documents have been checked in accordance with the Design Review Plan and Schedule. Project Co shall then engage WDBA to conduct the Design Review in accordance with Section 7.

Project Co shall ensure the completion of the Design Checks, certifications, and reviews for each Design Unit by the entity specified in the column entitled “Design Check and Certification to Project Co” appearing in Table 6-2-1. WDBA will provide review and acceptance of the design before Project Co releases the designs for construction.

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Project Co shall conduct the Design Check and Design Review for each Design Unit, supported by a written certification issued by the Design Quality Manager, at the Design Development Stage shown in Table 6-2-1 and in accordance with the Design Review Plan and Schedule and the DB Schedule.

**Table 6-2-1****Design Checks, Certifications, and Design Reviews for Permanent and Temporary Work**

<b>Design Development Stages or Temporary Work</b>	<b>Design Check and Certification to Project Co</b>	<b>Design Review</b>
Stage 1 Design Plan	relevant Project Co Persons and Design Quality Manager	WDBA and relevant Project Co Persons
Stage 2 Design Plan	relevant Project Co Persons and Design Quality Manager	WDBA and relevant Project Co Persons
RFC Documents	relevant Project Co Persons and Design Quality Manager	WDBA and relevant Project Co Persons
Working Drawings	relevant Project Co Persons and Design Quality Manager	WDBA and relevant Project Co Persons
Record Drawings	relevant Project Co Persons and Design Quality Manager	WDBA and relevant Project Co Persons
Major Temporary Work	relevant Project Co Persons and Design Quality Manager	WDBA and relevant Project Co Persons
Temporary Work	relevant Project Co Persons including Project Co checker	Not Applicable

**6.1 Design Checks Conducted by the Design Quality Manager**

A minimum of 5 Business Days in advance, Project Co shall notify and invite WDBA to participate in all Design Checks conducted by the Design Quality Manager.

Project Co shall issue a Design Check Report at the conclusion of each Design Check conducted by the Design Quality Manager. The Design Check Reports shall identify any actions arising from the Design Check. Project Co shall address all comments and concerns raised by the Design Quality Manager by revising the Design Documents to the Design Quality Manager's satisfaction. If the comments and concerns are not sufficiently addressed, Project Co shall ensure that the Design Quality Manager shall issue a design Non-Compliance Report and provide a copy to the Designer and to WDBA.

While other tasks of the Design Checks may be performed off of the Site, Project Co shall conduct all Design Checks conducted by the Design Quality Manager in the Project Office. The Project Co Lead and any specialists with significant input to the design or Design Review shall be present. Project Co shall make available to WDBA all Design Documents pertinent to the Design Check in accordance with the Design Review Plan and Schedule.

**6.2 Major Temporary Work**

In addition to the foregoing, Project Co shall conduct a Design Check of Major Temporary Work as described in Part 20 [Bridges] and Part 21 [The Bridge] of Schedule 10 [Design and Construction Specifications]. Major Temporary Work shall be done in accordance with the Design Development Stages and shall be included in the Design Review Plan and Schedule.

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### 6.3 RFC Documents

Project Co may commence the construction of any element of the permanent components in accordance with RFC Documents before the design of the entire Facility has been completed. However, Project Co acknowledges that changes may be required as design of the entire Facility progresses and it shall be responsible for the costs of implementing all such changes. Without limiting the generality of the foregoing, Project Co shall not commence construction of an element of a permanent component before the design of the entire Facility has been completed until after occurrence of all of the following:

- (a) Project Co has conducted its Design Checks throughout the design process in compliance with the Design Quality Management Plan and certifies, in writing, that the Design Document is complete to the appropriate level or stage of review, checked, and ready to be released for construction;
- (b) the Design Quality Manager has signed the title sheet for the drawings, certifying the following (the title sheet can be formatted to include the items of certification):
  - (i) Design Checks have been completed;
  - (ii) Design Work conforms to requirements of this Project Agreement;
  - (iii) Design Checks comply with the Quality Management System; and
  - (iv) all outstanding issues or comments from Design Reviews have been resolved in accordance with Section 13;
- (c) the Project Co Lead has signed all Design Documents prepared under its direction;
- (d) Project Co has verified, at a minimum, in writing the following as part of its Design Check:
  - (i) the design has undergone constructability review and is constructible as represented;
  - (ii) the design has undergone an interdisciplinary review by all applicable disciplines;
  - (iii) the Design Documents and related documents have undergone review for durability by Project Co, including the OMR Manager in accordance with the Durability Plan;
  - (iv) the Design Documents for the portion of the Project to be constructed are complete and checked by Project Co and, if applicable, by the Independent Design Checker in accordance with the Quality Management Plan;
  - (v) the Design Documents for maintenance of traffic and temporary erosion control and environmental measures applicable to the Project Work are complete;
  - (vi) adequate stakes, lines, and monuments necessary to control the Project Work have been established on the Site; and
  - (vii) Project Co has addressed the written comments material to construction provided by WDBA regarding the Design Documents, including the RFC Documents, and applicable maintenance of traffic plans, temporary erosion control measures, and environmental requirements in accordance with Section 13;

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- (e) any applicable design Non-Compliance Reports issued by the Design Quality Manager or WDBA shall be addressed and resolved by Project Co in accordance with Part 2 [Non-Compliance] of Schedule 7 [Quality Management] before any design is released for construction; and
- (f) the applicable Project Co Lead has stamped the Design Documents as Released For Construction.

**6.4 Record Drawings**

Project Co shall provide to WDBA record drawings which shall incorporate information that reflects that the Work as constructed meets the requirements of this Project Agreement (the “**Record Drawings**”). The Record Drawings shall incorporate all changes to design and the as-built conditions and shall be of CAD quality and shall not be hand marked. The Design Quality Manager shall certify that these documents have been checked in accordance with the requirements of this Project Agreement and the Design Review Plan and Schedule. Project Co’s Engineer of Record shall verify the Record Drawings in detail and shall sign and stamp all Record Drawings without reservation, exception, or disclaimer. Record Drawings shall be submitted as a complete package for each Component. Project Co shall then engage WDBA to conduct the Design Review in accordance with Section 7.

**7. DESIGN REVIEW**

WDBA will review Review Submittals at each Design Development Stage for compliance with this Project Agreement and Good Industry Practice, and including as set out below (the “**Design Review**”). In addition to the information set forth in this Section Project Co shall provide WDBA with such information as WDBA may require from time to time in connection with a Review Submittal. Project Co shall schedule the Design Review at each Design Development Stage to be consistent with the Design Review Plan and Schedule for WDBA action on those Review Submittals. Except as mutually agreed upon by Project Co and WDBA, all Design Review meetings shall be conducted in the Project Office.

**7.1 Design Review Process**

- (a) General

WDBA will review as many design packages as it can within the limitations of its staff; however, at WDBA’s discretion, it may limit the number of reviews, design submittals, and design re-submittals in a given week.

It is anticipated that more than one Review Submittal will be submitted for Design Review for each Component at the same time, requiring some of the Design Reviews to be completed as specified in the Design Review Plan and Schedule. However, the maximum number of concurrent Review Submittals to WDBA may be limited during a given week, at WDBA’s discretion, as shown in Table 6-2-2.

**Table 6-2-2  
Maximum Concurrent Design Review Submittals Per Week**

Component	Discipline or Element	Maximum Concurrent Design Review Submittal Per Week
General or Facility wide	Security	1

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Component	Discipline or Element	Maximum Concurrent Design Review Submittal Per Week
	Environmental: US	2
	Environmental: CAN	2
	Geotechnical: US	1
	Geotechnical: CAN	1
	Sustainability (Envision/LEED)	1
	ITS	2
	Tolling	2
	Visual Quality/Architectural Lighting	1
	Where not otherwise defined	2
The Bridge	The Bridge	2
Michigan Interchange	I-75 Bridges	2
	Maintenance of Traffic	1
	Michigan Interchange Ramp Bridges	2
	Roadway/Civil/Lighting	2*
	Other Structures and Systems	2
Canadian POE	Roadway/Civil/Lighting	2
	Canadian POE Bridges	1
	Other Structures and Systems	1
	Mechanical and Electrical	1
	Buildings	2
US POE	Roadway/Civil/Lighting	2*
	Other Structures and Systems	1
	Mechanical and Electrical	1
	Buildings	2

*\*No more than 2 total in sum between the Michigan Interchange and US POE*

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After each Design Review, without prejudice to Section 21.4 of the Project Agreement, Project Co shall address comments and concerns raised by WDBA in accordance with the process set out in Table 6-2-2.

WDBA will complete its Design Review of each of Project Co's Review Submittals and re-submittals within 15 Business Days, unless otherwise indicated elsewhere in this Project Agreement, it being understood that the time provided to WDBA for review resets with each re-submission of a Review Submittal (or component thereof). Each Design Unit may go through multiple iterations of review by WDBA before acceptance by WDBA. The actual WDBA review timeline may be directly related to the extent of involvement Project Co allows during the design development process by consistently engaging WDBA. WDBA may shorten review timelines based on comprehensive involvement through the design development process.

The Bridge Preliminary Plans and Roadway Base Plans for the Bridge and Michigan Interchange will be reviewed by the Federal Highway Administration for approval. Federal Highway Administration review time will be a maximum of 25 Business Days, concurrent with WDBA's reviews, which will be 15 Business Days.

(b) Comment Resolution

WDBA comments from Design Reviews will be recorded and transmitted to Project Co. Project Co shall record its proposed disposition and response to each comment and shall meet with WDBA to resolve outstanding comments and dispositions. Final comment disposition and resolution shall be documented by Project Co.

All Design Reviews shall include a comment resolution process where unresolved comments are discussed and a written action plan and schedule for the resolution of unresolved comments are presented in accordance with this Schedule. The Design Quality Manager shall lead the process. Unless otherwise agreed to in writing by WDBA, all comments on all Review Submittals which are required to be responded to in writing by Project Co in accordance with Table 6-2-3 shall be responded to by Project Co in writing within a reasonable time period, not to exceed 25 Business Days. If in the reasonable opinion of WDBA the response does not ensure the Review Submittal conforms to the Technical Requirements, the parties shall attempt in good faith to resolve the Dispute in a reasonable time period, and may refer the matter to the Dispute Resolution Procedure.

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(c) Re-submittal Process

Re-submittals of Design Documents may be required if deemed necessary by the Design Quality Manager or the process set out in Table 6-2-3. Each re-submittal must address all comments as required by the process set out in Table 6-2-3. Project Co shall not be entitled to any additional compensation or time extension due to any re-submittal requirement by the review process.

Project Co shall resubmit the Design Document (as well as any other required design re-submittal) as many times as necessary to address the comments of the quality process and ensure compliance with the process set out in Table 6-2-3.

Changes made to Design Documents from previous submittals shall be indicated for ease of review when re-submittals are made.

## 7.2 General Design Review Requirements

The Design Documents required for review at each Design Development Stage may vary by Component according to Governmental Authority requirements. This Section identifies submittal requirements that are common to all Components. Section 7.3 addresses Review Submittal requirements which are unique to certain Components. Other Schedules within the Technical Requirements list additional required submittals.

(a) Stage 1 Design Plan

The first Design Review of Design Documents after the Commencement Date is intended to verify that the design concepts proposed by Project Co meet the requirements of this Project Agreement (the "**Stage 1 Design Plan**"). A separate Stage 1 Design Plan shall be submitted for each Component, complete and including all Design Units within the Component. The Design Review of the Stage 1 Design Plan shall verify, as applicable, (i) that the design concepts are in conformance with the Technical Requirements (ii) that the design concepts are substantiated and justified by adequate Site investigation and analysis to the extent Project Co has had access to the relevant portion of the Site; (iii) that the design concepts are within the Site boundaries; (iv) that the Standards applicable to the proposed design concepts are identified and appropriate; and (v) that the design meets quality requirements and required procedures in the Design Quality Management Plan.

Project Co shall submit to WDBA the Stage 1 Design Plan for Design Review. If the Stage 1 Design Plan is revised subsequent to the Design Review of the Stage 1 Design Plan, Project Co shall recheck and recertify the design as an additional Design Review of the Stage 1 Design Plan. Unless the revisions resulted from a WDBA Change, such revisions shall not form the basis of a Relief Event or otherwise entitle Project Co to additional compensation or a time extension.

In addition to the elements required under this Project Agreement, the Stage 1 Design Plan shall include, at a minimum the following:

- (i) a list of all construction specifications, including any Project Special Provisions; Project Co shall confirm whether such base construction specification is required to be submitted as a Project Special Provision;
- (ii) Roadway Base Plans to the extent that Project Co has access to the relevant portion of the Site; and

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- (iii) Bridge Preliminary Plans.
- (b) Stage 2 Design Plan

Project Co shall submit to WDBA Stage 2 Design Plans for the next stage of Design Review when the Design Documents for a Design Unit are sufficiently advanced from Stage 1 Design Plan and in any event, in advance of RFC Documents to provide WDBA the opportunity to verify that the design is advancing in accordance with the requirements of this Project Agreement. Project Co shall submit Stage 2 Design Plans for each Design Unit.

Project Co and WDBA shall use the Stage 2 Design Plans to verify that the concepts and parameters established and represented in the Stage 1 Design Plans are being followed and that requirements of this Project Agreement continue to be met. Project Co shall specifically highlight, check, and bring to the attention of WDBA in writing any changes to information presented in the Stage 1 Design Plans. Project Co shall submit the Stage 2 Design Plans for review and acceptance by WDBA.

In addition to the elements required under this Project Agreement, the Stage 2 Design Plan shall include, at a minimum:

- (i) draft Project Special Provisions;
- (ii) a list of all construction specifications, including any Project Special Provisions; Project Co shall confirm whether such base construction specification is required to be submitted as a Project Special Provision;
- (iii) Roadway Preliminary Plans;
- (iv) Bridge Plans (70%) including, at a minimum:
  - (A) general plan of site;
  - (B) general plan of structure;
  - (C) existing structure removals;
  - (D) substructure plan and elevation;
  - (E) substructure details;
  - (F) superstructure plan and section;
  - (G) superstructure details;
  - (H) deck plan and section; and
  - (I) deck details;
- (v) plans, sections and details at a 70% level of completion include concrete reinforcing bar patterns, pre-stressing layouts, cable systems, plate thicknesses, and connection details such as bolt and weld sizes; and
- (vi) design calculations may be requested to support 70% design.

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## (c) RFC Documents

Project Co shall submit RFC Documents of each Design Unit for Design Review when the Design Documents for a Design Unit are suitable to proceed to construction and prior to sealing and signing by the Project Co Lead. Project Co and WDBA shall use the Design Review of the unsealed RFC Documents to verify that the concepts and parameters established and represented in the Stage 1 Design Plans or Stage 2 Design Plans, as applicable, are being followed and that requirements of this Project Agreement continue to be met. Project Co shall specifically highlight, check, and bring to the attention of WDBA, in writing, any changes to information presented in the Stage 1 Design Plans or Stage 2 Design Plans. Project Co shall submit the RFC Documents to WDBA for review and acceptance.

Project Co shall not construct any Permanent Elements or Major Temporary Work until the Design Reviews have been completed for the relevant Design Units in accordance with Table 6-2-3 and until any issues raised in the Design Review of the Design Unit have been resolved in accordance with Section 13.

After completion of all such requirements, the Project Co Lead, shall stamp, sign, and date the Design Documents as released for construction, certifying that all requirements of this Project Agreement have been satisfied. Subsequent revisions to RFC Documents shall clearly indicate revisions and include a complete history of revisions since first issuance in the title block and shall follow the same Design Review process described in this Section.

In addition to the requirements of this Project Agreement, the RFC Documents shall contain, at a minimum, the following:

- (i) design plans;
- (ii) design calculations;
- (iii) design reports;
- (iv) specifications (indexed and numbered);
- (v) Governmental Authority and Utility Supplier approvals if not already in Project Documents;
- (vi) independent structural Design Check certificate and calculations, as applicable;
- (vii) independent geotechnical Design Check certificate and calculations, as applicable; and
- (viii) RFC Quality Assurance.

When Project Co has completed the RFC Documents and wishes to submit an RFC Document of an item or element to obtain acceptance, the Project Co Quality Manager shall certify that:

- (A) the design meets all applicable requirements of this Project Agreement, Applicable Law, and the Permits;
- (B) the design has been checked by the Design Quality Manager;

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- (C) all required land has been secured, along with any and all Permits from Governmental Authorities and Utility Suppliers; and
  - (D) all comments from WDBA from previous submittals are resolved.
- (d) Working Drawings

Project Co shall check, review, and certify and submit the working drawings to WDBA for review and comment before they are released for construction (the “**Working Drawings**”). For those drawings and documents that are prepared by a manufacturer, supplier or other persons not under the direct supervision of the Project Co Lead, the Project Co Lead shall affix a stamp that indicates the design shown on the sheet or Design Document conforms to the overall design and requirements of this Project Agreement.

Working Drawings shall include the following supplemental design outputs:

- (i) shop drawings, including specially-prepared technical data for this Project, calculations, reports, and similar information not in standard printed form for general application to a range of similar projects;
- (ii) product data including manufacturer’s standard catalogs, pamphlets and other printed materials that show and describe materials and items, including at a minimum the following:
  - (A) product specifications;
  - (B) installation instructions;
  - (C) color charts;
  - (D) catalog cuts;
  - (E) rough-in diagrams and templates;
  - (F) wiring diagrams;
  - (G) performance curves;
  - (H) operational range diagrams; and
  - (I) mill reports;
- (iii) samples including both fabricated and non-fabricated physical examples of materials, products and units of work; both as complete units and as smaller portions of units of work; normally used for limited visual inspection;
- (iv) certificates of conformance or compliance, including documents attesting that a product complies with a specified Standard;
- (v) certified test (or inspection) reports: documents attesting that a product meets a specified level of performance or quality when a prototype specimen is tested or inspected in accordance with a specified procedure, consisting of a certified statement by the product supplier or contractor accompanied by a complete report of the inspection or test;

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- (vi) submittals related directly to the work (non-administrative) including warranties, maintenance agreements, workmanship bonds, Project photographs, survey data and reports, copies of industry standards, field measurement data, manufacturer's installation instructions, operating and maintenance materials, spare parts/data, product data samples, certificates of conformance or compliance, or certified test reports, and similar information, devices and materials applicable to the Project Work and not processed as shop drawings;
  - (vii) erection plans;
  - (viii) fabrication quality control and quality assurance plans;
  - (ix) fabrication plans;
  - (x) stress sheets;
  - (xi) lift plans;
  - (xii) bending diagrams for reinforcing steel;
  - (xiii) falsework plans; and
  - (xiv) similar data required for the successful completion of the DB Work.
- (e) Record Drawings

As a condition of Final Completion, Project Co shall submit Record Drawings, complete for each Component, to WDBA for review and acceptance. Project Co shall make all corrections noted in the review of Record Drawings and resubmit the corrected Record Drawings to WDBA for review and acceptance within 90 Business Days of Substantial Completion. The acceptance of Record Drawings by WDBA is a condition of Final Completion and will not occur until the Record Drawings are submitted, reviewed, and corrected in accordance with Section 13.

### 7.3 Component Specific Review Requirements

The Component-Specific Design Review requirements of this Section 7.3 supplement the requirements of Section 7.2. In the case of a conflict with any provision of such Section or where this Section 7.3 provides more detailed or better requirements, this Section 7.3 will prevail.

- (a) Canadian POE General

To ensure that the CBSA, CFIA, and associated other users have adequate opportunities to review the design and construction throughout (the design and construction process,) Project Co shall follow the design process and submission requirements in accordance with Appendix Submission Requirements in GSA PBS P-100 with the exception of the following items, unless stated otherwise in this document (revised directions are in parentheses):

- (i) building information model (optional);
- (ii) spatial data management (optional);
- (iii) design quality review;

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- (iv) energy analysis (as further described in Schedule 37 [*Sustainability*]);
- (v) warm lit shell and tenant improvement cost estimate;
- (vi) new construction and modernization:
  - (A) value engineering (systems level and analysis stage); and
- (vii) alteration projects (entire section).

Project Co shall use GSA PBS P-100 Figure A-3: Design Process and Related Submission Requirements for New Construction and Modernization as a guide for submittal requirements during the stages of design developments. No submittals will be required for the information listed above at the different stages.

Project Co acknowledges that that CBSA, CFIA, and certain other Governmental Authorities shall have the opportunity to review and comment on the various Review Submittals. Notwithstanding the foregoing, all submittals by Project Co shall be made to WDBA and not to CBSA or CFIA. WDBA will liaise with CBSA and CFIA with respect to the reviews. The reviewers will have 15 Business Days to review the submissions.

(b) Canadian POE Stage 1 Design Plans

The minimum content of Stage 1 Design Plan elements associated with the Canadian POE shall include the information indicated in GSA PBS P-100. The drawings shall incorporate the following detail to cover the release of any phased work proposed by Project Co:

- (i) floor plan updates which capture review and input from local code officials;
- (ii) incorporation of all Statement of Requirements room clarifications from the Schedule;
- (iii) foundation drawings that reflect the full perimeter and structural type needed for the geotechnical conclusions;
- (iv) final locations and sizes for underground utility service entrances and secondary distribution exit points;
- (v) all physical security features including fences, curbs, walls, bollards, vehicle barriers, and similar items;
- (vi) corrected building site placements coordinated with plaza roadway adjustments and all remaining utilities, manholes, and other physical features;
- (vii) major plant equipment selection and system design with corresponding LEED credits;
- (viii) AutoTurn verification for all vehicles and roadways; and
- (ix) identification of any phased construction.

(c) Canadian POE Stage 2 Design Plans

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Project Co shall submit to WDBA for review and acceptance the information indicated in GSA PBS P-100 for Construction Documents.

Project Co shall provide 90% construction drawings to allow adequate review of incorporation of POE Design Standard features for all disciplines, users, and stakeholders. The discipline drawings shall incorporate CBSA, and CFIA feedback on the following items:

- (i) physical security features around the site perimeter, physical containment of vehicles on public and government roadways, resistance of building, wall, and window assemblies, security of gates and doorway access including hardware, intrusion detection, CCTV coverage for all directed site locations, and coordination of WDBA, CBSA, and CFIA security requirements;
  - (ii) identification and incorporation of all fixtures and equipment including proper material identification, infrastructure support, and mechanical, electrical and plumbing hook-ups;
  - (iii) identification of all signage types, proper application, location review, and infrastructure support;
  - (iv) inspections booths including placements, envelope characteristics, MEP services, connectivity to lane equipment, and overhead canopy relationships;
  - (v) public access for cars, bicycles, and pedestrians, update of AutoTurn verification for all vehicles and roadways, circulation of staff and vehicles around the site, overall functionality, and future flexibility;
  - (vi) final MEP systems designs and corresponding LEED credits;
  - (vii) confirmation of 100-year life for major structural elements and performance ratings for all envelope and assembly systems; and
  - (viii) all other requirements identified in this Schedule.
- (d) Canadian POE RFC Documents

Project Co shall provide Design Documents when 100% complete with the information indicated in GSA PBS P-100 for final Construction Documents. This submission will be reviewed by WDBA and previous comments back-checked to ensure all required POE elements and features have been incorporated. CBSA and CFIA certifications shall also be provided for confirmation.

Project Co shall provide signed and sealed drawings to Relevant Authorities to obtain or maintain Permits as indicated in Part 8 [*Buildings - Canadian POE*] of this Schedule.

- (e) Canadian POE Record Drawings

Project Co shall submit a complete set of Computer Aided Design (CAD) files of Record Drawings including floor plans, corridors, stairways, and core areas, incorporating final changes to design and the as-built conditions. The plans shall have been generated by a CAD program which is compatible with the latest release of AutoCAD. The required file extension is ".DWG." Clean and purged files shall be submitted on CD-ROM. They shall

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be labeled with Building name, address, list of drawing(s), date of the drawing(s), and architect and architect's phone number.

(f) Bridge Stage 1 Design Plan

The Preliminary Plans submitted with the Stage 1 Design Plan of the Bridge shall include:

- (i) the Bridge Element dimensions, except plate thicknesses;
- (ii) the Cable System layout and connection details to tower, superstructure and anchorages;
- (iii) the prestressing layouts; and
- (iv) the expansion joint and bearing type, fixities and movements;

(g) Bridge Record Drawings

Project Co shall submit a complete set of CAD files of Record Drawings including final changes to design and the as-built conditions. The bridge record drawings shall be generated by a CAD program which is compatible with the latest release of AutoCAD and MicroStation at completion of Construction Work. The required file extension is either ".DWG." or ".DGN". Project Co shall prepare design plans that are similar in appearance and content to the MDOT Standards applicable to the design being performed. Clean and purged files, including the merging and/or binding of associated reference files, shall be submitted on CD-ROM and secure USB and shall be labeled with a list of included drawings and date of the respective drawings.

(h) Michigan Interchange General

Additional requirements and Design Documents to be included with the Michigan Interchange:

(i) Michigan Interchange -Transportation Management Plan

Project Co shall develop, implement, and maintain a Michigan Interchange - Transportation Management Plan, which shall include the temporary traffic control plan and work area access plan as described in Part 8 [*Maintenance of Traffic*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*]. The Michigan Interchange - Transportation Management Plan shall be submitted to WDBA according to the DB Schedule for review and acceptance. The Michigan Interchange - Transportation Management Plan shall be released for construction before submittal of Roadway Preliminary Plans for any Design Unit. Maintenance of traffic plans shall be included with roadway submittals following the acceptance of the Michigan Interchange - Transportation Management Plan by WDBA, unless otherwise approved by WDBA.

(ii) Environmental Documents

Project Co must have the Permits required pursuant to Applicable Law or Relevant Authority approval before commencing construction involving any regulated activity. See Schedule 16 [*Environmental*] for more information.

(i) Michigan Interchange Stage 2 Design Plan

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Additional Design Documents to be included with the Michigan Interchange Stage 2 Design Plan:

- (i) Plotted borings on proposed plans and profiles and cross sections, as set out in Part 1 [*Geotechnical*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*]. These plans and reports shall be submitted according to the DB Schedule.
- (ii) The Roadway Preliminary Plans shall also include, at a minimum, the following:
  - (A) Project Co shall submit cross-sections at a minimum of 50-ft. intervals, including existing ground, the proposed surface of the roadway, the proposed sideslopes, and plan grade elevations. MDOT standard vertical and horizontal scale reference shall be used; and
  - (B) signing and pavement marking plans shall be included with the Roadway Preliminary Plans.
- (j) Michigan Interchange RFC Documents

Additional requirements for the Michigan Interchange RFC Documents:

- (i) RFC Documents for bridges shall be in conformance with the requirements for "Final Plans" stated in the MDOT *Bridge Design Manual Section 3.03.01*. Project Co shall prepare and include reinforcement tables for structure components in accordance with MDOT *Typical Bridge Design Standard Practices*, except the weight of bars for each bar mark is not required to be shown. Project Co does not need to provide pay item or miscellaneous quantity tables in the plans. The RFC Documents shall include the names and estimated quantities of standard MDOT pay items and unique pay items for all items which require inspection or testing in accordance with the MDOT *Materials Source Guide*;
- (ii) RFC Documents for roadways shall be in conformance with the requirements for "Final Plans" stated in the MDOT *Road Design Manual Section 14*;
- (iii) Additionally, all RFC Documents for the Michigan Interchange shall meet the following requirements:
  - (A) all Project Work applicable to the Michigan Interchange, including modifications to the Project Work applicable to the Michigan Interchange, shall be designed under the authority of and signed by a professional engineer licensed to practice in the State of Michigan;
  - (B) the timing of submission of these documents is indicated in the Project Schedule;
  - (C) the limits of excavation have been identified for all excavation work;
  - (D) the limits of all stay-in-place elements of Temporary Work have been identified;
  - (E) estimated quantities shall be included for all items that require inspection or testing in accordance with the MDOT *Materials Source Guide*;

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- (F) product cut sheet information shall be submitted as required to define the Project Work applicable to the Michigan Interchange;
  - (G) all shop drawings and other items necessary to construct the Project Work applicable to the Michigan Interchange are submitted, or are identified for future receipt and review after the RFC Documents are submitted and returned (i.e., shop or Working Drawings and product data sheets); and
  - (H) for all materials, material strength, type, grade, and ASTM or AASHTO designation shall be included;
- (iv) Project Co shall obtain acceptance from WDBA on all RFC Documents before construction begins. Project Co may proceed, at Project Co's sole risk, with construction of certain elements or portions of the Project in accordance with released for construction plans before acceptance of those plans or the design of the entire Project has been completed in accordance with Section 6.3;

(k) Michigan Interchange Record Drawings

Additional requirements for the Michigan Interchange Record Drawings:

- (i) Project Co shall prepare design plans that are similar in appearance and content to the MDOT Standards applicable to the design being performed; all drawing files are prepared in MicroStation V8;
  - (ii) GEOPAK™ shall be used for design, unless specified otherwise;
  - (iii) all deliverables containing computer-aided drafting and Design Data shall be in MicroStation or GEOPAK™ format;
  - (iv) all computer-aided drafting and design drawings, GEOPAK™ design files, and associated documents shall be organized in a logical manner, have a uniform and consistent appearance, and clearly depict the intention of the design and construction; and
  - (v) all Design Documents shall be in English units.
- (l) US POE General

To ensure that the GSA, CBP and associated other users have adequate opportunities to review the design and construction throughout those processes, Project Co shall follow the design process and submission requirements in accordance with Appendix Submission Requirements in GSA PBS P-100 with the exception of the following items, unless stated otherwise in this document:

- (i) meter dimensioning on drawings (use all English Units);
- (ii) building information model (optional);
- (iii) spatial data management (optional);
- (iv) meter dimensioning in specifications (use all English Units);
- (v) design quality review;

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- (vi) energy analysis (as further described in Schedule 37 [*Sustainability*]);
- (vii) warm lit shell and tenant improvement cost estimate;
- (viii) new construction and modernization value engineering (systems level and analysis stage); and
- (ix) alteration projects (entire section);

Project Co shall use GSA PBS P-100 Figure A-3: Design Process and Related Submission Requirements for New Construction and Modernization as a guide for submittal requirements during the stages of design developments. No submittals will be required for the information listed above at the different stages.

Project Co acknowledges that that GSA, CBP and certain other Governmental Authorities shall have the opportunity to review and comment on the various Review Submittals. Notwithstanding the foregoing, all submittals by Project Co shall be made to WDBA and not to GSA or CBP. WDBA will liaise with GSA and CBP with respect to the reviews. The reviewers will have 15 Business Days to review the submissions.

(m) US POE Stage 1 Design Plans

The minimum content of Stage 1 Design Plan elements associated with the US POE shall include the information indicated in GSA PBS P-100 for Final Design Development. The drawings shall incorporate the following detail to cover the release of any phased work proposed by Project Co:

- (i) floor plan updates which capture review and input from local code officials;
- (ii) incorporation of all POR room clarifications from this Schedule;
- (iii) foundation drawings that reflect the full perimeter and structural type needed for the geotechnical conclusions;
- (iv) final locations and sizes for underground utility service entrances and secondary distribution exit points;
- (v) all physical security features including fences, curbs, walls, bollards, vehicle barriers, and similar items;
- (vi) corrected building site placements coordinated with plaza roadway adjustments and all remaining utilities, manholes, and other physical features;
- (vii) major plant equipment selection and system design with corresponding LEED credits;
- (viii) AutoTurn verification for all vehicles and roadways; and
- (ix) identification of any phased construction.

(n) US POE Stage 2 Design Plans

Project Co shall submit to WDBA for review and acceptance the information indicated in GSA PBS P-100 for Construction Documents.

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Project Co shall provide 90% construction drawings to allow adequate review of incorporation of Land POE Design Standard features for all disciplines, users, and stakeholders. The discipline drawings shall incorporate US government feedback on the following items:

- (i) CBP IA review of "GHIB Summary of CBP Security Requirements" including physical security features around the site perimeter, physical containment of vehicles on public and government roadways, resistance of building, wall, and window assemblies, security of gates and doorway access including hardware, intrusion detection, CCTV coverage for all directed site locations, and coordination of WDBA security requirements;
- (ii) identification and incorporation of all fixtures and equipment including proper material identification, infrastructure support, and MEP hook-ups;
- (iii) identification of all signage types, proper application, location review, and infrastructure support;
- (iv) inspections booths including placements, envelope characteristics, MEP services, connectivity to lane equipment, and overhead canopy relationships;
- (v) public access for cars, bicycles, and pedestrians, update of AutoTurn verification for all vehicles and roadways, circulation of staff and vehicles around the site, overall functionality, and future flexibility;
- (vi) final MEP systems designs and corresponding LEED credits;
- (vii) confirmation of 100-year life for major structural elements and performance ratings for all envelope and assembly systems;
- (viii) GSA input on all building aspects for leaseholder requirements; and
- (ix) all other requirements identified in the POS.

(o) US POE RFC Documents

Project Co shall provide Design Documents when 100% complete with the information indicated in GSA PBS P-100 for final Construction Documents. This submission will be reviewed by US government and previous comments back-checked to ensure all required POE elements and features have been incorporated. GSA certifications shall also be provided for confirmation.

(p) US POE Record Drawings

Project Co shall submit a complete set of CAD files of Record Drawings including floor plans, corridors, stairways, and core areas, incorporating final changes to design and the as-built conditions. The plans shall have been generated by a CAD program which is compatible with the latest release of AutoCAD. The required file extension is ".DWG." Clean and purged files shall be submitted on CD-ROM. They shall be labeled with Building name, address, list of drawing(s), date of the drawing(s), and architect and architect's phone number.

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#### 7.4 Additional Reviews

WDBA may conduct additional Design Reviews, as considered necessary to ensure a continued and uniform consistency in the quality and effective incorporation of revisions to designs. Project Co may also conduct Design Reviews as necessary to facilitate the early release of designs for construction.

#### 7.5 Submittal Format

Unless otherwise specified, Project Co shall provide WDBA with a complete electronic searchable Adobe PDF file of the Review Submittals. Multiple files may be used if necessary due to file size constraints. Each page or sheet shall be numbered sequentially from the first page in the file to the last page. Drawings and plan sheets shall be formatted for presentation in 11-inch x 17-inch format. All other Review Submittals that are not drawings are to be submitted in 8.5-inch x 11-inch format.

Project Co shall submit a table of contents for each submittal that contains multiple pages, containing the following information: discipline, page or sheet number, and page or sheet title (for example, Project Special Provision for Maintenance of Traffic Plans). If Project Special Provisions, Durability Plans, or Independent Design Checker certifications and calculations apply to a Design Unit, they shall be submitted with that Review Submittal.

At RFC and Record Drawings Review Submittals, the Project Co Lead shall sign and seal the Design Documents with its professional license stamp. The document that is signed and sealed shall convey what contents the signature and stamp apply to and shall indicate that quality procedures for that submittal have been followed. At RFC and Record Drawings Review Submittals, CAD files for drawings shall be provided in addition to drawings in Adobe PDF format.

At issue, each Review Submittal shall be clearly identified as a Review Submittal and shall be delivered with appropriate documentation including:

- (a) the appropriate certification by the Design Quality Manager, and acceptable to WDBA, that has been signed by Project Co, and is ready for the Review Submittal response of WDBA following review of the Review Submittal package;
- (b) a list of all the Review Submittal items in the submission package if more than one is included in the package being submitted; and
- (c) a statement of the following for each Review Submittal:
  - (i) the document numbers and/or drawing numbers, with revision numbers (if applicable);
  - (ii) document and/or drawing titles;
  - (iii) name of entity that prepared the Review Submittal;
  - (iv) the purpose of the Review Submittal;
  - (v) the Project Work that is the subject of the Review Submittal; and
  - (vi) for a revised Review Submittal, the submission history of the Review Submittal showing submission dates and revision numbers of all previous submissions of the Review Submittal.

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Design calculation submittals and Independent Design Checker calculation submittals shall meet the following additional requirements:

- (d) all title blocks of calculation sheets shall include the calculation title; file number; page number; initials of the relevant Project Co Person, design checker, and back-checker; and dates of when design, checking, and back-checking occurred;
- (e) all calculations shall indicate the design requirement, the assumptions made, the methods used, the source of the information, and the cross-reference for the applicable design drawings;
- (f) all calculations shall include the final iteration and be readily accessible, clear, understandable, concise, complete, and accurate so the final design of an element is easily determined;
- (g) all calculations are numbered with a table of contents;
- (h) all calculations identify the code or Standard utilized and indicate the specific section referenced in the right-hand column;
- (i) in the calculations, Project Co shall reference the computer programs and versions used. Computer input and pertinent output shall be included in the calculations. All generated input and output computer files shall be provided in their native format and an index included that lists the file names and their specific purpose;
- (j) all manual calculations are printed neatly and legibly; and
- (k) all calculations, manual or computer generated, shall be formatted for presentation at 8.5-inch by 11-inch or 11-inch by 17-inch size. The minimum allowable font size is 12 point.

## **8. DESIGN CHANGES BEFORE CONSTRUCTION**

Design changes may occur before commencement of Construction Work and may be initiated by Project Co or WDBA.

For all design changes requiring calculations, the Design Quality Manager shall conduct a documented check of all calculations. All design changes requiring the alteration of RFC Documents shall undergo all review procedures included for original Design Documents in Project Co's Design Quality Management Plan and Section 6. In addition, all design changes requiring the alteration of RFC Documents shall undergo a Design Review by WDBA as described in Section 7.

## **9. DESIGN CHANGES DURING CONSTRUCTION**

Project Co Lead and Design Quality Manager shall verify, during Construction Work, that the conditions actually encountered, work proposed to be constructed, and work as constructed, are consistent with the design and related Design Documents. Project Co shall prepare necessary adjustments in the Design Documents, and Project Co shall consult with WDBA and request its written comments. WDBA, at its discretion, may limit the number of such design changes during construction to not more than 10 per Component per week. The Design Quality Manager shall check any such changes in accordance with the Design Quality Management Plan. The Design Quality Manager shall certify the change, in writing, as meeting the requirements of this Project Agreement. Project Co shall incorporate the adjustments in the Record Drawings. Project Co shall retain copies of the Design Quality Manager's written certifications and submit the certifications to WDBA.

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## 10. CHECKING OF STRUCTURAL DESIGN

In accordance with Part 1 [*General*] of Schedule 7 [*Quality Management*], for relevant design submissions submitted in accordance with the Review Procedure, Project Co shall submit an Independent Structural Design Check Certificate in the form provided as Appendix 6-2-1, signed by the Independent Design Checker and an Independent Geotechnical Design Check Certificate in the form provided as Appendix 6-2-2, signed by the Independent Design Checker.

## 11. OTHER REVIEW SUBMITTALS

All other Review Submittals (other than design submittals, which are addressed in the foregoing provisions of this Schedule) shall be submitted to WDBA for review in accordance with the requirements set forth in this Section and all other applicable provisions of this Project Agreement.

Project Co is responsible for deciding the content of each Review Submittal package in order to comply with the Technical Requirements for that package.

Each Review Submittal package shall include copies of all the documents to be reviewed as part of that Review Submittal and shall clearly identify the purpose of the Review Submittal, Project Co's proposed course of action relating to the Review Submittal, and the element of Project Work that is the subject of the Review Submittal. Unless otherwise agreed to in writing by WDBA, all comments on the Review Submittals shall be responded to by Project Co in writing within a reasonable time period, not to exceed 15 Business Days. If the response is not acceptable to WDBA, the parties shall attempt in good faith to resolve the Dispute in a reasonable time period. WDBA, at its discretion, may limit the number of such other Review Submittals to not more than 2 per Component per week.

## 12. REVISIONS TO REVIEW SUBMITTALS

Project Co shall ensure that each Review Submittal keeps the same, unique reference number throughout the review process, and that any subsequent revisions of the same Review Submittal are identified by a sequential revision number.

Any correspondence related to a Review Submittal shall reference the relevant reference number and revision number.

Any revisions to a Review Submittal shall show clearly the revisions relative to the most recent submission of that Review Submittal, and shall include a preface that states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent visual format for text mark-ups shall be used (for example, with deletions being struck-through and additions being underlined, or similar). Revised portions of drawings shall be clearly marked using appropriate graphical means to distinguish between the revised and unrevised parts of the drawing. The revision number and description of the revision shall be stated on each revised drawing.

## 13. RESPONSES TO REVIEW SUBMITTALS

Table 6-2-3 specifies the terminology of the valid responses to Review Submittals that will be used by WDBA when undertaking reviews of Review Submittals.

Table 6-2-3 also specifies the requirements for Project Co's activities in consequence of Review Submittal review responses.

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**Table 6-2-3  
Responses to Review Submittals and requirements**

Response	Details and requirements
<b>REVIEWED or APPROVED</b>	<p>The response ‘REVIEWED’ or ‘APPROVED’ as applicable shall be assigned to a Review Submittal that, in the opinion of WDBA taking due account of any review by any WDBA Persons or other Governmental Authority conforms to the requirements of this Project Agreement. For Stage 1 and Stage 2 Design Plans, Project Co shall continue their design development. For all other Design Development Stages, Project Co may proceed with the relevant Project Work without further reference except as expressly provided by this Agreement.</p>
<b>REVIEWED WITH COMMENTS or APPROVED WITH COMMENTS</b>	<p>Unless the matter is referred to the Dispute Resolution Procedure, the response ‘REVIEWED WITH COMMENTS’ or ‘APPROVED WITH COMMENTS’ as applicable shall be assigned to a Review Submittal that, in the opinion of WDBA taking due account of any review by any WDBA Persons or other Governmental Authority generally conforms to the requirements of this Project Agreement and in which only immaterial deficiencies have been identified by the review. WDBA may make reference in its response to the relevant sections and clauses of this Project Agreement to which the identified deficiencies relate.</p> <p>For Stage 1 and Stage 2 Design Plans, Project Co shall resolve the provided comments and incorporate agreed to comments in their continued design development.</p> <p>For all other Design Development Stages, Project Co may proceed with the relevant Project Work subject to addressing the deficiencies identified in the review and except as expressly provided by this Agreement. Project Co shall revise the Review Submittal in accordance with the response and shall provide a copy of the revised Review Submittal to WDBA. Project Co shall comply with and implement in the Project Work the content of the revised Review Submittal.</p> <p>If at any time it is discovered that Project Co has not revised the deficiencies in the Review Submittal, then Project Co shall modify the Review Submittal and any implemented Project Work that is the subject matter of the Review Submittal to ensure that the Project Work complies with this Project Agreement. Project Co shall be required to resubmit the relevant Review Submittal. No extension of time will be given or additional compensation paid in respect of any such revision(s) and/or resubmittal(s) of a Review Submittal, unless Section 17 applies.</p>
<b>REJECTED</b>	<p>The response ‘<b>REJECTED</b>’ shall be assigned to a Review Submittal that, in the opinion of WDBA taking due account of any review by WDBA, WDBA Persons or other Governmental Authority, contains significant deficiencies and/or does not substantially conform to the requirements of this Project Agreement. WDBA may make reference in its response to the relevant sections and clauses of this Project Agreement to which the identified deficiencies and/or non-conformities relate.</p> <p>Unless the matter is referred to the Dispute Resolution Procedure, the Review Submittal shall be revised by Project Co and re-submitted as a Review Submittal. No extension of time will be given or additional compensation paid in respect of any such revisions and/or resubmittals of a Review Submittal, unless Section 15 applies.</p> <p>Project Co shall revise and resubmit the Review Submittal either: (i) within 10 Business Days after the date of the relevant REJECTED response or if the matter is referred to the Dispute Resolution Procedure, 10 Business Days after the Dispute Resolution Procedure rules in</p>

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

**Table 6-2-3  
Responses to Review Submittals and requirements**

Response	Details and requirements
	<p>WDBA's favour; or (ii) if a longer period is required by Project Co to undertake the revision, Project Co shall state the resubmission date on the Review Submittal schedule and issue the amended Review Submittal schedule.</p> <p>The resubmitted Review Submittal shall be reviewed in accordance with the Review Procedure and, depending on the outcome of the review, the Review Submittal shall be revised and resubmitted as often as may be required in order to achieve a response of either REVIEWED or REVIEWED WITH COMMENTS.</p>

In addition to the foregoing:

- (a) for the purpose of facilitating and expediting the review and correction of Review Submittals, WDBA and at WDBA's discretion, WDBA Persons and/or Governmental Authorities, and Project Co shall meet as may be mutually agreed to discuss and review any outstanding Review Submittals and any comments thereon.
- (b) where a Review Submittal is voluminous, WDBA may elect to stamp only the cover page or first sheet of the Review Submittal with the appropriate comment, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages returned without such an explanation as to their status shall be deemed to be "REVIEWED" by WDBA.
- (c) In lieu of returning a Review Submittal, WDBA may by letter notify Project Co of the comment assigned to the Review Submittal and if such comment is "REVIEWED WITH COMMENTS" or "REJECTED" the letter will contain comments in sufficient detail for Project Co to identify the correction sought.
- (d) All Review Submittals requiring approval by WDBA shall be approved by WDBA in writing.

#### **14. DEFAULT IN CASE OF LACK OF RESPONSE**

Except as allowed for in accordance with this Project Agreement and the limitations on concurrent Review Submittals in Table 6-2-2, on receiving a Review Submittal for review, if WDBA does not issue a response in the time period provided, then WDBA shall be deemed to have no comments on the Review Submittal and will be deemed to have returned the Review Submittal marked "Reviewed" per week.

#### **15. SUBSEQUENT DISCOVERY**

If at any time after WDBA has assigned a response or is deemed to have given a response to a Review Submittal, WDBA and/or Project Co discovers in the Review Submittal significant deficiencies and/or failure to conform to this Agreement, then WDBA may revise its response to the Review Submittal. If WDBA and Project Co agree (which agreement shall be reached within 10 Business Days of receipt of WDBA's revised response to a Review Submittal) and/or it is determined pursuant to the Dispute Resolution Procedure that the revised response is correct, Project Co shall make all necessary revisions to the Review Submittal and the relevant Project Work. Subject to the provisions of this Agreement, no

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extension of time will be given or additional compensation paid in respect of any such revision or re-submittal.

## 16. DISPUTES

Any Dispute concerning the implementation of a Review Submittal may be referred to the Dispute Resolution Procedure.

If Project Co disputes any acts and/or responses by WDBA in respect of a Review Submittal, Project Co may refer the matter to the Dispute Resolution Procedure.

## 17. REVIEW SUBMITTAL RESPONSES AND WDBA CHANGE

No alteration or modification to the design, quality and quantity of the Project Work arising from the responses properly given in accordance with Table 6-2-3 and the Review Procedure in connection with any Review Submittal shall be construed or regarded as a WDBA Change.

On receiving a Review Submittal response from WDBA, if Project Co considers that compliance with the response (in full or in part) would amount to a WDBA Change, then Project Co shall within 15 Business Days of such receipt, and before in any way complying with the relevant aspect of the response, provide written notice to WDBA of the same.

If WDBA agrees with Project Co's written notice that a WDBA Change would arise if the Review Submittal response were to be complied with, then WDBA may at its election either:

- (a) institute a WDBA Change in accordance with Schedule 22 [*Change Procedure*]; or
- (b) amend the Review Submittal response so as to remove any aspect that could constitute a WDBA Change if it were to be implemented.

If WDBA does not agree with Project Co's written notice that a WDBA Change would arise if the Review Submittal response were to be complied with, then either party may proceed to resolve the matter in accordance with the Dispute Resolution Procedure.

Any failure by Project Co to notify WDBA in accordance with this Section shall be deemed to mean that Project Co considers compliance with a Review Submittal response would not amount to a WDBA Change and this shall constitute an irrevocable acceptance by Project Co that any compliance with said Review Submittal response shall be without cost to WDBA and without any extension of time.

## 18. TRACKING AND AUDITS

### 18.1 Tracking Review Submittals

Project Co shall compile and maintain a register of: (i) the date and contents of all Review Submittals; and (ii) the date of receipt and content of all Review Submittal responses. This register shall be integral with and generated from the Electronic Project Collaboration System.

Project Co shall ensure the register can be filtered by:

- (a) type of submission;
- (b) document date;
- (c) position within the review process;

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- (d) review status;
- (e) review response;
- (f) any outstanding actions; and
- (g) entity responsible for outstanding actions, if any.

## **18.2 Audits of Review Submittals**

Without limiting any other right under this Project Agreement, WDBA shall have the right to audit all Review Submittals, including comparison of any Review Submittal with previous Review Submittals.

If during such an audit or at any other time (including in consequence of the Dispute Resolution Procedure) it is discovered by WDBA and/or Project Co that a Review Submittal was not correctly implemented by Project Co, Project Co shall at its sole cost immediately take all necessary steps to correct and modify the applicable Review Submittal and the relevant Project Work to which it relates and shall advise WDBA of all such corrections and modifications.

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**APPENDIX 6-2-1**

Certificate Form                      Certificate Ref. No [    ]

**INDEPENDENT STRUCTURAL DESIGN CHECK CERTIFICATE**

*Defined terms and expressions used in this Certificate have the same meanings given to them in the agreement between WDBA and Project Co dated as of September 28, 2018 (the "Project Agreement") relating to the Project.*

*Form of certificate to be used by the Checking Team for certifying the design of structures incorporated in the Project. For example, this form of Certificate would be used for the certification for an independent check of the Bridge (Schedule 10 Part 21).*

1. We certify that we have the requisite professional qualifications, skill, and experience to perform an independent check of the Design Data referred to herein in accordance with the requirements of the Project Agreement.
2. We certify that we have performed an independent check (as required by the Project Agreement) of the Design Data for **[list of all elements of the Structure included in the Design Data]** listed in the Schedule hereto and utilizing the standards of care, skill, and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such an independent check, and that in our professional opinion:
  - (a) such Design Data meets performance expectations outlined in the Project Agreement, No. [**@**>] dated [**@**>], as amended by the following:
  - (b) the design, methodologies, and assumptions are consistent with Good Industry Practice.

**SCHEDULE**

[Include here drawing numbers and titles and reports, calculations, etc.]

Signed: \_\_\_\_\_

Checking Team (Principal)

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**APPENDIX 6-2-2**

Certificate Form                      Certificate Ref. No [    ]

**INDEPENDENT GEOTECHNICAL DESIGN CHECK CERTIFICATE**

*Defined terms and expressions used in this Certificate have the same meanings in given in the agreement between WDBA and Project Co dated as of September 28, 2018 (the “**Project Agreement**”) relating to the Project.*

*Form of certificate to be used by the Checking Team for certifying the geotechnical design of structures incorporated in the Project. For example, this form of Certificate would be used for the certification for an independent check of the geotechnical design (Schedule 10 Part 4).*

1. We certify that we have the requisite professional qualifications, skill, and experience to perform an independent check of the Design Data referred to herein in accordance with the requirements of the Project Agreement.
2. We certify that we have performed an independent check (as required by the Project Agreement) of the Design Data for **[list of all elements of the Structure included in the Design Data]** listed in the Schedule hereto and utilizing the standards of care, skill, and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such an independent check, and that in our professional opinion:
  - (a) such Design Data meets performance expectations outlined in the Project Agreement, No. [**@>**] dated [**@>**], as amended by the following:
  - (b) the design, methodologies, and assumptions are consistent with Good Industry Practice.

**SCHEDULE**

[Include here drawing numbers and titles and reports, calculations, etc.]

Signed: \_\_\_\_\_

Checking Team (Principal)

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**SCHEDULE 7****QUALITY MANAGEMENT****PART 1****GENERAL****1. DEFINITIONS**

Unless defined specifically in Part 1 of this Schedule or unless the context otherwise requires, capitalized but otherwise undefined terms in Part 1 of this Schedule shall have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of this Project Agreement. Each Appendix to this Part 1 forms an integral part of this Part 1.

In this Part 1, the following terms have the meanings set out in this Section 1.

**Construction Quality Manager** has the meaning set out in Section 6.5(b).

**Construction Quality Management Plan** has the meaning set out in Appendix 7-1-3.

**Design Quality Manager** has the meaning set out in Section 6.5(b).

**Design Quality Management Plan** has the meaning set out in Appendix 7-1-2.

**Environment Quality Management Plan** has the meaning set out in Appendix 7-1-6.

**Fabrication Quality Assurance Personnel** has the meaning set out in Appendix 7-1-3.

**Field Review Engineer** has the meaning set out in Section 6.6.

**Independent Referee Laboratory** has the meaning set out in Section 8(d).

**Inspection and Test Plan** has the meaning set out in Section 7.3.

**OMR Quality Management Plan** has the meaning set out in Appendix 7-1-4.

**Part 1** means part 1 of this Schedule.

**Project Co Quality Manager** means the Key Individual appointed by Project Co from time to time as the "Lead Quality Manager" as described in Schedule 3 [*Key Individuals*] of this Project Agreement.

**Quality Documentation** means the reports, plans, documentation and information to be submitted by Project Co to WDBA pursuant to this Part 1.

**Quality Management Committee** has the meaning set out in Section 5.4.

**Quality Management Plan** means any one or more of the Construction Quality Plan, the Design Quality Management Plan, the Environment Quality Management Plan and the Traffic Quality Management Plan.

**Quality Management System** has the meaning set out in Section 2.

**Quality Manual** has the meaning set out in Appendix 7-1-1.

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**Schedule** means this Schedule 7 [*Quality Management*] unless such term clearly refers to another schedule or part of a schedule of this Project Agreement.

**Traffic Quality Management Plan** has the meaning set out in Appendix 7-1-5.

**Verification Sampling** has the meaning set out in Section 8(a).

All references to a Section number in this Part 1 means a Section number of this Part 1, unless such Section number clearly refers to a Section of the body of this Project Agreement or to another schedule or part of a schedule of this Project Agreement.

## 2. SCOPE

Project Co shall be solely responsible for the quality of the Project Work. Project Co shall develop, implement and maintain a quality management system for the Design Work and Construction Work in accordance with the requirements of this Part 1 ("**Quality Management System**"). This Part 1 includes the conduct and tracking of quality audit processes by WDBA throughout the Term.

## 3. STANDARDS

- (a) Project Co shall ensure that the Quality Management System, at a minimum, follows Good Industry Practice and complies with the requirements and principles of the ISO 9000 *Standards*, specifically:
  - (i) ISO 19011 Guidelines for auditing management systems;
  - (ii) ISO 9001 Quality management Systems – Requirements;
  - (iii) ISO 9004 Managing for the sustained success of an organization – a quality management approach; and
  - (iv) ISO/ International Electrotechnical Commission 17025 General requirements for the competence of testing and calibration laboratories;
- (b) Project Co shall ensure that the Quality Management System complies with the following standards with respect to the US POE and the Michigan Interchange:
  - (i) MDOT Standard Specifications for Construction and all publications included by reference in the Standard Specifications for Construction;
  - (ii) MDOT Supplemental Specification for Errata to the 2012 Standard Specifications;
  - (iii) All relevant standards as referenced in the appropriate schedules; and
  - (iv) MDOT frequently used special provisions including:
    - (A) Appendix 7-1-9 Quality Control and Acceptance of Portland Concrete; and
    - (B) Appendix 7-1-10 Superpave Hot Mix Asphalt Percent Within Limits; and
- (c) Project Co shall ensure that the Quality Management System is also compliant with the following standards for the Bridge and Canadian POE:

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- (i) Referenced MTO Standard Special Provisions;
- (ii) Referenced MTO Non-standard Special Provisions;
- (iii) Ontario Provincial Standards for Roads and Public Works; and
- (iv) All relevant standards as referenced in the appropriate schedules.

#### **4. PROJECT CO RESPONSIBILITIES**

Project Co is responsible for all quality assurance and quality control activities that are required to manage its own processes, as well as those of Project Co Persons, to meet the requirements of the Project Agreement throughout the Term both on and off of the Site. Project Co shall ensure that the Project Work is undertaken in accordance with the Quality Management System. Project Co shall comply with and shall cause all Project Co Persons to comply with the requirements of the Quality Management System. Project Co shall not be relieved of any of Project Co's responsibilities or obligations set out in this Schedule by the assignment of such responsibilities or obligations to Project Co Persons.

#### **5. QUALITY MANAGEMENT SYSTEM**

##### **5.1 Certification of the Quality Management System**

- (a) The Quality Management System shall be compliant with the ISO 9001 Standard. Project Co shall certify the Quality Management System within 365 days from the Commencement Date. Certification shall be by an accredited ISO 9001 Standard certification agency acceptable to WDBA, acting reasonably, which certification shall be maintained by Project Co throughout the Term. Certificates and third-party audit reports in respect of certification shall be submitted to WDBA.
- (b) The scope of certification for the Quality Management System shall encompass all of the Project Work, including Design Work, Construction Work, traffic management, environmental work, Interim OM Work, OMR Work, Rehabilitation Work and Handback Work. However, Project Co may focus and configure the scope of the certification of the Quality Management System as follows.
  - (i) For the first Quality Management System certification following the Commencement Date, Project Co shall focus on Quality Management System certification for the Project Work during the DB Period.
  - (ii) Starting no later than 90 days before the Canadian POE Agency Buildings Handover date, Project Co shall focus on Quality Management System certification for the Project Work during the Interim OM Period.
  - (iii) Starting no later than 90 days before the Scheduled Substantial Completion Date, Project Co shall focus on Quality Management System certification for the Project Work during the OMR Period.
- (c) Project Co shall update the Quality Management System and all Quality Documentation as required to ensure that the Quality Management System and Quality Documentation is, and at all times remains in full compliance with, the ISO 9001 Standards and the requirements of Part 1 of this Schedule.

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## 5.2 Quality Management Plans

Project Co shall prepare and submit a quality management plan for the Construction Contractor, the OMR Contractor, and all other contractors, subcontractors, consultants, or sub-consultants engaged by Project Co for the purposes of undertaking any material or substantial aspect of the DB Work, the Interim OM Work or the OMR Work, in each case in respect of the activities covered by that party's contract with Project Co and meeting the requirements of the Quality Manual, as set out in Appendix 7-1-1 (the "**Quality Management Plans**"). All Quality management plans are part of the Quality Documentation. At a minimum, Project Co shall prepare and submit the documents described in Table 7-1-1 as Review Submittals.

## 5.3 Compliance with Quality Management System

Project Co shall ensure that all aspects of the Project will be undertaken in accordance with the Quality Management System and its relevant subsets, including those listed in Table 7-1-1.

## 5.4 Continuous Improvement in Quality Management System

- (a) Project Co shall implement a program and shall have mechanisms in place, such as management reviews and quality audit programs, to allow the identification of opportunities for improvement in the Quality Management System to be recorded, tracked, implemented, closed out, and followed up on to verify the effectiveness of action taken. The program shall be used to continually improve the effectiveness and efficiency of the Quality Management System. Project Co shall use measurable key performance indicators, trend analyses, lessons learned, and quality training to promote continuous improvement.
- (b) Project Co shall institute training programs for all employees to promote knowledge of the Quality Management System and consistency of the approach to quality, including quality policy, new-worker orientation, quality relationship to durability and service life, and quality processes that may differ from traditional construction contracting methods. Training shall include methods to promote continuous improvement, including lessons learned and re-training, as necessary. Project Co shall institute a joint committee with equal representation from Project Co and WDBA, of four to six individuals, to review trend analysis, lessons learned, and quality training to provide process improvements (the "**Quality Management Committee**").
- (c) Project Co shall ensure that all persons are aware of the importance of continuous improvement and are actively engaged in its implementation in connection with the performance of the Project Work.

## 5.5 Timing of Implementation

Project Co shall fully implement the provisions of the Quality Manual and all Quality Management Plans prior to the submission of Stage 1 Design Plan.

Project Co shall not commence or permit the commencement of any aspect of the Project Work, both on and off of the Site, before those parts of the Quality Documentation that concern such aspect of the Project Work have been submitted to WDBA and accepted in accordance with this Schedule.

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## 6. ORGANIZATIONAL REQUIREMENTS

### 6.1 Quality Organization - Responsibility and Authority

Project Co's quality organization shall comply with the following:

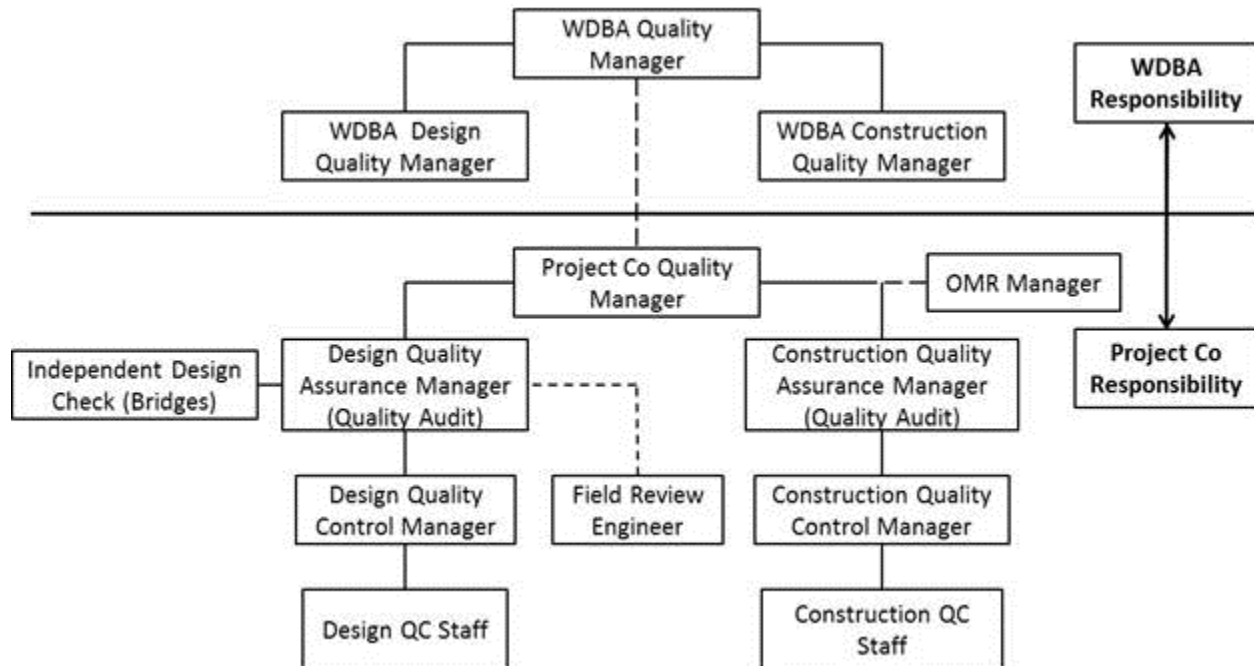
- (a) Executive management shall have the responsibility and authority to plan and determine the overall direction of Project Co and its relationship to the quality efforts. Executive management shall ensure the quality policy is documented and understood by all employees and management by formal and informal training and shall further ensure the implementation of the quality policy by everyone in the organization. The quality policy contained in the Quality Management Plan shall be endorsed by executive management.
- (b) The Quality Management System shall be an integral part of the Project Management and Execution Plan and as such, shall be supported and implemented from the top down. Quality shall not be the sole domain of the design checkers, quality control inspectors, or the Fabrication Quality Assurance Personnel. All workers, including design and construction production personnel, including those of Subcontractors, shall be aware of the Quality Management System requirements that govern their respective work.
- (c) A description of the organizational arrangements, including a chart, shall be available to WDBA and kept current. Project Co shall identify all key roles and persons, and lines of communication and authority between Project Co and WDBA and their representatives and with other organizations involved.
- (d) The responsibility, authority, and interrelation of personnel who manage, perform, and verify work affecting quality, both quality personnel and production personnel, shall be defined and documented, particularly for personnel who need the organizational freedom and authority to do the following:
  - (i) identify and record any problems relating to the product, process, and Quality Management System;
  - (ii) initiate, recommend, or provide solutions through designated channels;
  - (iii) initiate action to prevent the occurrence of any Non-Compliances relating to products, processes and the Quality Management System;
  - (iv) confirm, in a timely manner, the implementation of solutions and determine if the solution to the identified problem created another quality problem;
  - (v) control any further processing, delivery, or installation of non-compliant product until the deficiency or unsatisfactory condition has been corrected; and
  - (vi) establish controls for all quality and production personnel, including stopping work if necessary, once a significant quality problem is identified, until the cause of the problem can be identified and the required corrective action can be implemented.

Figure 7-1-1 is a graphical depiction of the structure of the Project quality control and assurance organization.

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**FIGURE 7-1-1  
PROJECT QUALITY CONTROL AND QUALITY ASSURANCE ORGANIZATION**



## 6.2 Resources

- Project Co shall identify resource requirements and provide sufficient resources, including the assignment of trained personnel, for management, performance of work and verification activities, including internal quality audits.
- Project Co shall have a system for ensuring that the quality management organization is adequately staffed and that staff are trained to perform such activities as design checks, verification activities, receiving, in-process and final inspections, and internal quality audits.
- The Quality Management Plan shall identify the source of staffing, including management, professional, technical, and labour and shall deal with the integration of resources into the specific requirements of the Project Agreement.
- The Quality Management Plan shall address all other resources, such as computers, electronic field devices or tools, craft tools, equipment, and facilities.

## 6.3 Management Review

Project Co's executive management shall review the Quality Management System at defined intervals sufficient to ensure its continuing suitability and effectiveness in satisfying the requirements of Part 1 of this Schedule and Project Co's stated quality policy and objectives. Management reviews shall be held, at a minimum, yearly, or whenever a need arises due to departures from policies and procedures or the discovery of non-compliant work. Records of such reviews shall be maintained. Minutes shall be taken of the review meetings, and these minutes

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shall be maintained as quality records. Copies of minutes shall be provided to WDBA within 20 Business Days after each meeting and posted to the Electronic Project Collaboration System.

#### 6.4 Project Co Quality Manager

(a) At all times during the Term, Project Co shall employ a full-time Project Co Quality Manager, as described in Schedule 3 [Key Individuals] as a direct employee of Project Co that is at arm's length from and completely independent of any entity carrying out Design Work, Construction Work, Interim OM Work or OMR Work for the Project. If Project Co designates different individuals to the post of Project Co Quality Manager for Design Work, for Construction Work, Interim OM Work and/or for OMR Work, then the requirements specified in this Schedule for each such individual for the relevant area of responsibility shall apply.

(b) The identity of the Project Co Quality Manager (and any replacement thereof) and the job specifications and responsibilities of such individual shall be subject to acceptance by WDBA (which shall not to be unreasonably withheld or delayed). Project Co shall also provide the names of two individuals as alternates, for approval by WDBA, who would function as the Project Co Quality Manager if the Project Co Quality Manager is unavailable.

The Project Co Quality Manager shall have successfully completed an ISO 9001 *Lead Auditor Course* and shall

(c) Demonstrate equivalent experience in a similar quality management representative role for a similar, successful project.

(d) The Project Co Quality Manager shall not act as a quality coordinator appointed pursuant to Section 6.5, except that Project Co Quality Manager is permitted to also be the quality coordinator in relation to the Quality Management System during Interim OM Period and the OMR Period. The Project Co Quality Manager shall be independent of the Construction Contractor and the OMR Contractor and have full access to all Quality Documentation.

(e) The role of Project Co Quality Manager shall, at a minimum, include:

(i) developing, implementing and maintaining, and ensuring the effective operation of the Quality Management System;

(ii) initiating management reviews, as described in Section 6.3 and taking other actions necessary to ensure the effective operation and continuous improvement of the Quality Management System;

(iii) taking a holistic and integrated overview of quality across all Project Work, even if other persons may have responsibility for day-to-day quality activities for Design Work, Construction Work, Interim OM Work and OMR Work;

(iv) preparing quality audit programs and scheduling and coordinating internal quality audits and external quality audits of key processes with relevant participants, including the Designer, the Construction Contractor, and the OMR Contractor, as applicable;

(v) ensuring that all quality audits required under the Quality Documentation are conducted;

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- (vi) having the authority and autonomy to immediately stop any work or activity that is not being performed or carried out in accordance with this Agreement;
- (vii) liaising with WDBA and acting as the primary representative for Project Co on all matters relating to quality management;
- (viii) coordinating all matters and issues relating to compliance with the ISO 9001 *Standard of the Quality Management System*;
- (ix) ensuring that relevant records are maintained and retained in accordance with the Quality Management System and the Records Management Protocol;
- (x) developing and implementing a program for correction and, when applicable, corrective action in respect of Non-Compliances including a risk based analysis to prevent reoccurrence in accordance with ISO 9001:2015;
- (xi) carrying out any other matters that in accordance with this Agreement and/or Good Industry Practice are the responsibility of Project Co Quality Manager;
- (xii) having the authority to add or change QA/QC staff as deemed necessary to meet the quality requirements;
- (xiii) addressing quality concerns expressed by either internal or external parties; and
- (xiv) being responsible for oversight of the Quality Management System with respect to the OMR Quality Management Plan, as described in Appendix 7-1-4, including customer service.

The Project Co Quality Manager shall report directly to the Project Director to ensure the quality of Project Work. The Project Co Quality Manager is responsible for ensuring that any matters relating to quality control that could adversely affect the DB Critical Path Schedule are promptly brought to the attention of Project Co and WDBA.

## 6.5 Quality Coordinators

- (a) Project Co shall provide quality coordinators who shall have defined responsibilities for ensuring the establishment and maintenance of the quality management plans listed in Table 7-1-1. Project Co shall provide sufficient quality coordinators to effectively manage the quality management plans listed in Table 7-1-1. Each quality coordinator shall report to Project Co Quality Manager.
- (b) Each quality coordinator shall have relevant experience in similar quality management representative roles for similar elements of work on other projects. Each quality coordinator shall possess certification as quality professionals from appropriate certifying bodies, or have successfully completed training courses in the quality discipline. At a minimum, these courses must include a two day introductory course to ISO 9001, and a one week external or lead auditor course based on ISO 9001. In addition, the Quality Management System shall require that the quality coordinator for the design component (the “**Design Quality Manager**”) shall be a professional engineer with at least five years of experience within the past 10 years overseeing the design of major urban freeways and bridges or other major urban civil infrastructure projects, and that the quality coordinator for construction (the “**Construction Quality Manager**”) have at least five years of experience within the past 10 years as quality managers on major highway and bridge construction projects or other major urban civil infrastructure projects. The identity

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of the Project Co Design Quality Manager and Construction Quality Manager (and any replacement thereof) and the job specifications and responsibilities of such individuals shall be subject to acceptance by WDBA (which shall not be unreasonably withheld or delayed). It shall be unreasonable to withhold or delay consent of candidate which meet the requirements of this Section 6.5(b).

- (c) The responsibilities of the quality coordinators include the following:
- (i) developing, implementing and maintaining, and ensuring the effective operation of their respective quality management plan, listed in Table 7-1-1;
  - (ii) taking the actions necessary to ensure the effective operation and continuous improvement of their respective quality management plan, listed in Table 7-1-1;
  - (iii) preparing quality audit programs and scheduling, coordinating, and performing internal quality audits and scheduling and coordinating external quality audits of key processes identified in their respective quality management plan, listed in Table 7-1-1;
  - (iv) ensuring that all quality audits required under the Quality Documentation are conducted and reporting the findings of such audits to Project Co Quality Manager;
  - (v) having the authority to immediately stop any work or activity related to their respective quality management plan, listed in Table 7-1-1 that is not being performed or carried out in accordance with this Agreement;
  - (vi) liaising with Project Co Quality Manager and WDBA and acting as the representative to Project Co Quality Manager on all matters relating to their respective quality management plan, listed in Table 7-1-1;
  - (vii) coordinating all matters and issues relating to compliance with the ISO 9001 Standard and AASHTO R-18 of their respective quality management plan, listed in Table 7-1-1;
  - (viii) ensuring that relevant records are maintained and retained in accordance with their respective quality management plan, listed in Table 7-1-1 and the Records Management Protocol;
  - (ix) ensure that all material certifications and/or material test results are obtained, where applicable, and are acceptable prior to incorporation of the material into the Project Work;
  - (x) developing and implementing a program for correction and, when applicable, corrective action in respect of Non-Compliances applicable to their respective quality management plan including a risk based analysis to prevent reoccurrence in accordance with ISO 9001:2015, listed in Table 7-1-1;
  - (xi) carrying out quality training for all production staff;
  - (xii) reporting to Project Co Quality Manager; and
  - (xiii) carrying out any other matters that in accordance with this Agreement and/or Good Industry Practice are the responsibility of the quality coordinators.

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## 6.6 Engineer of Record and Field Review Engineer

- (a) The Quality Management System shall provide for ensuring that the as-built Project Work is in conformance with the requirements of the RFC plans and construction specifications. Project Co shall implement a methodology to verify compliance of the as-built Project Work with the Design requirements. Changes made to the Design during construction shall be signed and sealed by the Engineer of Record, not the Field Review Engineer.
- (b) The Quality Management System shall require that a qualified construction engineer be designated to each component of construction (the “**Field Review Engineer**”), to ensure that the construction of their respective component conforms to the RFC plans and to the Technical Requirements, and that each Field Review Engineer certifies that the construction component for which they have been designated responsibility has been built according to the RFC plans and the Technical Requirements. Field Review Engineers shall report directly to Engineer of Record.

## 6.7 Independent Design Check

Project Co shall carry out an independent design check of all Bridge Structures, Major Temporary Works, and the effects of temporary structures on the permanent components in accordance with Part 20 [Bridges] of Schedule 10 [Design and Construction Specifications] and Part 21 [The Bridge] of Schedule 10 [Design and Construction Specifications]. Independent design checks shall be identified in the Design Quality Management Plan and submitted with the timelines set forth in Part 2 [Review Procedure] of Schedule 6 [Project Management]. The independent design check shall be performed by a qualified, independent professional firm selected and employed by Project Co or Construction Contractor, which is at arm's length from any bridge design or other bridge design checking for the Project.

## 7. REQUIREMENTS FOR INSPECTION AND TESTING

### 7.1 General

Where Project Co is required by this Agreement and/or any Quality Documentation to carry out any inspection, laboratory and technician quality management, sampling, test, or trial, such inspection, laboratory and technician quality management, sampling, test, or trial shall be carried out in accordance with the requirements of Part 1 of this Schedule and the provisions of the relevant Quality Documentation.

### 7.2 Accreditation Standards

All on-Site and off-Site inspections, sampling, tests, and trials shall be carried out by testing facilities, laboratories, technicians and organizations that are duly accredited for the carrying out of such inspections, calibrations, samples, tests, and trials. Laboratory accreditation for the Canadian POE and Bridge shall be in accordance with ISO/IEC 17025, except that for the following list of specific activities, the relevant laboratory accreditation stated below can be used in lieu of ISO/IEC 17025:

- (a) for precast concrete: CSA A23.4 *Precast Concrete – Materials and Testing* as appropriate for the Project Work undertaken;
- (b) for concrete and concrete materials: CSA A283-06 *Qualification Code for Concrete Testing Laboratories* to the appropriate category for the tests being done can be used;

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- (c) for structural steel and welding: CSA W178.1-08 *Certification of Welding Inspection Organizations* to the level appropriate for the inspection being carried out can be used;
- (d) for aggregates, hot-mix asphalt paving mixtures: *Canadian Council of Independent Laboratories* as appropriate to the Project Work being carried out can be used; and
- (e) for protective coatings: *NACE International* as appropriate to the Project Work being carried out can be used.

For the Bridge, US POE, and Michigan Interchange, testing and calibration laboratories shall be accredited by the AASHTO Accreditation Program, a comparable laboratory accreditation program approved by the FHWA, the Laboratory Accreditation Bureau, or the Construction Materials Engineering Council.

Project Co is permitted to request the agreement in advance of WDBA to use other industry-recognized accreditations, which agreement shall not be unreasonably withheld or delayed, if such other accreditation is applicable to the Project Work for which it is proposed and meets the intent of ISO/IEC 17025.

### 7.3 Inspection and Test Plans

- (a) Project Co shall prepare and implement an Inspection and Test Plan for all on-Site and off-Site inspection, sampling, test, and/or trial activities for Project Work performed by Project Co and its Subcontractors. Project Co shall be responsible for determining the scope of Project Work covered by each Inspection and Test Plan, including any hold points. The test plan shall include all Major Temporary Works and works that could affect the final structure. WDBA will identify hold points for WDBA verification sampling and testing within the Inspection and Test Plan.
- (b) Project Co's testing plan shall, at a minimum, provide for all sampling, testing and reporting that is required in the Standards of this Schedule, the Standards applicable to the Work under consideration, and with the requirements in Appendix 7-1-7, in both the quality assurance and quality control sections. Furthermore, Project Co shall complete any sampling or testing that is indicated as owner testing or testing to be done by the owner. Project Co shall collect all samples and deliver them to an appropriate laboratory or testing facility. Acceptance of the material being tested shall be based on the acceptance criteria listed in the Standard. If a Standard's acceptance criteria includes a provision for a bonus payment or a penalty, a bonus or penalty shall not be applied. And any test result, lot or subplot that would be subject to a penalty shall be deemed to be in Non-compliance and is subject to the provisions of Part 2 [*Non-Compliance*] of this Schedule.
- (c) Application of Appendix 7-1-7:

Appendix 7-1-7 is initially developed based upon MDOT *Standard Specifications for Construction*. In conjunction with its Inspection and Test Plan Review Submittals, Project Co shall prepare and submit to WDBA a version of the Table in Appendix 7-1-7 for each Component. Such table may be updated and resubmitted from time to time, as Project Co's design development progresses.

Where the Component work is governed in its respective Schedule and Part by Standards for construction other than MDOT *Standard Specifications for Construction* (e.g. *Ontario Provincial Standards for Roads and Public Works*), the Table shall be modified to include the material acceptance requirements of those Standards for

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construction applicable to the work. In addition, where Project Co proposes a material or product for use that is not listed in Appendix 7-1-7 or by way of a Project Special Provision, it shall amend Appendix 7-1-7 to include such material or product. Upon submission to WDBA and in conjunction with the Review Procedure, WDBA intends to provide the "Minimum Owner Verification Frequency" it intends to conduct to Project Co for its information.

Any modifications or updated versions of this Table shall continue as Appendix 7-1-7 for purposes of applying the requirements of this Schedule.

- (d) Project Co shall make the submission with samples and supporting documentation including third party testing to WDBA in accordance with the Review Procedure.
- (e) Project Co's testing plan shall, at a minimum, provide for all sampling, testing and reporting that is required in the *Ontario Provincial Standards for Ontario Roads and Public Works* in both the Quality Assurance and Quality Control sections furthermore Project Co shall complete any sampling or testing that is indicated as owner testing or testing to be done by the owner. Project Co is required to collect all samples and deliver them to an appropriate laboratory or testing facility. Acceptance of the material being tested shall be based on the acceptance criteria listed in the standard. If standard's acceptance criteria includes a provision for a bonus payment or a penalty, a bonus or penalty shall not be applied. And any test result, lot or subplot that would be subject to a penalty shall be deemed to be in Non-compliant and is subject to the provisions of Part 2 [*Non-Compliance*] of this Schedule.
- (f) Project Co shall prepare and submit each Inspection and Test Plan in respect of relevant Project Work as a Review Submittal. All works shall be performed under controlled quality processes and procedures. Project Co shall not perform the relevant Project Work until the applicable Inspection and Test Plan has been assigned a response of "REVIEWED" or "REVIEWED WITH COMMENTS" Each testing facility shall maintain and submit a quality systems manual for review and approval.
- (g) Each Inspection and Test Plan shall, at a minimum, include:
  - (i) description of the inspection, sampling, test, and/or trial activity, including:
    - (A) material category;
    - (B) material description;
    - (C) submittal required; and
    - (D) rejection criteria;
  - (ii) reference to the inspection, sample, test, or trial method;
  - (iii) frequency, number, and time schedule of inspections, sample, test, and/or trial based on material plan quantities where required;
  - (iv) reference to Standards, codes, specifications, and acceptance criteria;
  - (v) quality-recording forms, reports, and checklists to be used by the persons undertaking the activity;

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- (vi) entity within Project Co's team that is responsible for the inspection, calibration, sampling, test, or trial activity;
- (vii) quality assurance and WDBA review, including any hold points and/or witness points;
- (viii) as applicable, description and frequency of geotechnical instrumentation monitoring and adherence to acceptance criteria; and
- (ix) records generated as evidence of the inspection, calibration, sample, test, and/or trial activity.

#### 7.4 Notice of Inspection and Testing

Project Co shall provide WDBA with notice at least 2 Business Days in advance of all hold points identified by WDBA in the Inspection and Test Plan. WDBA may choose to be present for inspection and testing at all such hold points and Project Co shall cooperate with WDBA to ensure that WDBA review can be conducted in a timely and efficient manner. WDBA reserves the right to be notified of additional inspections if quality issues are present or persist.

For activities, such as fabrication, occurring off the Site, Project Co shall give WDBA at least 21 days of written notice for planned Project Work. WDBA reserves the right to invoice Project Co for all direct costs associated with any off Site inspection or testing procedure that has been cancelled by Project Co without reasonable notice to avoid associated cost.

WDBA is entitled to attend any inspections, laboratory and technician quality management activities, sampling, tests, and/or trials.

#### 7.5 Recording and Reporting

Project Co shall develop and implement an inspection and test recording system that shall permit the ready retrieval of all inspection, calibration, samples, test, and/or trial results and readings. Project Co shall ensure that such results and readings are available at all times (starting no later than 5 Business Days after a result or reading is generated) to WDBA via the Electronic Project Collaboration System. With respect to continuous inspection and testing operations, including the inspection and testing of steel welds, concrete quality, structural concrete material quality, aggregate quality, compaction tests, and hot-mix asphalt material quality, Project Co shall ensure that such results are available at all times (starting no later than 5 Business Days after a result is generated) to WDBA pursuant to the Electronic Project Collaboration System.

### 8. REQUIREMENTS FOR WDBA VERIFICATION SAMPLING AND TESTING

- (a) WDBA will undertake sampling and testing for verification purposes of Project Work construction materials (the "**Verification Sampling**"). Such samples will be obtained separately of other samples and may include witness samples. Project Co may do witness sampling and testing for verification purposes undertaken by WDBA. WDBA is not obliged to provide to Project Co advance notice of such sampling, other than where such notice may be necessary for the provision of safe access to the relevant sampling location, as applicable.
- (b) WDBA Verification Sampling shall govern in relation to QA/QC results. WDBA Verification Sampling is the test of record and the basis of acceptance. If Project Co's QA testing is statistically validated to represent the same material population as the relevant WDBA Verification Sampling, then the QA results may supplement the Verification Sampling

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results for any material disposition determinations including Non-Compliance Report and Michigan Interchange Buy Down Amount calculations.

- (c) If WDBA determines that the results of testing of such verification samples differ unacceptably from the relevant test results obtained by Project Co, WDBA may issue a Non-Compliance Report addressing the sampling and/or testing work and/or the quality of the sampled construction material and/or another aspect of the Project Work.
- (d) In response to a Non-Compliance Report of this type, Project Co shall provide WDBA with a written explanation as to why WDBA's test results and Project Co's test results differ and, if such difference is due to Non-Compliance, the resulting corrective actions in accordance with Part 2 of this Schedule. However, if Project Co reasonably disagrees with WDBA's test results, Project Co may seek to resolve the discrepancy through the services of the Independent Certifier, including the independent referee laboratory ("**Independent Referee Laboratory**") in accordance with Section 9.8.

## **9. QUALITY ASSURANCE, AUDITING, AND MONITORING**

### **9.1 Project Co's Quality Assurance**

Project Co's quality management structure shall include a quality assurance organization that shall be configured to:

- (a) provide a review of Project Co quality control systems that is independent of influence from the Design firm or Construction firm;
- (b) provide auditing of process and records of major works;
- (c) provide quality control technicians with proper credentials experience, and who are to be audited for compliance with testing methodologies;
- (d) provide quality assurance testing of materials; and
- (e) track precision and bias of acceptance testing results.

### **9.2 Project Co's Quality Audits**

- (a) Project Co shall conduct internal quality audits and external quality audits of its own processes and those of its Subcontractors in accordance with the ISO 19011 Standard and the requirements of Part 1 of this Schedule and the Quality Documentation. Project Co's quality auditing process shall be configured to:
  - (i) confirm that all Project Work activities are in compliance with the requirements documented in the Quality Documentation;
  - (ii) identify all Non-Compliances and necessary corrective actions and where applicable, preventive actions, which shall be in accordance with Part 2 of this Schedule; and
  - (iii) facilitate continuous improvement.
- (b) Quality audits shall be scheduled by Project Co so that all key processes and elements of the Quality Management System are reviewed regularly and at least twice per year. The scheduling of quality audits shall take due account of the status and importance of the processes being audited, as well as the results of previous audits. During the DB Period

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Project Co shall provide a 6-month rolling, planned audit schedule to WDBA, with an update submitted monthly. For the OMR Period, Project Co shall provide a 12 month rolling, planned audit schedule to WDBA, with an update submitted quarterly.

- (c) Project Co shall prepare a quality audit plan for each audit and shall provide each quality audit plan in advance to relevant Persons involved in the planned audit to confirm the scope and schedule of the audit. Within 14 days of completing a quality audit, Project Co shall document, or cause to be documented, the results of such quality audit in an audit report and make such report available to WDBA by way of the Electronic Project Collaboration System. Where necessary, follow-up audits shall be scheduled to ensure that identified correction and corrective actions are carried out in a timely and effective fashion. Documentation from follow-up audits shall also be made available to WDBA by way of the Electronic Project Collaboration System.

### 9.3 WDBA Quality Audits

WDBA will, following the submission of the Quality Documentation in accordance with this Part 1, review the Quality Documentation to identify the critical activities and processes described in the Quality Manual and Quality Management Plans on which WDBA's auditing efforts and resources will be directed. WDBA may identify different activities and processes for WDBA auditing purposes from time to time. WDBA shall determine the frequency of auditing through regular and ongoing review of Project Co's performance and management systems. Procedures and activities relating to the DB Work and the OMR Work that show good audit performance may have the frequency of auditing decreased, while those that show poor performance or increased risk of Non-Compliances may have the frequency of auditing increased. Without limiting Project Co's obligations under this Project Agreement, Project Co shall provide and shall ensure Project Co Persons provide WDBA with all documentation, records, access, facilities, and assistance requested in connection with WDBA's Quality Audit activities prior to and during the audit.

Project Co shall provide WDBA electronic access to all Inspection and Test Plans, including supporting quality documentation, on a real-time basis in order for WDBA to undertake WDBA Quality Audits.

The types of quality audits that may be conducted by WDBA include the following.

(a) Surveillance Quality Audits

Surveillance quality audits by WDBA shall be scheduled and/or unscheduled on-Site and/or off-Site audits conducted on a random basis, or at specific areas of interest to evaluate a specific item to make an acceptance or rejection determination, as determined by WDBA from time to time and/or as otherwise required by any other provision of this Agreement. The objective of the surveillance quality audits shall be to monitor Project Co's performance of the Project Work, including work practices, workmanship, submittal requirements, and general quality of products and materials in relation to compliance with this Project Agreement, Quality Documentation and Quality Management System, as applicable. WDBA will, as a result of a surveillance quality audit, document any observations that may result in the issuance of a Non-Compliance. Any resulting Non-Compliance shall be initiated by WDBA and resolved by Project Co in conformance with Section 11.2.

(b) Quality Management System Audits

These are scheduled audits undertaken by WDBA at specific, scheduled times to assess the performance of the Quality Management System and Project Co's compliance with

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the Quality Management System. At least once per year, unless specific quality issues require shorter intervals, WDBA may provide Project Co's Quality Manager with a forecasted quality audit plan, including a list of any records to be provided by Project Co, in advance of such audits to confirm the scope and schedule of the upcoming audits. At the opening meeting for the audit, WDBA's auditor shall review with Project Co the audit scope and audit objectives. WDBA's auditors shall conduct audit interviews, document any observations, evaluate the observations, and identify potential observed procedural or performance Non-Compliances that would require correction and, if applicable, corrective action.

At the closing audit meeting with Project Co, WDBA's auditor shall discuss the audit observations and inform Project Co of any potential Non-Compliances and audit recommendations. Project Co shall advise of any initial disagreements with the audit observations in the closing audit meeting. Any resulting Non-Compliance shall be initiated by WDBA and resolved by Project Co as provided in Part 2 of this Schedule.

#### **9.4 Spot-Check Monitoring By WDBA**

Throughout the Term, WDBA may monitor and verify the operation of the Quality Management System by, among other things, carry out spot checks and conduct inspections and tests of any element of the Project Work. Such monitoring and verification of the Quality Management System by WDBA shall not relieve Project Co of its responsibility to comply with the requirements of this Agreement, and Project Co shall not rely on such monitoring and verification for its own quality control and quality assurance purposes.

#### **9.5 Non-Compliance Reports**

For any Non-Compliance initiated as a result of audit findings, or otherwise, that is not resolved to the satisfaction of WDBA, WDBA may issue a Non-Compliance Report to Project Co and the provisions of Part 2 of this Schedule shall apply. Non-Compliances shall be reviewed as part of the Quality Management System Report referred to in Section 10.6.

#### **9.6 Quality Management System Compliance**

If either:

- (a) WDBA believes that Project Co is failing to conduct quality audits of its Quality Management System as required by this Agreement in any material respect and/or if such quality audits are not being conducted in accordance with the ISO 9001 Standard and/or the ISO 19011 Standard by personnel competent to conduct such quality audits; or
- (b) any auditing, monitoring, and/or or spot checks of the Quality Management System reveal deficiencies in the Quality Management System and/or the implementation thereof by Project Co,

then WDBA:

- (c) shall notify Project Co of the circumstances described Sections 9.6(a) and 9.6(b);
- (d) may carry out increased levels of quality audits (whether in number, duration, or detail) of all or any aspect of the Quality Management System until such time as WDBA is satisfied that none of the circumstances described Sections 9.6(a) and 9.6(b), continue to exist;

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- (e) may issue a Non-Compliance in respect of the Quality Management System; and
- (f) shall notify Project Co in writing when WDBA is satisfied that none of the circumstances described Sections 9.6(a) and 9.6(b), continue to exist.

### 9.7 Third-Party Quality Audits

Third-party quality audits shall be conducted as required under the ISO 9001 Standard on the Quality Management System by an accredited certification agency acceptable to WDBA and Project Co, each acting reasonably, and these audit reports shall be submitted to WDBA via the Electronic Project Collaboration System.

### 9.8 Independent Referee Laboratory

- (a) The Independent Referee Laboratory shall be an accredited laboratory that is not a WDBA Person or Project Co Person, is independent of any other quality control, quality assurance or verification, is retained by WDBA, and is not associated with the Project in any other capacity than as Independent Referee Laboratory. WDBA shall retain the services of the Independent Referee Laboratory on an on-call basis to act as the referee laboratory for the resolution of disputed differences between sampling and testing by WDBA and sampling and testing by Project Co. In Michigan, the Independent Referee Laboratory will be the MDOT Construction Field Services Central Services Laboratory or an independent AASHTO accredited laboratory facility designated by WDBA.
- (b) The services of the Independent Referee Laboratory may be requested by WDBA or Project Co.
- (c) On receiving a request to referee, the Independent Referee Laboratory shall promptly: (i) obtain relevant test samples (where possible, this shall be sufficient to allow statistical analysis of similarity of population and sample variances), (ii) undertake appropriate testing of the samples, and (iii) analyze the test results as applicable.
- (d) The conclusions determined by the Independent Referee Laboratory shall be final and binding on both parties and shall not be subject to the Dispute Resolution Procedure.
- (e) The party whose sampling and testing results are not confirmed by the conclusions determined by the Independent Referee Laboratory shall be responsible for payment for the services of the work done by the Independent Referee Laboratory. In the event that the conclusions of the Independent Referee Laboratory confirm neither parties' results, then payment for the relevant work done by the Independent Referee Laboratory shall be split equally between WDBA and Project Co.

### 9.9 Cost of Audits

If WDBA carries out any audit pursuant to Section 9.3, Section 9.4, or Section 9.6 and the results of such audit shows any Non-Compliance that materially interferes with the delivery of the Project Work in accordance with this Project Agreement, the Quality Manual, and/or the Quality Management Plans, then without limiting any other rights and remedies of WDBA, WDBA may seek reimbursement from Project Co to compensate WDBA for all costs incurred in carrying out such audit (including the relevant administrative expenses of WDBA, including an appropriate sum with respect to general staff costs and overheads). All other audits carried out by WDBA pursuant to Section 9.3, Section 9.4, or Section 9.6 shall be at WDBA's cost.

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## **10. QUALITY DOCUMENTATION**

### **10.1 General Principles**

In addition to any requirements specified in Part 1 this Schedule, Project Co's Quality Documentation and Quality Management System shall also comply with the requirements and principles of the ISO 9001 Standard, ISO 19011 Standard, and ISO 9004 Standard, including:

- (a) customer focus;
- (b) leadership;
- (c) involvement of people;
- (d) process approach;
- (e) system approach to management;
- (f) continual improvement;
- (g) factual approach to decision making; and
- (h) mutually beneficial supplier relationships.

### **10.2 Scope of Quality Documentation**

At a minimum, the Quality Documentation shall include:

- (a) all documents listed in Table 7-1-1;
- (b) all Inspection and Test Plans;
- (c) all method statements for Construction Work;
- (d) all quality audit programs and quality audit plans; and
- (e) price adjustments for the Michigan Interchange in accordance with the MDOT Standard Specifications, as amended, consistent with the buy-down calculation in Schedule 21 [*Certification Procedure*].

Quality Documentation shall comply with the MDOT *Documentation Guide (Minimum Documentation Requirements for Pay Item Approvals and Material Acceptance)*.

### **10.3 Submission of Supporting Documents with Quality Documentation**

If any Quality Documentation relies on or incorporates any quality manual, plan, procedure, external reference document, or similar supporting documents, then such supporting documents shall be submitted with the relevant Quality Documentation as part of any Review Submittal pertaining to that Quality Documentation.

### **10.4 Obligation to Update Quality Documentation**

Project Co shall be responsible for updating its Quality Management System and all Quality Documentation from time to time, in accordance with the procedures set forth in this Agreement, in order to ensure that the Quality Management System and all Quality Documentation is, and at all times remains, in full compliance with the ISO 9001 Standard and the requirements of this

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Agreement. Project Co shall submit as a Review Submittal any proposed amendments to any of the Quality Documentation.

## 10.5 Quality Records

Project Co shall establish and maintain complete and accurate quality management records. These quality records shall be configured to provide objective evidence of conformance with all requirements of this Agreement, compliance with the ISO 9001 Standard, and the effective operation of the Quality Management System.

## 10.6 Quality Management System Reports

At a minimum of once per quarter during the DB Period and at a minimum of once per year during the OMR Period, Project Co shall prepare and issue within 15 Business Days of the start of the following reporting period a Quality Management System report. Project Co shall issue each Quality Management System report to WDBA via the Electronic Project Collaboration System.

Each Quality Management System report issued by Project Co shall address all quality management activities occurring in the relevant reporting period, list of issues resolved during the reporting period, and any outstanding quality issues from the prior reporting period. At a minimum, each Quality Management System report shall include:

- (a) a corrective action log providing details of the corrective actions performed during the reporting period and their closeout status;
- (b) a list of certifications of all materials incorporated into the work;
- (c) a Non-Compliance log providing details of all Non-Compliances that had any status other than "closed" at any time during the relevant reporting period;
- (d) a summary of any inspection and testing activities conducted during the reporting period, including testing frequency and quantities;
- (e) any continual improvement initiatives taken during the reporting period, including those implemented as a result of any risk based analysis, including key performance indicators and trend analysis;
- (f) any other information required to be included in the Quality Management System reports pursuant to this Agreement and/or the Quality Management System;
- (g) internal quality audits and external quality audits performed during the reporting period;
- (h) summary of any amendments to the Quality Management System and/or the Quality Documentation made during the reporting period; and
- (i) a list of scheduled quality audits for the next 2 reporting periods.

## 11. NON-COMPLIANCES

### 11.1 General

The process for identifying and dealing with Non-Compliances is set out in Part 2 of this Schedule and Project Co shall comply with such Part 2 with respect to Non-Compliances and Non-Compliance Reports.

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## 11.2 Corrective and Preventative Action

Project Co shall establish and maintain documented procedures for implementing corrective action for all Non-Compliances. Procedures addressing corrective action need shall include a risk based analysis in accordance with ISO 9001:2015 in order to prevent reoccurrence. The investigation of Non-Compliances shall look into three possible causes: the product, the process, and the quality system. Project Co shall implement and record any changes to the documented procedures resulting from corrective action as provided in Part 2 of this Schedule.

## 11.3 Corrective Action

Project Co shall maintain and document a procedure for dealing with Non-Compliances as specified in Part 2 of this Schedule which shall address quality concerns expressed by either internal or external parties, to ensure that the cause has been determined and investigated, and that the appropriate corrective action, if any, shall be taken. Defective materials identified prior to incorporation by QC/QA, or Verification Sampling shall be removed from the Site. Defective materials identified after incorporation may be considered for Non-Compliance Report and corrective action.

## 12. MATERIAL ACCEPTANCE

Materials acceptance shall, at a minimum, be in accordance with the Standards of this Schedule, the Standards applicable to the work under consideration, and with the requirements in Appendix 7-1-7.

Products and materials for Components shall be selected from the following source lists, unless (i) explicitly stated otherwise in the Schedules and Parts that govern the related Work or (ii) higher performance products and materials are required to satisfy the requirements of the Schedules and Parts which govern the related Work.

- (a) the Bridge: Where supplied from the US: MDOT *Qualified Products List* may be used where shown to provide equal or better performance to their MTO *Designated Source for Materials* equivalents. Where not supplied from the US: the MTO *Designated Source for Materials* where shown to provide equal or better performance to their MDOT *Qualified Products List* equivalents;
- (b) the Canadian POE: MTO *Designated Source for Materials*;
- (c) the US POE: MDOT *Qualified Products List*; and
- (d) the Michigan Interchange: MDOT *Qualified Products List*.

The source lists above shall be supplemented, for relevant portions of the Work, with City of Windsor Standards and relevant Utility Supplier material lists as applicable.

The use of products or materials not included in the above source lists requires the prior written approval of WDBA. Such approval shall be subject to Project Co demonstrating, in its submission, sufficient experience with the proposed product and acceptable performance for the proposed product under conditions and applications similar to those existing for this Project. Project Co shall make the submission with samples and supporting documentation including third party testing to WDBA in accordance with the Review Procedure.

Appendix 7-1-8 sets out the special provision regarding the purchase of iron and steel for use in the Project.

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**13. PROVISION OF ADDITIONAL INFORMATION**

Notwithstanding any other provision of this Agreement, Project Co shall provide WDBA with such information as WDBA may reasonably request, from time to time, in order to determine compliance with this Schedule.

**14. REVIEW SUBMITTALS (DELIVERABLES)**

At a minimum, the Review Submittals pertaining to quality management shall include the plans listed in Table 7-1-1.

**TABLE 7-1-1  
LIST OF REVIEW SUBMITTALS FOR QUALITY MANAGEMENT SYSTEM**

<b>Deliverable</b>	<b>Delivery schedule</b>	<b>Refer to</b>
Quality Manual	Not later than 80 Business Days after the Commencement Date	Appendix 7-1-1
Design Quality Management Plan	Not later than 30 Business Days after the Commencement Date	Appendix 7-1-2
Construction Quality Management Plan	Not later than 20 Business Days before first Construction Work of Permanent Work	Appendix 7-1-3
OMR Quality Management Plan	Not later than 60 Business Days before Total Design-Build Substantial Completion	Appendix 7-1-4
Traffic Quality Management Plan	Not later than 30 Business Days after the Commencement Date	Appendix 7-1-5
Environmental Quality Management Plan	Not more than 60 Business Days after the Commencement Date	Appendix 7-1-6
ISO Certifications and Third-Party Audit Reports	Not later than 10 Business Days after issuance	5.1(a), 9.7
Modifications to Quality Management Plan and Quality Documentation	As initiated by changes to organizational charts, roles, duties, and responsibilities of Quality staff by Project Co	5.2, 10.4
Independent Design Check Certifications and Calculations	As per Part 2 [Review Procedure] of Schedule 6 [Project Management]	6.7
Inspection and Test Plans	Prior to performing the relevant Project Work	7.3(f)
Testing Facility Quality Systems Manual	Prior to performing the relevant Project Work	7.3(f)

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<b>Deliverable</b>	<b>Delivery schedule</b>	<b>Refer to</b>
Project Co 6-Month Planned Audit Schedule	Update provided not later than monthly during the DB Period	9.2(b)
Project Co 12-Month Planned Audit Schedule	Update provided not later than every quarter during the OMR Period	9.2(b)
Fabricator Quality Plans	Prior to the start of fabrication	Appendix 7-1-3
Fabricator Quality Documentation	Not later than 10 Business Days after issuance	Appendix 7-1-3
Step Certification for Steel and Iron Pay Items	Prior to incorporation of the materials into the Project Work	Appendix 7-1-8
Partially Compliant Steel and Iron Certification Documentation	Prior to incorporation of the materials into the Project Work	Appendix 7-1-8

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### **APPENDIX 7-1-1 REQUIREMENTS FOR QUALITY MANUAL**

Project Co shall provide and implement a comprehensive quality manual that describes the Quality Management System for all aspects of Project Work, including DB Work, Interim OM Work and OMR Work (the “**Quality Manual**”). The Quality Manual shall establish the quality policy and quality objectives for all aspects of the Project Work and, in accordance with the requirements of the ISO 9001 Standard, shall describe the processes that shall be established, implemented, controlled, and continually improved to achieve the established quality objectives. Prominently display the quality policy in all work locations.

The quality objectives shall be specific, measurable, achievable, results-focused, timely, and consistent with the quality policy and linked to meeting the needs and performance expectations with respect to the Project Work. The Quality Management System described in the Quality Manual shall include all the activities required to achieve these quality objectives, including project controls such as scope, cost, schedule, and general document control management activities. All of these activities shall be subject to internal quality audits and external quality audits.

The Quality Manual shall describe the nature of Project Co's organization involved in performing the Project Work and how key management activities (such as project controls, design, construction, traffic management, and environmental) shall interface with each other. The Quality Manual shall also provide the organizational chart, authority, and responsibilities of key persons, including but not limited to the Key Individuals. The Quality Manual shall describe the selection criteria for all quality personnel, including, at a minimum, required credentials, education, years of experience, certifications, and licenses. The Quality Manual shall list all quality personnel including, at a minimum, credentials, certifications, and licenses and shall be kept up to date and be available for viewing by WDBA Persons at any time during the normal business hours. The Quality Manual shall also show how the various levels of Quality Management System documentation are linked, compatible, and cohesive.

The Quality Manual shall describe how the Work will be divided into discrete and manageable packages to ensure all documentation requirements are met for each project element at each milestone prior to Substantial Completion. The Quality Manual shall describe how all documentation will be maintained, tracked, and communicated to WDBA.

The Quality Manual shall clearly define the reporting function and authority of Project Co's Quality Manager, who shall liaise with WDBA and act as the single-point representative of Project Co for all matters relating to quality management.

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**APPENDIX 7-1-2  
REQUIREMENTS FOR DESIGN QUALITY MANAGEMENT PLAN**

Project Co shall provide and implement a comprehensive design quality management plan that describes how it intends to manage the design processes for the Project Work in accordance with the ISO 9001 Standard, the Quality Management System requirements stated in the quality manual, and the provisions of this Agreement (the “**Design Quality Management Plan**”).

The Design Quality Management Plan shall include an organizational chart identifying key design management personnel and the linkage with Project Co Quality Manager for Project Co’s overall Quality Management System as documented in the Quality Manual. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between other engineering groups and construction disciplines which undertake DB Work. The Design Quality Management Plan shall address all phases and aspects of the Project Work, including Design Work and Construction Work.

The Design Quality Management Plan shall, at a minimum, include or reference detailed quality system procedures and process flow charts for the following processes in compliance with applicable Standards:

- (a) design and computer input and output review;
- (b) verification of design inputs that incorporate on-Site measurements and/or inspections;
- (c) design verification to ensure that design input requirements have been met;
- (d) design validation to ensure that the final product is capable of meeting its intended use;
- (e) constructability reviews;
- (f) design changes;
- (g) control of non-compliant product;
- (h) compliance with design and construction certification requirements;
- (i) design subcontractor quality assessment and procurement;
- (j) external quality audits of design subcontractors;
- (k) internal quality audits;
- (l) corrective actions;
- (m) document management;
- (n) control of records;
- (o) interaction with design checking teams, including independent design checkers; and
- (p) any mandatory documented procedures in addition to the foregoing in accordance with the ISO 9001 Standard.

At a minimum, the above-listed procedures and flow charts shall document who does the work, what they do, and what evidence is generated that they have done the work correctly. Each submission shall include a declaration from Project Co Quality Manager that the Design followed the quality process and is

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in compliance with the Quality Management System and any applicable independent design check certifications.

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**APPENDIX 7-1-3  
REQUIREMENTS FOR CONSTRUCTION QUALITY MANAGEMENT PLAN**

Project Co shall provide and implement a comprehensive construction quality management plan that describes how it intends to manage the construction processes in connection with the Project Work in accordance with the ISO 9001 Standard, the Quality Management System requirements stated in the Quality Manual, and the provisions of this Agreement (the “**Construction Quality Management Plan**”).

The Construction Quality Management Plan shall contain an organizational chart identifying key construction management personnel and the linkage with Project Co Quality Manager for Project Co's overall Quality Management System as documented in the Quality Manual. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between construction and other disciplines, including design, environmental management, and traffic management. The Construction Quality Management Plan shall address all phases and aspects of the Project Work, including design and construction.

The Construction Quality Management Plan shall, at a minimum, include or reference detailed quality system procedures and process flow charts for the following processes in compliance with applicable standards:

- (a) construction safety audits;
- (b) inspection, testing, and monitoring;
- (c) field measurements and surveys;
- (d) materials identification and traceability including:
  - (i) material sources;
  - (ii) mill certifications;
  - (iii) buy America/Canada certifications including step certification submittals, as set out in Appendix 7-1-8;
  - (iv) general material certifications;
  - (v) test data certifications; and
  - (vi) mix designs;
- (e) Subcontractors' quality assessment and procurement;
- (f) procurement monitoring;
- (g) external quality audits of Subcontractors;
- (h) internal quality audits;
- (i) control of non-compliant product;
- (j) corrective actions;
- (k) document management;
- (l) control of records; and

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- (m) any mandatory documented procedures in addition to the foregoing in accordance with the ISO 9001 Standard.

At a minimum, the foregoing procedures and flow charts shall document who does the work, what they do, and what evidence is generated that they have done the work correctly.

The Construction Quality Management Plan shall identify planned quality assurance duration and number of personnel for fabrication of structural and aesthetic elements such as, but not limited to cladding, soffits, structural steel, concrete girders, deck panels, cables, and expansion joints for the Project Components. Each fabrication facility shall have quality assurance personnel (the "**Fabrication Quality Assurance Personnel**") dedicated solely to the Project fabrication for the entire fabrication duration, otherwise approved in writing by WDBA in its sole discretion. Fabrication Quality Assurance Personnel shall have stop work authority and shall be provided all requests for information, approved shop drawings, quality control Non-Compliance Reports and any additional information and access requested to perform their inspections. Fabrication Quality Assurance Personnel responsibilities shall, at a minimum, meet those of the Ontario Provincial Standards for Roads and Public Works, MDOT *Standard Specifications for Construction* and all publications included by reference in the *Standard Specifications for Construction* including the *Michigan Quality Assurance Procedures Manual*, the *MDOT Supplemental Specification for Errata to the 2012 Standard Specifications*, and all Project Special Provisions.

All fabrication Quality Documentation, including Inspection and Test Plans, requests for information, repairs, Non-Compliance Reports, engineer approvals, and quality assurance daily reports shall be uploaded to the Electronic Project Collaboration System within 10 Business Days for access by WDBA.

All quality plans for fabricators shall be approved by the licensed design professional responsible for the respective Project Work and submitted to WDBA prior to the start of fabrication.

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**APPENDIX 7-1-4  
REQUIREMENTS FOR OMR QUALITY MANAGEMENT PLAN**

Project Co shall provide and implement a comprehensive OMR quality management plan that describes how it intends to monitor and measure its Interim OM Work and OMR Work in connection with the Project in accordance with the ISO 9001 Standard, the Quality Management System requirements stated in its Quality Manual, and the provisions of this Agreement (the “**OMR Quality Management Plan**”). The OMR Quality Management Plan shall be aligned with all relevant performance measures specified in Schedule 11 [*Operations, Maintenance and Rehabilitation*] and shall define Project Co’s approach to achieving compliance with the requirements of this Agreement relating to Interim OM Work and OMR Work.

The OMR Quality Management Plan shall include an organizational chart identifying key OMR management personnel and the relationship with Project Co Quality Manager for Project Co’s Quality Management System as documented in Project Co’s Quality Manual. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between the OMR management and other disciplines, such as design, construction, traffic, and environmental management.

The quality coordinator for the OMR Quality Management Plan shall:

- (a) have experience in a similar role on a similar, successful highway and bridge project and successful completion of an ISO 9001-compliant internal audit training course; and
- (b) report to Project Co Quality Manager.

Project Co shall develop documented quality system procedures and process flow charts to ensure that all performance specifications and requirements in this Project Agreement with respect to Interim Work and OMR Work are met or exceeded. These procedures and flow charts shall document who does the work, what they do, and what evidence is generated that they have done the work correctly.

The OMR Quality Management Plan shall incorporate a compliance monitoring process to track compliance with all performance measures specified in Schedule 11 [*Operations, Maintenance and Rehabilitation*]. The performance measures compliance monitoring process shall clearly describe the approach taken in assessing compliance, and define the frequency and method of monitoring and reporting performance measures compliance. WDBA shall review Project Co’s performance measures compliance monitoring process and may request changes that WDBA considers appropriate to facilitate the accurate and appropriate monitoring and reporting of compliance with the performance measures and otherwise to meet the requirements of this Agreement. Project Co’s performance measures compliance monitoring process shall be subject to ongoing review by WDBA throughout the Term.

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**APPENDIX 7-1-5  
REQUIREMENTS FOR TRAFFIC QUALITY MANAGEMENT PLAN**

Project Co shall provide and implement a comprehensive traffic quality management plan that describes how it intends to administer the traffic management processes in connection with the Project Work in accordance with the ISO 9001 Standard, the Quality Management System, Quality Documentation, and the provisions of this Agreement (the “**Traffic Quality Management Plan**”).

The Traffic Quality Management Plan shall include an organizational chart identifying key traffic management personnel and the linkage with Project Co Quality Manager for Project Co’s overall Quality Management System as documented in the Quality Manual. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between the traffic management and other disciplines, such as design, construction, and environmental management. The Traffic Quality Management Plan shall address all phases and aspects of the Project Work.

The Traffic Quality Management Plan shall, at a minimum, include or reference detailed quality system procedures and process flow charts for the following processes:

- (a) design input and output review for: the Canadian POE – Transportation Management Plan, The Sandwich Street - Transportation Management Plan, the US POE – Transportation Management Plan, and the Michigan Interchange – Transportation Management Plan;
- (b) design verification to ensure that design input requirements have been met for: the Canadian POE – Transportation Management Plan, The Sandwich Street - Transportation Management Plan, the US POE – Transportation Management Plan, and the Michigan Interchange – Transportation Management Plan;
- (c) validation to ensure that the final product is capable of meeting its intended use for: the Canadian POE – Transportation Management Plan, The Sandwich Street - Transportation Management Plan, the US POE – Transportation Management Plan, and the Michigan Interchange – Transportation Management Plan;
- (d) design changes relative to or affecting: the Canadian POE – Transportation Management Plan, The Sandwich Street - Transportation Management Plan the US POE – Transportation Management Plan, and the Michigan Interchange – Transportation Management Plan;
- (e) Annual Traffic Management Communications Plan and Individual Traffic Communications Plans;
- (f) implementation plan;
- (g) advisory signing plan;
- (h) risk assessment plan;
- (i) external quality audits of Subcontractors;
- (j) internal quality audits;
- (k) control of non-compliant activities and/or product;
- (l) corrective actions;

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- (m) document management;
- (n) control of records; and
- (o) any mandatory documented procedures in addition to the foregoing in accordance with the ISO 9001 Standard.

At a minimum, the above-listed procedures and flow charts shall document who does the work, what they do and what evidence is generated that they have done the work correctly.

When the above processes are already covered as part of another quality management plan, the process heading shall still be identified as part of the Traffic Quality Management Plan; however, the details may be minimized to a cross-reference to the other quality management plan, provided that the cross-referenced document presents specific requirements with regard to the above processes as these relate to traffic quality management.

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**APPENDIX 7-1-6  
REQUIREMENTS FOR ENVIRONMENTAL QUALITY MANAGEMENT PLAN**

Project Co shall provide and implement a comprehensive environmental quality management plan that describes how it intends to manage the environmental components of the Project Work in accordance with the ISO 9001 Standard, the ISO 14001 Standard, the Quality Management System, Quality Documentation, and the provisions of this Agreement (the “**Environmental Quality Management Plan**”). The Environmental Quality Management Plan shall address all phases and aspects of the Project Work, including Design Work, Construction Work, Interim OM Work and OMR Work.

The Environmental Quality Management Plan shall include an organizational chart identifying key environmental management personnel and the linkage with Project Co Quality Manager for Project Co’s overall Quality Management System as documented in the Quality Manual. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between the design and other disciplines.

The Environmental Quality Management Plan shall include or reference detailed quality system procedures and process flow charts for the following processes:

- (a) satisfying and ensuring compliance with the Environmental Obligations, including the preparation and implementation of the Environmental Management System as specified in Schedule 16 [*Environmental*];
- (b) obtaining and maintaining Permits under the responsibility of Project Co;
- (c) environmental monitoring and reporting;
- (d) environmental incident reporting and tracking;
- (e) external quality audits of Subcontractors;
- (f) internal quality audits;
- (g) control of non-compliant services or products;
- (h) corrective actions;
- (i) document management;
- (j) control and retention of records; and
- (k) any mandatory documented procedures in addition to the foregoing in accordance with the ISO 9001 Standard.

At a minimum, the foregoing procedures and flow charts shall document who does the work, what they do, and what evidence is generated that they have done the work correctly.

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**APPENDIX 7-1-7  
MATERIAL ACCEPTANCE**

All references in Appendix 7-1-7 to sections (e.g. 502.02B) refer to the MDOT *Qualified Products List*. All other references are to MDOT standards.

**MATERIALS QUALITY CONTROL, QUALITY ASSURANCE AND OWNER VERIFICATION**

See Miscellaneous area at the end of table for materials deleted from the MDOT 2012 Standard Specifications for Construction.

\* **Must be tested unless provided by an Approved Manufacturer. See MDOT Material Source Guide.**

\*\* **When the Basis of Acceptance is not "Test", the sampling criteria below may be used when there are concerns with material quality.**

\*\*\* **Project Co's files will be spot checked at least every 3 months to ensure certifications are correct. This frequency may be increased at WDBA's discretion.**

\*\*\*\* **Qualified Products are located at MDOT's Material Source Guide. For inclusion of materials not on a Qualified Products List, see the MDOT Materials Quality Assurance Procedures Manual (MQAP) for the evaluation process for materials**

\*\*\*\*\* **See Special Instructions in the MDOT Quality Assurance Procedures Manual**

Material Name and Applicable Section of the MDOT 2012 Standard Specifications for Construction	Quality Control (QC) Frequency (To be completed by Project Co)	Minimum Basis of Acceptance	** Minimum Quality Assurance Sample Frequency If Required	Quality Assurance (QA) Sample Size	Quality Assurance Maximum VI Quantity	Minimum Owner Verification Frequency	**** Additional Remarks
<b>502.02B</b> Overband Crackfill, Asphalt Rubber (Alt 2)		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product

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Material Name and Applicable Section of the MDOT 2012 Standard Specifications for Construction	Quality Control (QC) Frequency (To be completed by Project Co)	Minimum Basis of Acceptance	** Minimum Quality Assurance Sample Frequency If Required	Quality Assurance (QA) Sample Size	Quality Assurance Maximum VI Quantity	Minimum Owner Verification Frequency	**** Additional Remarks
<b>603.03B2</b> Adhesive Systems for Grouting Dowel Bars and Tie Bars for Full-Depth Concrete Pavement Repairs		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>NOTE:</b> Use for grouting to existing concrete in the same direction of traffic in the same lane as the repair. For grouting lane ties (deformed bars positioned transverse to the direction of traffic located between traffic lanes) select from Adhesive Anchor Systems for Structural Anchors and Lane Ties (712.03J).							
<b>702.02B</b> Non-Shrinking Mortar and Grout, Type H-1(Non-Metallic) Pre Mixed		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>702.02C</b> Admixture for Expansive Grout, Type E-1		Test Data Certification	-	-	-	*** Spot check Project Co files to verify data on certification matches test results	
<b>703</b> Prepackaged Hydraulic Fast Set Mortar		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product (703).
<b>706.03K4</b> Expansion Joint Devices for Bridges		See Remark	-	-	-	*** Spot check Project Co files	See MDOT Bridge Standard Plans for list of approved devices and details. Deviations from Standard Plans must be approved by WDBA

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Material Name and Applicable Section of the MDOT 2012 Standard Specifications for Construction	Quality Control (QC) Frequency (To be completed by Project Co)	Minimum Basis of Acceptance	** Minimum Quality Assurance Sample Frequency If Required	Quality Assurance (QA) Sample Size	Quality Assurance Maximum VI Quantity	Minimum Owner Verification Frequency	**** Additional Remarks
<b>706.03S</b> Penetrating Water Repellent (Protective Coating for Concrete)		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>707.02</b> Bushings for Pins and Link Plates		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>708.03A</b> Prestressed Concrete Bridge Beams		Fabrication Inspection & VI	Daily per MDOT Quality Assurance Manual	-	-	1 OVT visit per 10 production days	See MQAP Manual Section 4.04 for additional details on the Quality Assurance requirements. A Visual Inspection must be conducted upon delivery to jobsite.
<b>712.03J</b> Adhesive Anchor Systems for Structural Anchors and Lane Ties		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>712.03K</b> Structure Expansion Anchors (Mechanical Expansion Anchors)		General Certification	Pull Out Testing on all structural anchors	-	-	*** Spot check Project Co files Witness pull out testing per MDOT specifications.	Must be a Qualified Product. Pull-out testing is required per MQAP Manual Section 4.03.
<b>712.03L</b> Mechanical Reinforcement Splicing		General Certification	1 per 500 splices per year	2 splices per year	-	*** Spot check Project Co files. Witness testing of 2 splices per year	Must be a Qualified Product

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Material Name and Applicable Section of the MDOT 2012 Standard Specifications for Construction	Quality Control (QC) Frequency (To be completed by Project Co)	Minimum Basis of Acceptance	** Minimum Quality Assurance Sample Frequency If Required	Quality Assurance (QA) Sample Size	Quality Assurance Maximum VI Quantity	Minimum Owner Verification Frequency	**** Additional Remarks
<p><b>NOTE:</b> Project Co must make test splices, witnessed by WDBA representatives, on the largest bar sizes that are to be spliced. See MDOT Bridge Field Services Advisory (BFSA) 2012-03. Test splice consists of 2 pieces of reinforcing bar joined by the coupler with 12 inches of bar exposed on each end of the coupler.</p>							
<b>712.03Y</b> Embedded Galvanic Anodes		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>713.02B</b> Sealant for Perimeter of Beam Repairs		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>715.02 &amp; 915</b> Coating Systems for New Hanger Assemblies		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product.
<b>715.02</b> Abrasive, Low Dusting		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>715.02 &amp; 716.02</b> Abrasive, Low Dusting		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>803.02B</b> Detectable Warning Surfaces		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>811.03D1</b> Waterborne, Liquid Pavement Marking Materials		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>811.03D2</b>							

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Material Name and Applicable Section of the MDOT 2012 Standard Specifications for Construction	Quality Control (QC) Frequency (To be completed by Project Co)	Minimum Basis of Acceptance	** Minimum Quality Assurance Sample Frequency If Required	Quality Assurance (QA) Sample Size	Quality Assurance Maximum VI Quantity	Minimum Owner Verification Frequency	**** Additional Remarks
Low Temperature Waterborne, Liquid Pavement Marking Materials		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>811.03D3</b> Regular Dry Paint, Liquid Pavement Marking Materials		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>811.03D4</b> Cold Plastic Tape, Liquid Pavement Marking Materials		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>811.03D5</b> Thermoplastic Liquid Pavement Marking Materials		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>811.03D5</b> Thermoplastic, Blocks Rumble Strips and Snowmobile Crossings		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>811.03D6</b> Thermoplastic, Sprayable, Liquid Pavement Marking Materials		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>811.03D7</b> Polyurea, Liquid Pavement Marking Materials		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>811.03D8</b> Modified Urethane, Liquid Pavement Marking Materials		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>902</b>							

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Material Name and Applicable Section of the MDOT 2012 Standard Specifications for Construction	Quality Control (QC) Frequency (To be completed by Project Co)	Minimum Basis of Acceptance	** Minimum Quality Assurance Sample Frequency If Required	Quality Assurance (QA) Sample Size	Quality Assurance Maximum VI Quantity	Minimum Owner Verification Frequency	**** Additional Remarks
Coarse Aggregates		Test	1 per 1000 ton	60 lb	100 ton	20% to 40% of Quality Assurance Frequency 1 Owner Verification Test (OVT) per 5 QA tests.	
<b>902</b> Dense-Graded Aggregates		Test	1 per 1000 ton	60 lb	500 ton	20% to 40% of Quality Assurance Frequency 1 OVT per 5 QA tests.	
<b>902</b> Open-Graded Aggregates		Test	1 per 1000 ton	60 lb	100 ton	20% to 40% of Quality Assurance Frequency 1 OVT per 5 QA tests.	
<b>902</b> Granular Material Class I		Test	1 per 1000 ton	60 lb	100 ton	20% to 40% of Quality Assurance Frequency 1 OVT per 5 QA tests.	
<b>902</b> Granular Material Class II (Subbase) and Class IIA		Test	1 per 3000 cyd	60 lb	500 cyd	20% to 40% of Quality Assurance Frequency 1 OVT per 5 QA tests.	
<b>902</b> Class II (Abutment B. F.)		Test	1 per structure	60 lb	100 cyd	20% to 40% of Quality Assurance Frequency 1 OVT per 5 QA tests.	

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Material Name and Applicable Section of the MDOT 2012 Standard Specifications for Construction	Quality Control (QC) Frequency (To be completed by Project Co)	Minimum Basis of Acceptance	** Minimum Quality Assurance Sample Frequency If Required	Quality Assurance (QA) Sample Size	Quality Assurance Maximum VI Quantity	Minimum Owner Verification Frequency	**** Additional Remarks
<b>902</b> Granular Material Class III		Test	1 per 10,000 cyd	60 lb	500 cyd	20% to 40% of Quality Assurance Frequency 1 OVT per 5 QA tests.	
<b>902</b> Granular Material Class IIIA		Test	1 per 1000 cyd	25 lb	100 cyd	20% to 40% of Quality Assurance Frequency 1 OVT per 5 QA tests.	
<b>902</b> Fine Aggregate		Test	1 per 1000 ton	25 lb	100 ton	20% to 40% of Quality Assurance Frequency 1 OVT per 5 QA tests.	
<b>903.01</b> Air Entraining Admixtures		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>903.02</b> Water Reducing and Water Reducing Retarding Admixtures for Concrete		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>903.04</b> Concrete Accelerators without Calcium Chloride		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>904.03A</b> Asphalt Binder for HMA Mixtures		See Remark	Take 1 sample each day, Test 1 sample per tank	(2) 1 qt containers	-	1 per binder grade per supplier per year	See Special Instructions.

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<b>904.03C</b>  Emulsified Asphalt		* Approved Manufacturer	1 per batch	See Remark	-	*** Spot check Project Co files Witness testing per MDOT specifications. 1 per project per year.	See Special Instructions.
<b>905.03</b> Bar Reinforcement  1. Bar  2. Epoxy Coating Companies		* Approved Manufacturer  * Approved Manufacturer	1 per 100,000 lbs.	See Note	500 lb	1 per manufacturer per year  1 per manufacturer per year	2 pcs. One 24 in. & one 36 in. Test Data Certification to required with sample. Epoxy coating must be a Qualified Product
3. Epoxy Coating Material (905.03C)		General Certification	-	-	-	*** Spot check Project Co files	
<p><b>NOTE:</b> Sample ID to include name of epoxy coating company, epoxy resin trade name and lot number, bar manufacturer and heat number. Sample size, 2 pieces, 1 of which is 24 in. and 1 of 36 in.</p>							
<b>905.07</b>  Strand for Prestressed Concrete		* Approved Manufacturer	1 per fabricator, per manufacturer, per year	2 pcs each, 80 inches long	-	1 per manufacturer per year	Obtain sample 5 ft. from end of reel. Test Data Certification required with sample.
<b>905.08</b>							

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Tendons for Post Tensioning of Box Beams - Prestressing Strand		* Approved Manufacturer	1 per heat	2 pcs each, 80 inches long	-	1 per manufacturer per year	Sampling and testing may be waived if strand from same reel is tested for beam fabrication. Obtain sample at least 5 ft. from end of reel. Test Data Certification required with sample.
<b>905.08</b> Post Tensioning Bar		Test	1 per heat per project	2 pcs each 30 inches long	-	1 per manufacturer per year	Test Data Certification must be attached to Sample Identification form for lab testing.
<b>906</b> Structural Steel		Fabrication Inspection & VI	Daily per MDOT Quality Assurance Manual	-	-	1 OVT visit per 10 production days per facility per year	See MQAP Manual Section 4.05 for additional details on the Quality Assurance requirements. A Visual Inspection must be conducted upon delivery to jobsite.
<b>906.07</b> High Strength Steel Bolts		Test	1 per dia per length per heat per project	bolts, nuts & washers, 3 each	-	1 per dia per length per heat per project on bolts, nuts & washers of 3 assemblies (same as the QA Sample Size)	Bolt, nut and washer Test Data Certification must identify the manufacturer and must be attached to the Sample ID.
<b>906.09</b>							

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Shear Developers (Studs)		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product (906.09).
<b>907.05A</b> High Tensile Wire Fence (Wire)		Test	1 per project per manufacturer	3 ft	250 ft	*** Spot check Project Co files	
<b>908.09A</b>  Tubing, Steel Railings, Base Plate, Angle, and Post Elements (Galvanized)		Fabrication Inspection	1 per heat per project	1 base plate, 1 post 18 inches in length	-	1 OVT visit per 20 production days or minimum 1 per year	See MQAP Manual Section 4.05 for additional details on the Quality Assurance requirements. Test Data Certification document must be attached to the sample ID.
<b>908.09B</b>  Tubing, Steel Railings, Rail Elements (Tube) (Galvanized)		Fabrication Inspection	1 per heat per project	36 inches long, galvanized	-	1 OVT visit per 20 production days or minimum 1 per year	<b>See MQAP Manual Section 4.05 for additional details on the Quality Assurance requirements.</b> Chemical analysis must include silicon. Test Data Certification document must be attached to the sample ID.
<b>908.09C</b>							

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Tubing, Steel Railings, Hardware (Anchor Studs)		Test	1 per heat per diameter per project	A bolt, nut, washer, coupling and base plate, if applicable	-	1 per heat	
<b>908.14</b>  Anchor Bolts, Anchor Studs, Anchor Rods and Anchor Base Plates		Test***	1 per heat per diameter per project	1 bolt, nut, washer, coupling and base plate if applicable	-	1 per heat	Non MDOT Standard Plan Bolts require Shop Drawings along with the Test Data Certification document. For cantilever foundations: 1 per heat per dia per foundation, max 3 per project.
<b>909.01</b>  Recycled Rubber Adjusting Rings for Manholes and Drainage Castings		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>909.03</b>  Watertight Joint Systems		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>909.03</b>  Gasket, Compression (O-Rings)		Visual Inspection	-	-	-	<b>NA</b>	Part of Watertight Joint System.
<b>909.03</b>  Gasket, External Rubber Type		Visual Inspection	1 per lot or shipment	18 inches length full width of gasket	-	NA	Part of Watertight Joint System.

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<b>909.04A</b> Reinforced Concrete Pipe		* Approved Manufacturer	1 percent of number of pieces of each size		5 pieces of 42 inches or smaller	*** Spot check Project Co files	See Special Instructions.
<b>909.04B</b> Reinforced Concrete Elliptical Pipe		* Approved Manufacturer	1 percent of number of pieces of each size	See Remark	5 pieces of 42 inches or smaller	*** Spot check Project Co files. Witness one test per year per plant and material information	See Special Instructions.
<b>909.04C</b> Non-Reinforced Concrete Pipe		* Approved Manufacturer			10 Pieces	*** Spot check Project Co files. Witness one test per year per plant and material information	See Special Instructions.
<b>909.04D</b> Precast Concrete Box Sections		* Approved Manufacturer	Over 10 ft, daily per MDOT Quality Assurance Manual	-	-	*** Spot check Project Co files 1 OVT visit per 10 production days for spans 10' and greater per year	Spans <b>10 ft.</b> and greater require QA inspection. Box = 4 sided. See MQAP Manual section 3.10.
<b>909.04E</b> Precast Concrete End Section for Culverts and Sewers		* Approved Manufacturer	1 percent of number of pieces of each size	Full size units	10 pcs	*** Spot check Project Co files	Strength test by coring or cylinders, VI dimensions and conditions. Test for air content. .
<b>909.04G</b>			Over 10 ft, daily	-	-		

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Precast Concrete Three-Sided or Arch Culverts		* Approved Manufacturer	per MDOT Quality Assurance Manual			*** Spot check Project Co files 1 OVT visit per 10 production days for spans 10' and greater per year	Spans <b>10 ft.</b> and greater require QA inspection. See MQAP Manual section 3.10.
<b>909.05A</b> Corrugated Steel Pipe		* Approved Manufacturer	-  1 per 5000 ft	-	-	*** Spot check Project Co files	See Special Instructions.  General Cert must accompany sample.
<b>909.05A1</b> Corrugated Steel Sheets (Galvanized)		General Certification	-	-	-	*** Spot check Project Co files	See Special Instructions.
<b>909.05A1</b> Polymer Coating, Galvanized Corrugated Steel Pipe		General Certification	-	-	-	*** Spot check Project Co files	Coating must be from Qualified Products List
<b>909.06</b> 1. Corrugated Polyethylene Pipe (CPE/HDPE), (Smooth Lined Type S)		Test if ≥12 in. dia	≥12 inch diameter, 1 per 1000 feet (Straight Lengths)	See Remark	12 inch diameter and over, 100 feet	1 per 5000 ft	Over 12 in. dia- one 10 ft length and one 6 ft length plus coupling.  See Special Instructions.
<b>909.06</b> 2. Corrugated Polyvinyl Chloride (CPV) Pipe		Test	1 per 1000 feet, straight lengths	See Remark	12 in. dia and over, 100 ft	1 per 5000 ft	Over 12 in. dia- one 10 ft and one 6 ft. length plus coupling.

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<b>909.06</b> 3. Class B (CPE/HDPE & CPV)		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>NOTE:</b> Watertight Joint Systems (909.03) and Pipe (401 & 402; Class B Bury) must be listed on QPL. Pipe (909.06) must be accepted by "Test" or "Tested Stock" for use on project.							
<b>909.07A</b> Pipe for Underdrains, Smooth Perforated Plastic Pipe (PVC)		Test	1 per 2,500 feet, or fraction thereof	5 foot length	250 feet	1 per 10,000 ft	
<b>909.07B</b> Pipe for Underdrains, Corrugated Plastic Tubing (Perforated and Non-Perforated) (Wrapped and Non-Wrapped)		* Approved Manufacturer for 4-, 6-, or 8- inch diameter	1 per 50,000 ft sample from coils	See Remark	250 ft	1 per 500,000 ft sample from coils	Sample Size, one 10 ft length plus coupling. For perforated tubing wrapped in fabric, tie fabric securely in place before cutting sample.
<b>909.07C</b> Outlet Pipe for Underdrains  1. Polyvinyl Chloride (PVC) Pipe		Test	1 per 2,500 ft or fraction thereof	5 ft length	250 ft	1 per 10,000 ft	See 404.02C for Underdrain Outlet Endings.
<b>909.07C</b>							

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Outlet Pipe for Underdrains  2. Corrugated Steel Pipe		* Approved Manufacturer	See Remark	See Remark	-	*** Spot check Project Co files	See Special Instructions for 909.05A, Test Data Certification to Construction Field Services. See 404.02C for Underdrain Outlet Endings.
<b>909.08B</b>							
Culvert, Downspouts  1. Corrugated Steel Pipe		* Approved Manufacturer	See Remark	See Remark	-	*** Spot check Project Co files	See 909.05A Corrugated Steel Pipe. Test Data Certification to Construction Field Services.
<b>909.08B</b>							
Culvert, Downspouts  3. Corrugated Polyethylene Pipe (Corrugated Lined Type C) (CPE/HDPE)		Test	See Remark 1 per 1,000 ft	See Remark	<12 in. dia up to 250 ft >12 in. dia up to 100 ft	1 per 5,000 ft.	See 909.06 (1)
<b>909.09</b>							
Cold Applied Pipe Joint Sealer (Mastic)		Test	1 per shipment from a single container	1 qt	10 gal	No OVT required	
<b>910.03A</b>							

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Geotextiles  1. Blankets 2. Filter Bags		Test	See Remark	See Remark	See Remark	1 OVT per every 5 QA tests	See Special Instruction 910.03. Anticipate up to 28 days for the testing of geotextile samples.
<b>910.03A</b>  Knitted Sock Pipe Wrap		See Remark	-	-	-	1 OVT per every 5 QA tests	See 909.07B Certified with Corrugated Plastic Tubing.
<b>910.03B</b>							
Liner for Rip-Rap		Test	See Remark	See Remark	See Remark	1 OVT per every 5 QA tests	See Special Instruction 910.03. Anticipate up to 28 days for the testing of geotextile samples.
<b>910.03B</b>  Liner for Heavy Rip-Rap		Test	See Remark	See Remark	See Remark	1 OVT per every 5 QA tests	See Special Instruction 910.03. Anticipate up to 28 days for the testing of geotextile samples.
<b>910.03C</b>  Separator/Stabilization Geotextile		Test	See Remark	See Remark	See Remark	1 OVT per every 5 QA tests	See Special Instruction 910.03. Anticipate up to 28 days for the testing of geotextile samples.
<b>910.03D</b>							

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Geogrids		Test	1 per type per project	1 pc 6 ft long full roll width	-	1 OVT per every 5 QA tests	Sample must be rolled not folded. Anticipate up to 28 days for the testing of geotextile samples.
<b>910.04</b> Silt Fence; (Geotextile Fabric only)		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product (910.04).
<b>910.05A</b> Prefabricated Drainage System		* Approved Manufacturer	1 per 10,000 ft or less	1 pc 6 ft long plus 3 syd filter-wrap	-	1 OVT per every 5 QA tests	Test Data Certification must be attached to sample ID Form.
<b>910.05B</b> Wall Drain		Test	1 per 1,000 ft or less	1 pc 6 ft long plus 3 syd filter-wrap	100 sft	1 OVT per every 5 QA tests	
<b>912.08</b> Wood Posts and Blocks for Guardrail and Highway Signs (Dimension Sawed)		* Approved Manufacturer	minimum 1 per project or 1 per 2,500 posts	22 cores	-	*** Spot check Project Co files	Cedar post need not be treated. General Cert must accompany sample.
NOTE: All post must be treated except Northern White Cedar. General Certification document required for Northern White Cedar in lieu of approved manufacturer.							
<b>912.08Q</b> Recycled Plastic or Rubber Guardrail Offset Blocks		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product. May only be used on Steel Posts (912.08Q).

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<b>913.06</b>  Precast Reinforced Concrete Units for Drainage Structures		* Approved Manufacturer	1 percent per size	See Remark	10 pcs total	1 witness test per facility per year	Submit QA cylinder test results and core samples. Submit sample 1-3 sq.in. from wall of unit if absorption is required.
<b>913.07</b>  Precast Concrete Bases, for Drainage Structures		* Approved Manufacturer	5 percent of total	-	10 pcs total	1 witness test per facility per year	
<b>914.03B (Steve Kahl)</b>  Recycled Rubber Joint Filler		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product (914.03B).
<b>914.04A</b>  Hot-Poured Joint Sealant		Test or Tested Stock	1 per batch from a single container	5 lb.	100 lb	1 per project per year	Do not submit melted samples.
<b>914.06</b>  Epoxy Resin Adhesive and Temporary Seal (Crack Injection)		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product
<b>914.07</b>  Transverse Pavement Joints							Test Data Certification must accompany sample. Epoxy coating must be a Qualified Product (905.03C).

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1. Dowel Bars		* Approved Manufacturer	1 per 30,000 bar	1 bar	240 bars	1 per project per manufacturer per year	Bond Release Agent must be a Qualified Product (914.07A). See Special Instructions 914.07.
2. Dowel Baskets (Load Transfer Assemblies)		* Approved Manufacturer	1 per 300 assemblies or fraction thereof	Full size unit	20 assemblies	1 per 3,000 assemblies or fraction thereof	
<b>914.07A</b> Coatings for Dowel Bars							
1. Epoxy Coating Companies		* Approved Manufacturer	1 per 30,000 bar	1 bar	240 bars	1 per project per manufacturer per year	Test Data Certification must accompany sample.
2. Epoxy Coating Material		General Certification	-	-	-	*** Spot check Project Co files	Coating must be a Qualified Product (905.03C).
3. Bond Release							Must be a Qualified Product (914.07A) or meet Standard Spec 914.07A.
a. Bituminous Material		General Certification	-	-	20 gal max	*** Spot check Project Co files	
b. Alternate Bond Release Agents		General Certification	-	-	-	*** Spot check Project Co files	

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<b>914.09</b>  Straight and Bent Tie Bars for Longitudinal Pavement Joints (Lane Ties)  1. Bars  2. Epoxy Coating		* Approved Manufacturer  General Certification	1 per project  per mfr	2 bar	500 lb	*** Spot check Project Co files	Test Data Certification must accompany sample. Coating must be a Qualified Product (905.03C). See Note.
<b>NOTE:</b> Epoxy Coating must be a Qualified Product. Sample ID to include name of Coater, Bar manufacturer, Resin manufacturer, and Resin trade name.							
<b>914.10</b>  Bolts for Structure Expansion Anchors		Test	1 per heat	3 bolt	250 units	1 per project per year	
<b>914.11</b>  Preformed Waterproofing Membrane and Joint Waterproofing Membrane		General Certification  See Remark	-	-	-	*** Spot check Project Co files	Must be a Qualified Product  (914.11). Do not use on Treated Wood Materials.
<b>915</b>  Coating Systems for Steel Structures, Hanger Assemblies and End Diaphragms		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product  (915).
<b>916.02</b>							General Certification to Construction Field Services

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Silt Fence  1. Fabricated Fence  2. Fabric (see 910.04)		* Approved Manufacturer  General Certification	See Remark  -	See Remark  -	500 ft  -	1 OVT per every 5 QA tests  *** Spot check Project Co files	1 sample for the first 3000 ft or fraction thereof; 1 sample for each additional 10,000 ft or fraction thereof; 1 piece 8 ft long by full fence height include 2 attached posts and lath. As per 910.04 of Standard Specifications, fabric must be from the Qualified Product List (910.04).
<b>NOTE:</b> Sample to include identifying markings of fabricator. Indicate on sample ID description of markings. Note where markings were found.							
<b>917.12</b>  Grass Seeding Mixtures		VI	1 per lot	¼ lb	100 lbs		For projects that include more than 5 acres of seeding, See MDOT Frequently Used Special Provision for Grass Seed Testing Special Provision. Varieties of seed must be Qualified Product (917.12).

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Material Name and Applicable Section of the MDOT 2012 Standard Specifications for Construction	Quality Control (QC) Frequency (To be completed by Project Co)	Minimum Basis of Acceptance	** Minimum Quality Assurance Sample Frequency If Required	Quality Assurance (QA) Sample Size	Quality Assurance Maximum VI Quantity	Minimum Owner Verification Frequency	**** Additional Remarks
Grass Seed Varieties		See Remarks General Certification	per shipment -	-	-	*** Spot check Project Co files	
<b>917.15B1 &amp; 2</b> High Velocity Mulch Blankets and Standard Mulch Blanket		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product  (917.15B 1 & 2). High velocity - netting 2 sides. Standard - netting 1 side.

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Material Name and Applicable Section of the MDOT 2012 Standard Specifications for Construction	Quality Control (QC) Frequency (To be completed by Project Co)	Minimum Basis of Acceptance	** Minimum Quality Assurance Sample Frequency If Required	Quality Assurance (QA) Sample Size	Quality Assurance Maximum VI Quantity	Minimum Owner Verification Frequency	**** Additional Remarks
<b>917.15C</b> Mulch Anchoring - Latex, Recycled Newsprint, Wood Fiber, Guar Gum, Other Tackifiers		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product (917.15C).
<b>918.06D</b> Light Weight Composite Handholes		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product (918.06D).
<b>918.08C</b> Light Standards, Frangible Transformer Bases		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product (918.08C).
<b>918.10A</b> Tower Lighting Units		Fabrication Inspection & VI	Daily per MDOT Quality Assurance Manual	-	-	1 OVT visit per 10 production days	MQAP Manual Section 4.06. VI must be conducted upon delivery to jobsite.
<b>918.11A</b> Guy Wire		Test	1 per size	3 ft	-	*** Spot check Project Co files	

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Material Name and Applicable Section of the MDOT 2012 Standard Specifications for Construction	Quality Control (QC) Frequency (To be completed by Project Co)	Minimum Basis of Acceptance	** Minimum Quality Assurance Sample Frequency If Required	Quality Assurance (QA) Sample Size	Quality Assurance Maximum VI Quantity	Minimum Owner Verification Frequency	**** Additional Remarks
<b>919.02</b> Signs (Permanent)		General Certification	-	-	-	*** Spot check Project Co files	-  C-S. General Cert must be attached and inspected at project site.
<b>919.02A1</b> Metal Sections (Extruded Aluminum)		Test  See Remark	1 from each width in shipment	12 in. long and full width of section	-	1 per project per year	Test Data Certification must be attached to the Sample ID form.
<b>919.02A3</b> Aluminum Sheet		Test  See Remark	See Note	Min. of 12 in. square	100 sft	1 per project per year	Test Data Certification must be attached to the Sample ID form.
<b>NOTE:</b> 2 samples per heat per Tested Stock Supplier up to 10,000 sft; 4 samples per heat per Tested Stock Supplier over 10,000 sft.							
<b>919.02B1</b> Reflective Sheeting		General Certification  See Remark	1 per run or lot	See Remark	1 roll, for less than 3 in. in width	*** Spot check Project Co files	Must be a Qualified Product  (919.02B1) 4 pcs each 12 in. square. For rolls less than 12 in. width, at least 7.5 ft.

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Material Name and Applicable Section of the MDOT 2012 Standard Specifications for Construction	Quality Control (QC) Frequency (To be completed by Project Co)	Minimum Basis of Acceptance	** Minimum Quality Assurance Sample Frequency If Required	Quality Assurance (QA) Sample Size	Quality Assurance Maximum VI Quantity	Minimum Owner Verification Frequency	**** Additional Remarks
<b>919.03D</b> Delineator Posts 2. Plastic		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product (919.03D).
<b>919.05</b> Wood Sign Posts		* Approved Manufacturer	See Remarks	22 cores	20 posts	*** Spot check Project Co files	General Cert <b>must accompany sample.</b> See 912.08.
<b>919.06</b> Break-Away Column Sign Supports		Fabrication Inspection & VI  See Remark	Daily per MDOT Quality Assurance Manual	-	-	1 OVT visit per 20 production days	MQAP Manual Section 4.06 and Subsection 919.06 of the Standard Specifications. VI must be conducted upon delivery to jobsite.
<b>919.07</b> Sign Support Structures  Cantilever, Overhead Lane Assignment, Truss and Bridge Sign Connections		Fabrication Inspection & VI  See Remark	Daily per MDOT Quality Assurance Manual	-	-	1 OVT visit per 10 production days	MQAP Manual Section 4.06. VI must be conducted upon delivery to jobsite.
<b>921.03</b> Traffic Signals and Mounting Assemblies		See Note	-	-	-	N/A	
<p><b>NOTE:</b> Compliance with specifications will be determined by the agency responsible for maintaining the system. Agency must provide the project engineer with a memo or other appropriate form indicating that the inspection has been made and the material is acceptable.</p>							

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Material Name and Applicable Section of the MDOT 2012 Standard Specifications for Construction	Quality Control (QC) Frequency (To be completed by Project Co)	Minimum Basis of Acceptance	** Minimum Quality Assurance Sample Frequency If Required	Quality Assurance (QA) Sample Size	Quality Assurance Maximum VI Quantity	Minimum Owner Verification Frequency	**** Additional Remarks
<b>921.05A</b> Strain Pole Band Clamps		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product (921.05A).
<b>922.04</b>  Temporary Traffic Control  Temporary Concrete Barriers (TCB)		Test Data Certification  See Remark	Each project	-	-	*** Spot check Project Co files	Contractor must provide certifications and documentation confirming the TCB provided meets the requirements of subsection 922.04A of the Standard Specifications for Construction
<b>922.06A</b> Temporary Traffic Control  Temporary Pavement Markings; Type R and NR Tape		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product (922.06A).
<b>922.06A2</b> Temporary Traffic Control  Temporary Pavement Markings; Paint		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product (811.03D).

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Material Name and Applicable Section of the MDOT 2012 Standard Specifications for Construction	Quality Control (QC) Frequency (To be completed by Project Co)	Minimum Basis of Acceptance	** Minimum Quality Assurance Sample Frequency If Required	Quality Assurance (QA) Sample Size	Quality Assurance Maximum VI Quantity	Minimum Owner Verification Frequency	**** Additional Remarks
<b>922.06B</b> Temporary Traffic Control  Temporary Raised Pavement Markers		General Certification	-	-	-	*** Spot check Project Co files	Must be a Qualified Product (922.06B).
<b>Special Provision #7</b>  Traffic Signal Mast Arm Pole and Mast Arm (Trunkline )		Fabrication Inspection & VI	Daily per MDOT Quality Assurance Manual	-	-	1 OVT visit per 10 production days	See MQAP Manual Section 4.11. VI must be conducted upon delivery to jobsite.

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**APPENDIX 7-1-8**  
**SPECIAL PROVISION FOR SOURCE OF STEEL AND IRON (BUY AMERICA OR CANADA)**

Delete subsection 105.10, on page 53 of the MDOT 2012 Standard Specifications for Construction, in its entirety and replace with the following:

105.10. Source of Steel and Iron. Provide steel and iron materials and products for permanent incorporation into the work which were produced in whole only in the United States (per Title 23 of the Federal Code of Regulations (CFR) Section 635.410, Buy America Requirements), or which were produced in whole only in Canada under Canadian requirements as applicable, or from a combination of U.S. and Canadian sources.

All steel and iron products and manufacturing processes of the steel and iron material in a product, including but not limited to the following steps; smelting, melting, rolling, extruding, machining, bending, grinding, drilling, welding, galvanizing, and coating, must occur within the United States or Canada.

Examples of products that are subject to this coverage include, but are not limited to, the following:

- (a) Steel or iron products used in pavements, bridges, tunnels, buildings/facilities, or other structures, which include, but are not limited to, the following: fabricated structural steel, reinforcing steel, piling, high strength bolts, anchor bolts, dowel bars, permanently incorporated sheet piling, bridge bearings, cable wire/strand, pre-stressing/post-tensioning wire, motor/machinery brakes and other equipment for moveable structures;
- (b) Guardrail, guardrail posts, end sections, terminals, cable guardrail;
- (c) Steel fencing material, fence posts;
- (d) Steel or iron pipe, conduit, grates, manhole covers, risers;
- (e) Mast arms, poles, standards, trusses, supporting structural members for signs, luminaires, or traffic control systems;
- (f) Steel or iron components of precast concrete products, such as reinforcing steel, wire mesh and pre-stressing or post-tensioning strands or cables; and
- (g) Steel or iron building/facilities components.

Provide Step Certification for all steel and iron related pay items, materials, products, and components as specified on the Department website. The Department will maintain a list of these pay items, materials, products, and/or components on the following website.

[http://www.michigan.gov/mdot/0,1607,7-151-9622\\_11044\\_11367---,00.html](http://www.michigan.gov/mdot/0,1607,7-151-9622_11044_11367---,00.html)

Step certification is defined as the certification by the respective manufacturer or fabricator for their specific process (step) that the product, material, or component was fabricated, manufactured, and/or processed in the United States or Canada. The step certification documentation for these pre-defined pay items, materials, products, and/or components is to be submitted to the Engineer in a package covering each step prior to delivery or concurrent with material delivery on-site. Approved certification is required prior to incorporation of the materials into the project. Canadian steel/iron used must meet Technical Requirements.

Certification documentation for American products and materials designated as fully compliant with these requirements on the MDOT Qualified Products List, Approved Manufacturers, and Tested Stock Suppliers Lists will be maintained by the MDOT Construction Field Services Division. Certification for these fully compliant items does not need to be submitted by Project Co, but a bill of lading, product label, or

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shipping record to document that the products are from the respective source is to be provided to WDBA. Certification documentation for American products and materials that are partially compliant will be required to be submitted prior to delivery or concurrent with material delivery and prior to incorporation, noting the value of foreign steel/iron. Canadian products and materials will be reviewed by WDBA for compliance. The use of MDOT maintained lists and notations for American products and materials does not relieve Project Co from responsibility of ensuring compliance. Project Co is ultimately responsible for compliance with this special provision.

The above requirements do not preclude a minimal use of non-American or non-Canadian steel and iron, provided the total invoice cost of non-American or non-Canadian material permanently incorporated into the project does not exceed 0.1 percent of the total contract amount or \$2,500 whichever is greater. The total invoice cost is defined as the total value of the non-American or non-Canadian steel and iron materials delivered to the project. The total contract is defined amount to be the total of the contract unit prices for items of facilities work, road work and bridge work, any adjustments as provided for in the contract, and any assessment of incentive, disincentive or liquidated damages as provided for in the contract.

WDBA fabrication facility inspectors will not approve incorporation of non-American or non-Canadian steel/iron prior to fabrication. It is the responsibility of the fabricator to notify and coordinate with Project Co all potential inclusion of non-American or non-Canadian steel/iron in fabricated products.

The minimal use of non-American or non-Canadian steel and iron can be approved by the managing office. The following documentation must be provided by the Contractor to verify this value and placed in the project files to ensure that the threshold is not exceeded:

- (a) description of associated non-American or non-Canadian steel/iron material, product, or component
- (b) cost of associated non-American or non-Canadian steel/iron material, product or component
- (c) cumulative list of all non-compliant items with the total dollar amount.

The use of non-American or non-Canadian steel/iron under the minimal usage amount does not need to be approved by WDBA. This amount is not considered a waiver to the requirements. Project Co must ensure that the minimal usage amount is not exceeded.

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**APPENDIX 7-1-9**  
**SPECIAL PROVISION FOR GHB QUALITY CONTROL, QUALITY ASSURANCE, AND ACCEPTANCE OF PORTLAND CEMENT CONCRETE**

**1. DEFINITIONS**

Unless defined specifically in this Special Provision or unless the context otherwise requires, capitalized but otherwise undefined terms in this Special Provision shall have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of the body of this Project Agreement.

**Acceptable Quality Level** or **AQL** means the threshold limit that would warrant 100 percent payment for the production lot of concrete.

**Air Content of Fresh Concrete** means the recorded air content of fresh concrete sampled and tested according to this special provision.

**Air Content Test Results** means the recorded air content of fresh concrete corresponding to the strength test specimens that were molded for acceptance.

**Alkali-Silica Reactivity** or **ASR** means a chemical reaction which occurs over time within concrete between highly alkaline cement paste and reactive forms of silica found in some aggregates. In the presence of moisture, an expansive ASR gel is formed which can exert pressure within the concrete, causing random cracking and premature deterioration of the concrete. See section 4.4(a) of this special provision.

**Base Price** means the price established by WDBA to be used in calculating adjustments to pay items and shown in the contract for the Michigan Interchange Buy-Down Amount.

**Concrete Mix Design** means the process, by which the concrete mixture performance characteristics are defined, based on selected materials, performance requirements, environmental exposure considerations, placement methods, and other factors that control the plastic and hardened properties of the concrete in efforts to produce an economical and durable product.

**Construction Quality Assurance (QA) Manager** means an employee of, or consultant engaged by Project Co, responsible for developing and overseeing all aspects of QA for the project. This includes, but is not limited to reviewing the Construction Quality Plan, performing QA of the product, material sampling, testing, construction inspection, and review of QC documentation.

**Construction Quality Control (QC) Manager** means an employee of, or consultant engaged by Construction Contractor, responsible for developing and overseeing all aspects of QC for the project. This includes, but is not limited to preparing the Construction Quality Plan, managing Construction Contractor QC personnel, communicating routinely with the production personnel to ensure quality, initiating corrective action and suspending operations when the process is found to be producing non-conforming materials, and preparing and submitting all necessary QC documentation to the Engineer within the specified time period.

**F&t** means the F-Test and t-test statistical analysis methodology.

**Job Mix Formula** or **JMF** means the actual batch quantities (mixture proportions) of each constituent included in the concrete mixture, based on adjustments to the target weights attained from the mix design process necessary to optimize the concrete mixture properties.

**MTM** means the Michigan Test Method as defined in the MDOT Manual for the Michigan Test Methods (MTM's).

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**Non-PWL Applications** means all concrete applications which are not subject to Percent Within Limits (PWL) analysis. Quality index analysis using PWL will not apply.

**Optimized Aggregate Gradation** means the method to produce a well-graded blend of aggregates used for high performance concrete (Grades P1M, DM and S2M), when specified in the contract.

**Pay Factor** or **PF** means the factor that is determined according to Sections 4.4 and 4.5 of this special provision, used to calculate the Michigan Interchange Buy-Down Amount for a discrete quantity of concrete relative to its respective level of quality. Pay factor determination for PWL applications will be according to Section 4.4 of this special provision using the MDOT Concrete PWL Worksheet. Pay factor determination for non-PWL applications will be according to Section 4.5 of this special provision.

**Percent Within Limits** or **PWL** means the method used to determine acceptance, and where applicable the Michigan Interchange Buy-Down Amount for pavement (Grade P1M) and structural concrete (Grades DM and S2M). PWL will not apply for temporary concrete pavements or other non-pavement/structural concrete, where applicable. The PWL is the cumulative area under a standard curve which represents the estimated percentage of a production lot that falls above the Lower Specification Limit (LSL), beneath the Upper Specification Limit (USL), or between the LSL and USL.

**PWL Analysis Lot** means a PWL Analysis Lot is made up of a discrete cubic yard quantity of concrete containing the same JMF and used for the same application. Each PWL Analysis Lot is typically made up of either six (6) WDBA Verification Sublots, or if statistically validated by F&t statistical test method, the combination of six (6) WDBA Verification Sublots and fifteen (15) corresponding QA sublots.

**Quality Assurance** or **QA** means activities administered by Project Co Construction QA Manager dealing with acceptance of the product, including, but not limited to, materials selection, sampling, testing, construction inspection, and review of QC documentation. All concrete QA sampling and testing will be administered by Project Co. Project Co's QA testing will be eligible to be used as a part of the acceptance decision if the QA results pass F&t statistical validation comparison tests from those of the WDBA Verification for those corresponding lots of material.

**Quality Assurance Dispute Resolution** means the process used to referee discrepancies between Project Co's QA test results and the WDBA Verification test results. Dispute resolution applies for PWL quality index analysis of 28-day compressive strength only. For greater clarity, this is not the Dispute Resolution Procedure described in Schedule 22 [*Dispute Resolution Procedure*].

**Quality Assurance (QA) Lot** means a discrete cubic yard quantity of concrete containing the same JMF and used for the same application. Each QA Lot is typically made up of 5 sublots.

**Quality Assurance (QA) Sublot** means a portion of a QA lot or an individual sample that is represented by a complete set of QA tests. QA Sublots will be approximately equal size. WDBA and Project Co may agree to reduce the typical QA sublot size based on project staging or other project conditions.

**Quality Control** or **QC** means all activities administered by Project Co Construction QC Manager to monitor, assess, and adjust production and placement processes to ensure the final product will meet the specified levels of quality, including, but not limited to, training, materials selection, sampling, testing, project oversight and documentation. Project Co-administered QC is described in section 3 of this special provision.

**QC Action Limits** means a range of values established by Project Co in the PCC Quality Plan that, if exceeded, requires that corrective action be taken by Project Co to restore the continuity and uniformity of the mixture and methods in conformance with specification requirements. The QC action limits shall not exceed the QC suspension limits.

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**QC Suspension Limits** means a range of values defined in Table 7-1-9-2 that, if exceeded on a single QC test, requires Project Co to suspend operations and determine, correct, and document the deficiencies before resuming production. The QC suspension limit shall not exceed specification requirement thresholds.

**Quality Index** means the calculated percent of material that meets specification.

**Quality Index Parameter** means the quality characteristics that are evaluated under the QA program and on which acceptance for material is based. The quality index parameters used for acceptance are 28-day compressive strength and air content of fresh concrete.

**PCC Quality Plan** means the project-specific plan developed by Project Co describing, in detail, all aspects of production and construction for the PCC on the project to ensure consistent control of quality to meet specification requirements. The plan can be included with the Construction Quality Management Plan or submitted separately as a Review Submittal.

**Rejectable Quality Level or RQL** means the threshold limit (defined in Table 7-1-9-3) for the quality index parameters that if not met, would require a Non-Compliance Report of the concrete production lot. RQL only applies for PWL quality index analysis.

**Sample** means a representative quantity of concrete taken during production which is used to measure the quality characteristics for the concrete.

**Sampling Rate** means the number of times the fresh concrete is sampled, as described in Sections 4.4 and 4.5 of this special provision.

**Small Incidental Quantity** means a single day's placement of less than 20 cubic yards of concrete used for non-structural or non-pavement related applications, including, but not limited to: curb and gutter, sidewalks and sidewalk ramps (excluding driveways and driveway ramps), installing sign or fence posts, guard rail or cable rail foundations (excluding end anchorage foundations). Requirements for small incidental quantity consideration are described in Sections 4.4(f) and 4.5(b) of this special provision. The corresponding weekly QA test results shall meet specification limits defined in Table 7-1-9-4. Small incidental quantities shall be approved by WDBA.

**Specification Limits** means the threshold values placed on a quality characteristic used to evaluate the quality of the material.

**Strength Sample Test Result** means the average of the two companion 28-day compressive strength test specimens taken from the same sample of concrete is considered a strength sample test result. For PWL quality index analysis, described in Section 4.6 of this special provision, each individual strength test specimen from the sample of concrete is considered a strength sample test result.

**Strength Test Specimen** means a strength test specimen is an individual 6-inch by 12-inch strength test cylinder or 4-inch by 8-inch strength test cylinder molded and cured according to *AASHTO T23/ASTM C31* and tested according to *AASHTO T22/ASTM C39*. All respective QC, QA and WDBA Verification strength test specimens shall be the same nominal size. Strength test specimen cylinder size of 4-inch by 8-inch is permitted only if the nominal maximum coarse aggregate particle size, as specified for the coarse aggregate in the concrete mixture, is 1-inch or less (not permitted for Grade P1M concrete).

**Supplementary Cementitious Materials (SCM)** means a mineral admixture (slag cement, fly ash) used to replace a portion of the Portland cement, either individually or as a blended cement, in the concrete mixture. SCM requirements are described in Section 4.4 of this special provision.

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**Validation** means the WDBA Verification testing will be the test of record. WDBA Verification tests can be supplemented with QA tests if those tests are statistically validated by F&t statistical test method. This validation method compares the two independent data sets (WDBA Verification and QA) of multiple test results to determine if the materials tested come from the same population. When the validation test confirms that both data sets represent the same population then both WDBA and QA test results may be used in the Percent Within Limits calculations. If the validation test determines that the data sets do not represent the same population then only WDBA Verification tests will be used in the Percent Within Limits calculations.

**Verification Lot** means a discrete cubic yard quantity of concrete containing the same JMF and used for the same application, typically made up of 6 WDBA Verification Sublots and 15 corresponding and validated QA subplot, as described in Section 4.6(a) of this special provision.

**WDBA Verification** means all activities dealing with the acceptance of the product, including but not limited to materials sampling, testing, construction inspection, evaluation and statistical verification of QA acceptance testing, and basis of acceptance determination.

**WDBA Verification Lot Concrete** means a discrete cubic yard quantity of concrete containing the same JMF and used for the same application used for verification of material requirements. Each WDBA Verification Lot Concrete is typically made up of 6 WDBA Verification Sublots Concrete and 15 corresponding Project Co QA sublots. For Non-PWL applications, an WDBA Verification subplot will be required for each QA subplot.

**WDBA Verification Sublot Concrete** means a portion of a lot or an individual sample that is represented by a complete set of WDBA Verification tests. WDBA Verification Sublots Concrete will be approximately equal size. WDBA and Project Co may agree to reduce the typical WDBA Verification and QA subplot size based on project staging or other project conditions.

## 2. DESCRIPTION

This special provision sets forth the minimum Project Co quality control (“**QC**”), Project Co quality assurance (“**QA**”), and WDBA Verification procedures for acceptance of Portland cement concrete (“**PCC**”) for the Michigan Interchange, Bridge and US POE. This special provision defines the minimum Acceptable Quality Level for all PCC in the Michigan Interchange, Bridge and US POE in addition to providing the methodology for calculating the price adjustment for PCC for the Michigan Interchange Buy-Down Amount.

Percent-within-limits (PWL) analysis applies to pavement (Grade P1M) and all structural concrete (including Grades DM and S2M). Non-PWL analysis will apply for temporary concrete pavements and other non-pavement/non-structural concrete, where applicable.

Project Co shall provide WDBA advance notification prior to each concrete placement in accordance with the hold point timeframes specified in Schedule 7 [*Quality Management*] Part 1 [*General*].

## 3. INTERACTION WITH OTHER REQUIREMENTS

### 3.1 General

Except as explicitly modified by this special provision, all materials, test methods, and PCC mixture requirements in this Schedule, Schedule 10 [*Design and Construction Specifications*], and Schedule 15 [*Michigan Interchange Design and Construction Specifications*] shall apply.

### 3.2 The Bridge

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Where the construction specifications Standards of Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*] or the provisions of Project Co's Durability Plan are more restrictive or require a higher standard of care than the requirements of this special provision, such Standards and provisions shall govern. Alternative mix designs to those required by this special provision may be employed by Project Co to meet the Service Life and structural performance requirements applicable to the Work, subject to the requirements of Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*] and Project Co's Durability Plan and where accepted by WDBA.

### **3.3 Bridge Structures and Ancillary Structures along the Connecting Ramps**

Alternative mix designs to those required by this special provision may be employed by Project Co to meet the Service Life and structural performance requirements applicable to the Work, subject to the requirements of the applicable Schedules and Parts and where accepted by WDBA.

For the Connecting Ramp Bridges, where the provisions of Part 20 [*Bridges*] of Schedule 10 [*Design and Construction Specifications*] or Project Co's Durability Plan are more restrictive or require a higher standard of care than the requirements of this special provision, the more restrictive provisions shall govern.

For Bridge Structures and Ancillary Structures along the Connecting Ramps party to the Michigan Interchange Buy-Down process and with required minimum Service Lives in excess of 75 years, where as-built PCC does not demonstrate conformance with the required Service Life, such PCC shall be considered rejectable, subject to further evaluation, and subject to the NCR regime.

## **4. PROJECT CO QUALITY CONTROL**

### **4.1 Project Co PCC Quality Plan**

Project Co shall prepare, implement, and maintain a PCC Quality Plan for concrete, specific to the project that will provide quality oversight for production, testing, and control of construction processes. The PCC Quality Plan shall be in conformance with the Project Agreement and shall identify all procedures used to control production and placement including when to initiate corrective action necessary to maintain the quality and uniformity of the work.

Project Co shall develop concrete mix designs and JMFs, as specified, and conduct QC sampling, testing, and inspection during all phases of the concrete work at the minimum frequency, or at an increased frequency sufficient to ensure that the work conforms to specification requirements.

The PCC Quality Plan shall include, as applicable:

- (a) organization chart;
- (b) construction Quality Control Manager and contact information;
- (c) the name(s) and credentials of the QC staff;
- (d) methods for interaction between production and QC personnel to engage timely corrective action, including suspension of work;
- (e) coordination of activities;
- (f) documentation, procedures, and submittals;
- (g) project and plant specifics;
- (h) concrete production facilities inspections and certifications;

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- (i) current testing equipment calibration documentation including calibration factor;
- (j) testing and initial field curing facilities for QC and QA strength test specimens (*AASHTO T23/ASTM C31*);
- (k) stockpile management plan;
- (l) corrective action plan;
- (m) mixing time and transportation, including time from batching to completion of delivery and batch placement rate (batches per hour), along with the manufacturer's documentation relative to the batching equipment's capabilities in terms of maximum mixing capacity and minimum mixing time (*ASTM C94*);
- (n) placement and consolidation methods including monitoring of vibration, depth checks, and verification of pavement dowel bar alignment;
- (o) process for monitoring stability of air content of fresh concrete during concrete production and placement;
- (p) hot and cold weather protection considerations and methods;
- (q) control charts with action and suspension limits;
- (r) verification for non-deleterious alkali-silica reactivity (see Section 4.4(a) of this special provision);
- (s) mix design and JMFs;
- (t) proposed production lot size and location for use of each JMF on the project;
- (u) frequency of sampling and testing;
- (v) handling, protection, initial curing, and transporting of strength test specimens (*AASHTO T23/ASTM C31*);
- (w) methods to monitor construction equipment loading and open-to-traffic strengths;
- (x) finishing and curing procedure
- (y) ride quality control
- (z) list of QC records to be submitted to the Construction Quality Manager and WDBA in accordance with Section 4.2 of this special provision; and
- (aa) thermal Control Plan as described in Schedule 10 [*Design and Construction Specifications*] Part 21 [*The Bridge*] Section 10.3(c).

Project Co shall submit the PCC Quality Plan, for the appropriate items of work, to the Project Co Construction QA Manager and to WDBA for review before the start of related work. Project Co shall not begin concrete placement before acceptance of the PCC Quality Plan by WDBA.

#### 4.2 QC Records

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Project Co shall maintain complete records of all QC tests and inspections. Document what action was taken to correct deficiencies. Include sufficient information to allow the test results to be correlated with the items of work represented.

#### 4.3 Personnel Requirements

The Construction Quality Control Manager shall have full authority and responsibility to take all actions necessary for the successful implementation of the PCC Quality plan. Individuals performing QC tests shall demonstrate that they are proficient and capable of sampling and testing concrete or aggregate, where applicable, in accordance with the associated test procedures and WDBA requirements prior to commencement of related work. Any adjustments to the JMF shall be made by a certified concrete technician (Michigan Concrete Association (MCA) Michigan Level II).

#### 4.4 Mix Design and Documentation

Design concrete mixtures meeting the requirements specified in Table 7-1-9-1 shall be provided for Project Co Construction QA Manager approval. Project Co shall provide the grade of concrete for the section number reference application specified in Table 7-1-9-1 or as specified in the contract. Project Co shall request variance in writing to Project Co Construction QA Manager when proposing a mix design that exhibits temperature, slump or air content other than those specified. Project Co shall include the proposed mix design, JMF, and associated trial batch verification test data. Project Co shall not use a grade of concrete with a lower specification limit (LSL) 28-day compressive strength greater than what is designated for the application. Unless specified otherwise, concrete mixtures using optimized aggregate gradation may be used in lieu of standard concrete mixtures for other applications, as approved by WDBA.

Ensure supplementary cementitious materials are from an MDOT Approved Manufacturer. Slag cement shall meet the requirements of section 901.06 of the MDOT Standard Specifications for Construction. Fly ash shall meet the requirements of section 901.07 of the MDOT Standard Specifications for Construction.

Secure prior approval from WDBA to use concrete intended for early opening to traffic to facilitate driveway gaps or other features necessary for required local access.

Unless otherwise specified in the contract, set accelerating admixtures are prohibited.

Unless otherwise specified in the contract, provide either concrete Grade P1M or Grade DM for bridge approach slab applications.

High performance concrete is required for all pavement and structural concrete applications. Provide concrete mixture (Grade P1M) for high performance mainline pavement, shoulder, miscellaneous pavement (including ramps), and concrete pavement overlay applications; concrete mixture (Grade DM) for high performance bridge superstructure (including bridge railing) applications; concrete mixture (Grade S2M) for high performance bridge substructure applications; and either concrete Grade P1M, DM, or S2M for high performance bridge approach slab applications. WDBA may approve Grade P1M, DM, or S2M for other applications. Prepare the optimized aggregate gradation and perform process control according to the procedure for Optimized Aggregate Gradation included Section 4.13 of the Michigan Department of Transportation *Materials Quality Assurance Procedures*.

Optimized aggregate gradation is required for concrete mixtures that are placed using a pump.

Concrete Grades P1M, DM, and S2M require 25 to 40 percent replacement of the Portland cement in the concrete mixture with a supplementary cementitious material.

If replacing Portland cement for concrete Grades other than P1M, DM, and S2M, do not exceed 40 percent replacement of the Portland cement in the concrete mixture with a supplementary cementitious material.

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Do not exceed 40 percent total replacement of the Portland cement if more than one supplementary cementitious material is used in the concrete mixture.

Use the combined weight of all cementitious materials to determine compliance with the maximum water-cementitious ratio and cementitious material content requirements specified in Table 7-1-9-1.

For night casting, where applicable, a water-reducing admixture may be used in lieu of a water-reducing and retarding admixture, provided the concrete can be placed and finished in the sequence specified on the plans prior to initial set, is not subjected to residual vibration, or is not within the areas influenced by dead load deflections as a result of adjacent concrete placement operations. When the maximum air temperature is not forecast to exceed 60 degrees F for the day, Project Co may use a water-reducing admixture or a water-reducing retarding admixture.

Additional mixture requirements for mass concrete placement apply where specified in the Standards applicable to the work under consideration and as required by Thermal Control Plans produced subsequent to the requirements of Part 21 [*The Bridge*] of Schedule 10 [*Design and Construction Specifications*].

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**TABLE 7-1-9-1  
MINIMUM MIX DESIGN REQUIREMENTS FOR CONCRETE**

Mix Design Parameter	Grade of Concrete						
	P1M (a,b,e)	P1 (a,b,e)	D,DM (a,b,e)	T	S1 (a,e)	S2,S2M (a,b,e)	S3/P2 (a,e)
<b>PWL Applications</b>							
Lower Specification Limit (LSL) (28-day compressive, psi)	3500	—	4500	—	—	3500	—
Rejection Limit for an Individual Strength Sample Test Result	2500		3500			2500	
<b>Non-PWL Applications</b>							
Lower Specification Limit (LSL) (28-day compressive, psi)	3500	3500	4500	3500	4000	3500	3000
Rejection Limit for an Individual Strength Sample Test Result	3000	3000	4000	3000	3500	3000	2500
<b>All Concrete Applications</b>							
Maximum Water/Cementitious Ratio (lb/lb) (c)	0.45						
Cementitious Material Content (lb/yd3) (d)	470-564	517-611	517-658	517-611	517-611	517-611	489-517
Air Content (percent) (f)	5.5-8.5						
Slump (inch) (max.)	(g)						
Section Number Reference (h)	602, 603	602, 603, 801, 802, 803, 810	706, 711, 712	706, 718	705	401, 706, 712, 713, 718, 801, 802, 803, 810, 819	402, 403, 602, 803, 804, 806, 808, 810, 813, 814
<p>a. If the local average minimum temperature in the next 10 consecutive days is forecast to be below 40 degrees F, Project Co shall submit a revised PCC Quality Plan, for WDBA’s approval, addressing, in detail, changes in concrete batching and mixing processes, construction methods, curing, and protection of the in situ concrete to ensure that the necessary quality characteristics of the hardened concrete product will not be compromised as a result of the cold weather. The revised PCC Quality Plan shall be approved by WDBA prior to cold weather concrete placement. Project Co shall not remove the supplementary cementitious material from the concrete mixture.</p> <p>b. Project Co shall use aggregates from only geologically natural sources for pavement, shoulder, miscellaneous pavement (including ramps), concrete pavement overlay, bridge approach slab, structural concrete, drilled shaft, bridge railing, and bridge sidewalk applications.</p> <p>c. Project Co shall use admixtures as listed in the Qualified Products Lists to reduce mixing water. Project Co shall ensure concrete in concrete diaphragms contains a water-reducing admixture, or a water-reducing retarding admixture.</p> <p>d. Type III cement is not permitted.</p> <p>e. For grades of concrete requiring optimized gradation, aggregates shall meet the physical requirements specified in section 4.4(c) of this special provision. Optimized aggregate gradation is required for pumped concrete.</p> <p>f. For action, suspension, and specification limits, see Tables 7-1-9-2, 7-1-9-3 and 7-1-9-4, where applicable.</p> <p>g. The maximum slump for Grades P1, P1M, and P2 concrete is 3 inches or as documented on the approved JMF. All other grades of concrete will be according to Table 701-1 of the MDOT Standard Specifications for</p>							

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Construction.	
h. Section Number Reference:	
401 Culverts	402 Storm Sewers
403 Drainage Structures	602 Concrete Pavement
603 Concrete Pavement Restoration	705 Foundation Piling
706 Structural Concrete Construction	711 Bridge Railings
712 Bridge Rehabilitation-Concrete	713 Bridge Rehabilitation-Steel
718 Drilled Shafts	801 Concrete Driveways
802 Concrete Curb, Gutter and Dividers	803 Concrete Sidewalk, Sidewalk Ramps, and Steps
804 Concrete Barriers and Glare Screens	806 Shared Use Paths
808 Fencing	810 Permanent Traffic Signs and Supports
813 Slope Protection	814 Paved Ditches
819 Electrical and Lighting	

(a) Alkali-Silica Reactivity

Provide documentation to WDBA that the concrete mixture does not present the potential for excessive expansion caused by alkali-silica reactivity (ASR). Provide current ASR test results (valid for 2 years from completion of testing), for the fine aggregate that is proposed to be used in the concrete, from an independent testing laboratory proficient in ASR testing. The independent testing laboratory shall certify in writing, including a signed statement that all testing was conducted in accordance with *ASTM C1293, Concrete Prism Test*. ASR requirements specified in this Section 4.4(a) of this special provision are not required for concrete pavement repairs and temporary concrete pavements. Use the Rounding Method described in *ASTM E29* when determining significant digits for reporting expansion test results.

If the expansion of concrete prisms is not greater than 0.040 percent (rounded to the nearest 0.001 percent) after 1 year, the fine aggregate is considered non-reactive to ASR and may be used in the JMF.

If the expansion of concrete prisms is greater than 0.040 percent (rounded to the nearest 0.001 percent) after 1 year, the fine aggregate is considered reactive to ASR and is, therefore, prohibited for used in the concrete.

WDBA will not approve the use of a JMF if the associated ASR reactivity versus mitigation requirement is not met, as specified above. Additional testing requirements may be specified by the Durability Plan.

(b) Changes in Materials and Proportions

Any change from one approved JMF to another for the same grade of concrete shall have prior approval by WDBA and the Durability Plan Preparer, if applicable.

Prior to batching, verify that the proposed JMF changes will not affect the properties of the fresh concrete (slump, temperature, air content, density (unit weight), workability), nor result in excessive mortar bar expansion as a result of deleterious reactivity between the aggregates and cementitious materials as described in Section 4.4(a) of this special provision.

Resubmittal of a mix design and its accompanying JMF, is not required when making adjustments to the aggregate mix proportions included in the approved JMF in order to maintain optimization of the aggregate gradation in accordance with the contract if also in accordance with applicable Durability Plans.

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Record all changes to JMF in the QC records along with the rationale for the change.

(c) Aggregates for Optimized Gradation

(i) Coarse Aggregate Requirements

- (A) Coarse aggregate includes all aggregate particles greater than or retained on the 3/4-inch sieve.
- (B) The physical requirements for coarse aggregate are as specified in Table 902-2 of the MDOT Standard Specifications for Construction for Class 6AAA and the following:
  - (I) Maximum 24 hour soak absorption of 2.50 percent;
  - (II) Maximum freeze-thaw dilation (MTM 113, 114, and 115):
    - Pavement concrete: 0.040 percent per 100 freeze-thaw cycle;
    - Structural concrete: 0.020 percent per 100 freeze-thaw cycle;
  - (III) Maximum flat and elongated particles of 15.0 percent as measured on the greater than or retained on the 3/4-inch sieve using a 3:1 aspect ratio (ASTM D4791); and
  - (IV) Maximum Loss by Washing per MTM 108 of 2.0 percent for materials produced entirely by crushing rock, boulders, cobbles; otherwise 1.0 percent.

(ii) Intermediate Aggregate Requirements

- (A) Intermediate aggregate includes all aggregate particles passing the 3/4-inch sieve through those retained on the No. 4 sieve.
- (B) The physical requirements for intermediate aggregate are as specified in Table 902-2 of the MDOT Standard Specifications for Construction for Class 6AAA and the following:
  - (I) Maximum freeze-thaw dilation of 0.067 percent per 100 freeze-thaw cycle (MTM 113, 114, and 115);
  - (II) Maximum sum of soft and chert particles of 4.0 percent by weight (MTM 110); and
  - (III) Maximum Loss by Washing per MTM 108 of 3.0 percent.

(iii) Fine Aggregate Requirements

- (A) Fine aggregate includes all aggregates particles passing the No. 4 sieve.
- (B) The fine aggregate shall meet the requirements of subsection 902.08 of the MDOT Standard Specifications for Construction.

(d) QC Sampling and Testing

Conduct startup sampling and testing for temperature, slump, density (unit weight), and air content on the first load. Do not place concrete until testing verifies that the fresh concrete properties have

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not exceeded the QC action and suspension limit thresholds specified in Table 7-1-9-2 and the testing correlation requirements of this Section 4.4(d) of this special provision have been met. Continue testing subsequent loads as described in the PCC Quality Plan, for each grade of concrete delivered to the work site each day. Startup or initial sampling and testing will not be eligible for consideration to initiate PWL dispute resolution process.

Additional quality testing requirements for air-entrainment, permeability, and water-to-cementitious ratio for service life validation are required by Section 10.3(b) of Part 21 [*The Bridge*], of Schedule 10 [*Design and Construction Specifications*] for the Bridge, and Section 10.3 of Part 20 [*Bridges*], of Schedule 10 [*Design and Construction Specifications*] for the Connecting Ramp Bridges. More stringent testing requirements may also be required by the Durability Plan.

Provide the curing facilities in accordance with Section 4.5(b) of this special provision prior to start of concrete production. Perform QC sampling and testing for air content loss of fresh concrete that is either slipformed or pumped, as follows:

- (i) At least once during each day of production.
- (ii) Whenever the concrete pump is relocated, where applicable.
- (iii) Whenever there is a significant change in the boom configuration or pumping pressure of the concrete pump, or there is a significant change in the characteristics of the paving operation during concrete placement, where applicable.

Sample and test a representative haul unit of concrete immediately after its discharge but before the slipform paver or pump hopper, where applicable. Sample and test the concrete representing the same haul unit, again, after the slipform paver or after discharge from the pump under continuous production stream, where applicable. If the difference in measured air content between the two test locations for the same concrete is greater than 1.0 percent air by volume of concrete, suspend operations and administer corrective action. Resume concrete placement only after taking the necessary corrective action to reduce the loss in air content of fresh concrete between the two test locations, as approved by the Construction Quality Control Manager. Document the corrective action to be taken in the QC records and make the necessary changes to the PCC Quality Plan, where applicable.

Project Co's QC and QA strength test specimens for 28-day compressive strength shall be the same size (either 6-inch by 12-inch or 4-inch by 8-inch) for lot dispute resolution consideration. Dispute resolution only applies for PWL quality index analysis.

Independent QC sampling and testing shall be conducted on each subplot within a respective production lot in order for the production lot to be considered for dispute resolution.

Concrete exceeding the maximum specification limits for slump or temperature shall be rejected regardless of the total mixing time at the time of arrival to the project.

The Construction Quality Manager may require Project Co to administer additional QC sampling and testing if the Construction Quality Manager determines Project Co's current QC sampling and testing methodology is shown to be insufficient to ensure continual control of the quality of the concrete.

Take the appropriate corrective action, as described in the PCC Quality Plan, when QC testing shows the QC action limits for any quality characteristic are exceeded. Suspend production if any of the QC suspension limits are exceeded or if the corrective action is not sufficient to restore the quality to acceptable levels.

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Resume production only after making all necessary adjustments to bring the mixture into conformance with all applicable specifications and receiving approval to resume work from the Construction Quality Manager. Document these adjustments in the QC records

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**TABLE 7-1-9-2  
QC ACTION AND SUSPENSION LIMITS**

Quality Characteristic	Action Limits	Suspension Limits
Air Content (percent)	See Note Below	< 5.0 or > 9.0
Air Content Loss (percent)		Greater than 1.0
Conc. Temp. (deg. F)	As Defined in the PCC Quality Plan	< 45 or > 90 at time of placement
Slump (max.) (inch)		See Table 7-1-9-1, footnote (g)
Density (unit weight)		N/A
Aggregate Gradation	Refer to procedure for Optimized Aggregate Gradation included in the contract.	
Note: Action limits shall be defined in the Project Co PCC Quality Plan and cannot be < 5.5 or > 8.5. Suspend work if air content is < 5.0 or > 9.0 percent after pump or paver, regardless of the air loss.		

(e) Work Progress Test Specimens

Determine the strength of concrete for opening to construction traffic or regular traffic, for removing shoring and forms, or for similar purposes in accordance with subsections 104.11, 601.03.H, and 701.03.D of the MDOT Standard Specifications for Construction, and as approved by WDBA. Cure work progress test specimens in the same manner as the in-situ concrete. Allow the Construction Quality Manager and WDBA to witness testing of work progress test specimens.

(f) Reduced QC for Small Incidental Quantities

If approved by WDBA, reduced levels of on-site QC testing for concrete may be considered for small incidental quantities as defined in Section 1.1 of this special provision.

Unless approved by WDBA, multiple small incidental quantities, including ones that are consecutively placed throughout the project on the same day, are not eligible for reduced QC consideration if the total plan quantity of concrete for the item exceeds 100 cubic yards in volume. Include details for reduced QC testing and oversight in the approved PCC Quality Plan, and in accordance with following:

- (i) The small incidental quantity of concrete will be limited to a single day's concrete placement of a maximum 20 cubic yards in volume.
- (ii) The small incidental quantity of concrete is not an integral part of a structural load bearing element.
- (iii) The Construction Quality Manager and WDBA received written certification from Project Co that the concrete supplier has a current PCC Quality Plan in place and available for review upon request.
- (iv) The concrete supplier employs a certified concrete technician (MCA Michigan Level II) available at the plant or on call during concrete placement to validate and authorize modifications to the concrete JMF, as necessary.
- (v) Prior to the first concreting operation, concrete representing the JMF for the small incidental quantity has been sampled and tested by a certified concrete technician (MCA Michigan Level I or II) to verify that, historically, the JMF produced a concrete mixture meeting the minimum requirements for density (unit weight), slump, air content, and strength.

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- (vi) The Construction Quality Manager verified that the temperature, slump, and air content conform to specification requirements at the start of the day's concreting operation associated with the small incidental quantity.
- (vii) WDBA and quality assurance personnel are notified and provided sufficient opportunity to witness concrete placement.

#### 4.5 Project Co Quality Assurance (QA)

- (a) Quality Assurance is the responsibility of the Construction QA Manager and will be accomplished by conducting QA sampling and testing, monitoring Project Co's adherence to the PCC Quality Plan, and inspection of field placed material,
  - (i) Personnel Requirements. The personnel responsible for field inspection and for obtaining QA samples will possess the required qualifications to collect QA samples. Sampling will be performed by a certified concrete technician (MCA Michigan Level I or II) or (MCAT) certified aggregate technician, where applicable.
  - (ii) Testing Correlation. The testing equipment and associated testing personnel for the Project Co's QA testing, Project Co's QC testing, and the WDBA Verification testing shall be used to conduct side by side correlation testing of the same concrete from the first load to verify correlation of test results for temperature and air content of fresh concrete. Side by side testing correlation shall be conducted whenever there is a change in QA, or WDBA Verification equipment and/or personnel for the project. The temperature measuring devices shall correlate relative to each other within 2 degrees F. If the air content results of two tests conducted between the QA and the WDBA testers differ by more than 0.4 percent air by volume of concrete, all associated air meters will be immediately checked for calibration using the accompanying approved calibration canister. Discrepancies in testing correlation shall be resolved prior to commencement of concrete placement.
  - (iii) Laboratory Facilities. The testing laboratory with responsibility for QA testing on this project shall be a qualified facility under the authority of the Construction Quality Manager. Dispute resolution testing for 28-day compressive strength, where applicable, will be conducted at the MDOT's Central CFS laboratory or an independent AASHTO Accredited laboratory facility designated by WDBA.
- (b) QA Sampling and Testing

Quality assurance personnel will verify Project Co's daily startup sampling and testing of temperature, slump, and air content of fresh concrete on the first load; conduct QA sampling and testing; monitor Project Co adherence to the PCC Quality Plan; and inspect field placed materials in such a manner as to ensure that all concrete for the project is represented. The testing correlation requirements of Section 4.4(d) of this special provision shall be met prior to concrete placement. At the Construction Quality Manager's discretion or in accordance with the Quality Manual or Durability Plan, additional testing may be performed by QA for service life verification.

The following ASTM test methods will apply. MDOT's established procedures for sampling and testing are acceptable alternatives.

C31 Practice for Making and Curing Concrete Test Specimens in the Field

C39 Test Method for Compressive Strength of Cylindrical Concrete Specimens

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- C78 Test Method for Flexural Strength of Concrete (Using Simple Beam with Third-Point Loading)
  - C138 Test Method for Density (Unit Weight), Yield and Air Content (Gravimetric) of Concrete
  - C143 Test Method for Slump of Hydraulic-Cement Concrete
  - C172 Practice for Sampling Freshly Mixed Concrete
  - C173 Test Method for Air Content of Freshly Mixed Concrete by the Volumetric Method
  - C231 Test Method for Air Content of Freshly Mixed Concrete by the Pressure Method
  - C293 Test Method for Flexural Strength of Concrete (Using Simple Beam with Center-Point Loading)
- (i) Lot Size and Make Up

A QA production lot will not include more than one grade of concrete, concrete of the same grade having different specified slump or air content, or concrete of the same grade having different mix designs, or JMFs. Non-PWL application and small incidental quantities will not be included in PWL Analysis Lots.

Consecutively placed concrete mixes where the aggregate proportions were adjusted to maintain an optimized gradation may be included in the same QA production lot provided they are the same grade and same JMF.

(A) PWL Applications

PWL applies to pavement (Grade P1M) and structural concrete (Grades DM and S2M). PWL will not apply for temporary concrete pavement and other non-pavement/structural concrete, where applicable. The QA lot size will be based on cubic yard quantities. The maximum QA lot size will not exceed 1000 cubic yards. The QA lot may be a single day's production. The QA production lots size for each item of work will be determined by the Construction Quality Manager at the pre-production meeting. Each QA production lot will be divided into five approximately equal sublots. At the option of the Construction Quality Manager, occasional small individual quantities of concrete may be combined with a larger production lot provided they are of the same grade, contain the same JMF, and are used for the same PWL application.

(B) Non-PWL Applications

Non-PWL applies to all concrete placements other than PWL and small incidental quantity applications. Lot size and makeup will be determined by the Construction Quality Manager, based on site conditions. A QA production lot may consist of a single day's production, individual concrete elements or any combination thereof, provided they are of the same JMF. Each QA production lot will be divided into sublots of approximately equal size, as determined by the Construction Quality Manager. The minimum number of sublots will be one per production lot, with the maximum number of sublots based on the anticipated total quantity of concrete to be placed and site conditions. A minimum of one sublot will be required for each day of production.

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## (C) Small Incidental Quantities

At the option of WDBA, daily 28-day compressive strength QA test cylinders for small incidental quantities of concrete, as defined in Section 1.1 of this special provision, may not be required provided QA test cylinders representing the same JMF as the small incidental quantity of concrete were sampled and molded at least once during the same week (see Section 4.4(f) of this special provision).

## (ii) Sampling

Except as modified herein, QA sample locations will be determined as described in the "Random Sampling for Quality Control/Quality Assurance Projects" section of the MDOT *Materials Quality Assurance Procedures Manual*.

The QA sampling rate and sample location will be based on cubic yard quantities.

QA sample will be taken at the point of discharge from the haul unit, at approximately the middle one-third of the load. Mix adjustments to the concrete contained within the haul unit selected for QA sampling and testing (beyond normal QC) will not be permitted prior to QA sampling and testing. QA sampling will be without prior notification.

Project Co will perform QA sampling and testing for air content loss of fresh concrete that is either slipformed or pumped, (1) at least once during each day of production, (2) whenever the concrete pump is relocated, where applicable, or (3) whenever there is a significant change in the boom configuration or pumping pressure of the concrete pump or there is a significant change in the characteristics of the paving operation during concrete placement, where applicable. Concrete will be sampled from a representative haul unit immediately after its discharge but before the slipform paver or pump hopper, where applicable. The concrete representing the same haul unit will then be sampled and tested after the slipform paver (after vibration) or after discharge from the pump (without interruption or alteration of the pumping operation), where applicable. If the difference in measured air content between the two test locations for the same concrete is greater than 1.0 percent air by volume of concrete, a Major Non-Compliance with Contract Requirements, as described in Section 4.5(b) of this special provision will be issued. Resume concrete placement only after the necessary corrective action is taken to reduce the loss in air content of fresh concrete between the two test locations, as approved by the Engineer. Document the corrective action that was taken by Project Co.

## (A) PWL Applications

The random number method for PWL sampling will be used to determine the sampling locations. A random number will be generated for each respective subplot. The sampling frequency for a QA production lot is one QA sample per subplot.

(I) Prior to the pre-production meeting, the Construction Quality Manager will generate a list of random numbers using a computer spreadsheet program or a calculator. The random numbers will be used to designate when QA samples are to be taken, based on cubic yard quantities.

If a subplot is not completed in sufficient quantity to permit it to be randomly sampled during its respective production day, as planned, the quantity of concrete for the subplot that was not placed as part of the day's production will be sampled during the following production day according to the original random number

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sampling protocol. The random sample will then represent the total quantity of concrete for the subplot placed over the respective multiple days of production.

If the quantity of a grade of concrete to be sampled on the last day of production for the project is not sufficient to make up three or more equivalent sublots, combine the test results for these one or two remaining sublots, or fraction thereof, with the previous day's production lot.

(B) Non-PWL Applications

Where practical, the random number method will be used to determine the sampling locations as described in Section 4.5(b)(i)(B) of this special provision. A random number will be generated for each respective subplot. The sampling frequency for a production lot is one QA sample per subplot.

(C) Small Incidental Quantities

At the option of WDBA, small incidental quantities as defined in Section 1.1 of this special provision may be accepted (visually inspected and noted on the Inspector's Daily Report) without daily 28-day compressive strength QA test specimens provided there is a current acceptable strength test history of the JMF for the project prior to placement of the small incidental quantity. One set of compressive strength QA test specimens will then be molded for each small incidental quantity JMF at least once per week during production, thereafter, as determined by WDBA (note the test results or identification number for the corresponding weekly QA compressive strength test result on the Inspector's Daily Report for each small incidental quantity). Quality control testing and daily QA testing for temperature, slump, and air content of fresh concrete are still required.

(iii) Testing

The location(s) within the project limits for QA testing of the fresh concrete and placement of QA and separate WDBA curing facilities for initial curing of the 28-day compressive strength QA test cylinders will be determined by the Construction Quality Manager in conformance with the following criteria:

- (A) The elapsed time between obtaining the first and the final portion of the composite sample shall not exceed 15 minutes.
- (B) Testing for slump, temperature, and air content of fresh concrete shall begin within 5 minutes after obtaining the final portion of the composite sample.
- (C) Molding of the 28-day compressive strength QA test cylinders shall begin within 15 minutes after obtaining the final portion of the composite sample.
- (D) The concrete sample shall be protected from the sun, wind, and other sources of rapid evaporation, and from contamination.

Two QA concrete strength test specimens per sample will be molded for 28-day compressive strength QA testing.

Project Co will provide separate curing facilities equipped to ensure the proper environment for the WDBA Verification and QA concrete strength test specimens during initial cure. Each initial cure facility shall provide ventilation or insulation, where applicable,

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to ensure the ambient temperature surrounding the specimens is maintained according to *AASHTO T23/ASTM C31*. Failure by Project Co to maintain the proper curing environment during initial cure will not be basis for rejection of samples, dispute resolution, or claims. Each initial curing facility shall be capable of being locked. Project Co will ensure that all initial curing facilities are accounted for at all time, and protected against theft and damage. Project Co will place and secure each initial cure facility throughout the project limits in such a manner so as to minimize excessive transport of the test specimens prior to initial cure.

(iv) QA Stop Production Criteria

The Construction Quality Manager will issue a Major Non-Compliance and concrete production shall stop when one or more of the following are observed, or as otherwise required by the Durability Plan.

- (A) The QA testing shows that one or more of the suspension limits for quality characteristics defined in Table 7-1-9-2 are in non-compliance.
- (B) The PCC Quality Plan is not being followed.
- (C) Segregation, excessive slumping of unsupported slipformed edges, or other notable changes in the fresh concrete properties is observed that may prevent proper placement, consolidation and finishing, or compromise the performance or long-term durability of the finished product.
- (D) The required curing system is not being applied in a timely manner, as specified by the contract.
- (E) If the measured air content loss between the two testing locations for the same concrete is greater than 1.0 percent air by volume of concrete as described in Section 4.5(b)(ii) of this special provision.

The Construction Quality Manager will issue a Notice to Resume Work only after all necessary adjustments are made to restore conformance with all applicable specifications, and the appropriate documentation is made in the QC records.

(v) QA Records

The Construction Quality Manager will maintain a complete record of all QA tests and inspections. The records will contain, as a minimum, signed originals of all QA test results and raw data, random numbers used (where applicable) and resulting calculations.

#### 4.6 WDBA Verification Sampling and Testing

- (a) Verification is the responsibility of WDBA and will be accomplished by conducting verification sampling and testing, monitoring Project Co's adherence to the PCC Quality Plan, and inspection of field placed material. Verification sampling and testing will be conducted in the same manner as the QA sampling and testing but at a reduced frequency. At WDBA's discretion, additional testing may be performed by WDBA for service life verification. Random sample locations will be determined as described in the "Random Sampling for Quality Control/Quality Assurance Projects" section of the MDOT Materials Quality Assurance Procedures Manual. WDBA Verification samples will be obtained independently of any QC or QA samples. Each WDBA Verification Lot Concrete will be divided into six (6) sublots of approximately equal size sampling and testing. The WDBA Verification Lot Concrete will be statistically compared to the fifteen (15) corresponding and

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validated QA sublots. For Non-PWL applications, there will be one WDBA Verification Sublot Concrete for each QA subplot.

For PWL applications only, two additional concrete strength test specimens will be molded for dispute resolution consideration.

Michigan Interchange Buy-Down Amount PWL pay factor calculations for the Michigan Interchange will be based on Validation of the WDBA Verification and QA test results. For the US POE and the Bridge project components, Validation for PWL applications that report less than 50 PWL will result in a Non-Compliance Report.

(b) Quality Index Analysis

QA test results may be used in the pay factor (PF) and Michigan Interchange Buy-Down Amount calculations if the QA results are statistically validated against the WDBA Verification testing. Project Co's QC test results will not be used for pay factor analysis or the Michigan Interchange Buy-Down Amount calculations.

(i) PWL Applications

The PWL, PF and associated Buy Down will be determined according to Section 4.6(c) of this special provision using the MDOT Concrete PWL Worksheet. The AQL, RQL, LSL and USL used in the quality index analysis are shown in Table 7-1-9-3. WDBA will perform the quality index analysis for all concrete represented by sufficient lot size and makeup necessary for random sampling according to Sections 4.4(d) and 4.5(b) of this special provision. All values of PWL, PF, and OLPF in these formulae are percent, not decimal. All values of PWL are rounded to whole numbers. All values of PF and OLPF are rounded to two decimal places.

(ii) Non-PWL Applications

The PF and associated ADJ will be determined according to Section 4.6(c) of this special provision. All values of PF and OLPF in these formulae are decimal, not percent. All values of PF and OLPF are rounded to two decimal places.

(iii) Small Incidental Quantities

Price adjustment for 28-day compressive strength deficiencies will be based on test results for the corresponding weekly QA test specimens and the pay factor (PFs) calculated according to the formulae defined in this Section 4.6(b)(iii) of this special provision. The price adjustment (ADJ) = (PFs – 1)(Price).

**TABLE 7-1-9-3  
QUALITY INDEX PARAMETER SPECIFICATION LIMITS FOR PWL APPLICATIONS**

Quality Index Parameters	Grade of Concrete		
	P1M	DM	S2M
<b>28-Day Compressive Strength</b>			
Specification Limit – Lower (LSL) (psi)	3500	4500	3500
Specification Limit – Upper (USL)	N/A		
Acceptable Quality Level (AQL)	95 PWL		
Rejectable Quality Level (RQL)	50 PWL		

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<b>Air Content of Fresh Concrete (All Grades of Concrete)</b>	
Specification Limit – Lower (LSL) (percent)	5.5
Specification Limit – Upper (USL) (percent)	8.5
Acceptable Quality Level (AQL)	90 PWL
Rejectable Quality Level (RQL)	50 PWL
Suspension Limits (percent)	< 5.0 or > 9.0

(c) Pay Factor (PF) Determination and Price Adjustment for Percent Within Limits (PWL) Applications

The MDOT Concrete PWL Worksheet uses the following formulae to calculate the PF and associated ADJ for each production lot. The maximum calculated numerical values for PF and OLPF will not exceed 105.00.

(i) Pay Factor for 28-Day Compressive Strength (PFs)

If PWL for 28-day compressive strength (PWLs) is 95 to 100 inclusive, use the following formulae to determine PFs.

$$PFs = 5 + PWLs$$

If PWLs is 50 to less than 95, use the following formulae to determine PFs.

$$PFs = 47.22 + (0.5556 \times PWLs)$$

If PWLs is less than 50, it will be subject to a Major Non-Compliance. If the WDBA Verification Lot Concrete PWLs is located within the Michigan Interchange, the WDBA will require additional evaluation to decide what further action may be warranted.

(ii) Pay Factor for Air Content of Fresh Concrete (PFac)

If PWL for air content of fresh concrete (PWLac) is 70 to 100 inclusive, use the following formulae to determine PFac.

$$PFac = 55 + (0.5 \times PWLac)$$

If PWLac is 50 to less than 70, use the following formulae to determine PFac.

$$PFac = 37.5 + (0.75 \times PWLac)$$

If PWLac is less than 50, WDBA will issue a Major Non-Compliance. If the WDBA Verification Lot Concrete PWLAC is located within the Michigan Interchange, WDBA may elect to do one of the following:

- (A) Require removal and replacement of the entire production lot with new testing conducted on the replacement concrete and repeat the evaluation procedure.
- (B) Provided no individual test results for the production lot are outside the suspension limits for air content specified in Table 7-1-9-2, allow the production lot to remain in place and apply an OLPF of 50.00.
- (C) Allow submittal of a corrective action plan for the licensed design professional responsible for the applicable Project Work, the Durability Plan preparer, and WDBA approval. If WDBA does not approve the plan for corrective action,

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Sections 4.6(c)(ii)(A) or 4.6(c)(ii)(B) of this special provision will be applied. Positive ADJ (quality initiative) will not apply for production lots subject to corrective action.

(iii) Overall Lot Pay Factor (OLPF)

The following formulae are used to calculate the OLPF and ADJ. Both pay factors (PFs and PFac) shall be 100.00, or greater for the production lot to be eligible for positive ADJ (quality initiative) consideration.

$$OLPF = (0.60 \times PFs) + (0.40 \times PFac)$$

$$ADJ = (OLPF - 100)(Price) / 100$$

ADJ = Price adjustment per pay unit to be applied to the production lot quantity

Price = Base price established for the pay item

The Pay Adjustments include positive pay adjustments that can be used to offset any negative pay adjustments in the final Buy Down calculation.

(d) Pay Factor (PF) Determination and Price Adjustment for Non-PWL Applications

Use the following formulae to calculate the PF and associated ADJ for each concrete item. Positive ADJ (quality initiative) does not apply for non-PWL applications. Each individual WDBA strength sample test result will be used to determine the PF and ADJ for the respective quantity of concrete that it represents, based on the sampling rate described in Section 4.5(b)(ii) of this special provision.

The specification limits for non-PWL applications are defined in Table 7-1-9-4. Unless otherwise specified in the contract, concrete not conforming to the requirements specified in Table 7-1-9-4 is rejectable and subject to further evaluation.

**TABLE 7-1-9-4  
QUALITY INDEX PARAMETER SPECIFICATION LIMITS FOR NON-PWL APPLICATIONS**

Quality Characteristic	Specification Limits
Air Content of Fresh Concrete (percent)	5.5 – 8.5
Rejection Limit (percent)	<5.0 or >9.0
Conc. Temp. (deg. F)	45 - 90 at time of placement
Slump (max.) (inch)	See Table 7-1-9-1, footnote (g)
28-day Compressive Strength (psi)	For LSL see Table 7-1-9-1
Rejection Limit - 28-day Compressive Strength	See Table 7-1-9-

(e) Pay Factor for 28-Day Compressive Strength (PFs)

$$PFs = \frac{\text{Tested Strength}}{LSL}$$

Where:

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PFs = Pay Factor for 28-day compressive strength (not to exceed 1.00)

Tested Strength = WDBA Verification 28-day compressive strength sample test result

LSL = Lower specification limit (see Table 7-1-9-1)

If the tested strength does not meet the rejection limit specified in Table 7-1-9-1, WDBA will require additional evaluation.

(f) Pay Factor for Air Content of Fresh Concrete (PFac)

The pay factor for air content of fresh concrete (PFac) will be according to Table 7-1-9-5.

**TABLE 7-1-9-5  
AIR CONTENT OF FRESH CONCRETE PAY FACTOR (PFAC) FOR NON-PWL APPLICATIONS**

Air Content of Fresh Concrete (percent)	Pay Factor (PFac)
5.5 – 8.5	1.00
5.0 – 5.4	0.50
Below 5.0	Rejection
8.6 – 9.0	0.75
Above 9.0	Rejection

If the air content of fresh concrete is below 5.0 or above 9.0 percent, WDBA will elect to do one of the following.

- (i) Require removal and replacement of the entire quantity of concrete represented by the test with new testing conducted on the replacement concrete and repeat the evaluation procedure.
  - (ii) Allow submittal of a corrective action plan for the Engineer of Record responsible for the applicable Project Work, the Durability Plan Preparer, and WDBA approval. If WDBA does not approve the plan for corrective action, Section 4.6(f)(i) of this special provision will be applied. All costs associated with plan submittal and corrective action under this Section will be borne by the Project Co.
- (g) Overall Lot Pay Factor (OLPF)

The following formulae are used to calculate the OLPF and ADJ. The OLPF will not exceed 1.00.

$$OLPF = (0.60 \times PFs) + (0.40 \times PFac)$$

$$ADJ = (OLPF - 1)(Price)$$

ADJ = Price adjustment per pay unit to be applied to the quantity represented by the WDBA Verification test

Price = Base price established for the pay item

**4.7 Lot Dispute Resolution**

Dispute resolution pertains to production lots subject to quality index analysis for PWL applications only. The air content of fresh concrete is not eligible for dispute resolution. The 28-day compressive strength WDBA Verification test results for a lot of concrete may be eligible for dispute resolution only if the following criteria are met:

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- (a) The request for dispute resolution testing was submitted by Project Co in writing within 2 working days of receipt of the results of the quality index analysis for the production lot.

Complete records and reports for all QA tests and inspections as described in Section 4.5 of this special provision, including documentation of what action was taken to correct deficient concrete, along with sufficient information and production lot identification to allow the test results to be correlated with the items of work represented, were submitted to WDBA within 24 hours after the date covered by the records and reports.

- (b) QA sampling and testing procedures were conducted in the same manner as the WDBA Verification sampling and testing procedures.
- (c) The WDBA Verification and QA 28-day compressive strength test specimen for the production lot in dispute are the same nominal size (either 6-inch by 12-inch or 4-inch by 8-inch).
- (d) The pay factor for 28-day compressive strength (PFs), as re-calculated by WDBA using the QA test results, is greater than that determined by WDBA using the Verification test results.
- (e) Each subplot within the respective production lot under dispute is represented by complete QA test results.
- (f) The QA sampling and testing for the production lot in dispute was conducted by a certified concrete technician (MCA Michigan Level I or II).
- (g) A current and complete PCC Quality Plan, for the appropriate items of work, was submitted and approved by WDBA prior to start of related work.
- (h) The QA sampling and testing was performed on the same production lot of concrete as the WDBA Verification sampling and testing, and all associated QA records include the appropriate production lot identification number that coincides with the WDBA Verification lot identification number.
- (i) The corresponding QA and WDBA Verification 28-day compressive strength test specimens for the production lot in dispute were properly secured during initial curing in the curing facility provided and maintained by Project Co.
- (j) The QA test results and documentation for aggregate gradation (where applicable), slump, air content of fresh concrete, temperature, and density (unit weight) of the fresh concrete were complete and within specification requirements.
- (k) The appropriate corrective action was taken by Project Co in the event QC action limits were exceeded, as described in the PCC Quality Plan.
- (l) QC suspension limits for the associated production lot of concrete were not exceeded.

Dispute resolution will not be considered if it is shown that the QA has not been completed in accordance with the approved PCC Quality Plan.

If WDBA determines, based on the above criteria, that further evaluation is not warranted, the ADJ for the production lot will be based on WDBA's original 28-day compressive strength Verification test results.

#### 4.8 Dispute Resolution Schedule

If WDBA determines, based on the above criteria, that lot dispute resolution is warranted, the following schedule and testing process will be initiated:

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- (a) WDBA will deliver the dispute resolution samples along with the appropriate sample identification submittal forms to the MDOT CFS Central Laboratory for testing within 3 working day of the receipt of the request.
- (b) The MDOT Central laboratory will test all dispute resolution test specimens within 2 working days of their receipt.
- (c) The 28-day compressive strength (psi) LSL specified in Table 7-1-9-3 will be increased 10 psi for each additional day beyond 28 days after molding of the test specimens associated with the production lot under dispute, up to and including 60 days after molding (32 additional days after 28 days; 320 psi to account for additional strength gain after the 28-day standard curing period).
- (d) The MDOT CFS Central laboratory will return the dispute resolution test results to WDBA within 10 working days from receipt of the dispute resolution samples.

#### **4.9 Dispute Resolution Testing Process**

- (a) All lot dispute resolution samples will be tested for the production lot under dispute resolution.
- (b) All dispute resolution test results will replace respective original WDBA Verification test results.
- (c) The dispute resolution and QA test results will then be statistically validated by F&t statistical test method. If the validation test confirms that both data sets represent the same population, then both the dispute resolution and QA test results will be used in the Percent Within Limits calculations. If the validation test confirms that the two data sets do not represent the same population, then only the dispute resolution test results will be used in the Percent Within Limits calculations.
- (d) The adjusted LSL described in Section 4.8(c) of this special provision will then be used to determine the PWL for the production lot under dispute.
- (e) The PFs for the production lot under dispute will be recalculated using the compressive strength test results from the dispute resolution test specimens.
- (f) If the recalculated lot PFs is less than or equal to the original corresponding PFs, the costs for dispute resolution sample testing will be borne by Project Co.
- (g) If the recalculated lot PFs is greater than the original corresponding PFs, the costs for dispute resolution sample testing will be borne by WDBA.
- (h) The OLPF will then be recalculated using the PFs from the compressive strength dispute resolution test results and the original corresponding PFac.

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**APPENDIX 7-1-10  
SPECIAL PROVISION FOR QUALITY CONTROL, QUALITY ASSURANCE, AND ACCEPTANCE OF  
HOT MIX ASPHALT**

**1. DESCRIPTION**

Unless defined specifically in this Special Provision or unless the context otherwise requires, capitalized but otherwise undefined terms in this Special Provision shall have the respective meanings given to such terms in Schedule 1 [Definitions and Interpretation] of the body of this Project Agreement.

This special provision sets forth the minimum Project Co quality control (“**QC**”), Project Co quality assurance (“**QA**”), and WDBA Verification procedures for acceptance of Superpave Hot Mix Asphalt (“**HMA**”). This special provision defines the minimum Acceptable Quality Limits for all HMA for the US POE and the Michigan Interchange Area in addition to providing the price adjustment for the Michigan Interchange Buy-Down Amount. Except as explicitly modified by this special provision, all materials and HMA mixture requirements of the standard specifications and Schedule 7 [Quality Management], Schedule 10 [Design and Construction Specifications], and Schedule 15 [Michigan Interchange Design and Construction Specifications] shall apply.

**Delete subsection 501.03.N.2.b of the MDOT 2012 Standard Specifications for Construction, in its entirety and replace with the following:**

**1.1 Terminology**

**Alternate Density Acceptance.** Means the density acceptance criteria for applications where standard coring cannot be performed due to core thickness requirements. Alternate density acceptance applies to Hand Patching, Joint Repairs, Driveways, Gores, and Widening less than or equal to 5 feet. Scratch Course density is accepted using Alternate Acceptance In-Place Density Method if the application rate does not meet the minimum core thickness per section 6.5 of this special provision.

**Binder Content** means the percent by weight of asphalt cement in the total mixture.

**Bulk Specific Gravity of Aggregate ( $G_{sb}$ )** means the ratio of the oven dry weight in air of a unit volume of an aggregate at a stated temperature to the weight of an equal volume of water at a stated temperature.

**Effective Specific Gravity ( $G_{se}$ )** means the ratio of the oven dry weight in air of a unit volume of an aggregate (excluding voids permeable to asphalt) at a stated temperature to the weight of an equal volume of water at a stated temperature.

**HMA Design** means the selection and proportioning of aggregate(s), mineral filler (if required), reclaimed asphalt pavement (RAP), and asphalt binder to meet mixture design criteria.

**Initial Production Lot** means a process used in which HMA Production for specific HMA mixtures and HMA plants are limited to 400 to 1000 tons per day for a maximum of 3 (consecutive or separate) days and 400 to 750 tons for the fourth and subsequent days until it is determined that HMA Production has met the requirements in section 5 of this special provision, prior to moving into Unlimited Daily HMA Production.

**Job Mix Formula (JMF)** means an HMA Design for a specific project. This may include adjustments to the mix design to optimize the field application.

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**Maximum Specific Gravity of Mixture ( $G_{mm}$ )** means the ratio of the weight in air of a unit volume of an un-compacted HMA at a stated temperature to the weight of an equal volume of water at a stated temperature.

**Outlier** means a value identified by the percent within limits (PWL) program that deviates markedly from test results for other samples from the same lot which will be investigated. Outlier applies only to core density evaluation.

**Overall Lot Pay Factor (OLPF)** means value to be used to determine the lot pay adjustment.

**Overall Sublot Pay Factor (OSPF)** means value to be used to determine the sublot pay adjustment when Single Test Acceptance (STA) is used.

**Percent Within Limits (PWL)** means the percentage of material within the specification limits or tolerance for a given quality index parameter.

**QA Lot** means a lot is made up of a discrete tonnage of one mixture. Each lot is typically made up of five sublots.

**QA Lot Acceptable Quality Limits (AQL) (Table 4 Col. VI)** means a PWL value for an individual quality index parameter that will still result in a PF of 100 for that quality index parameter. AQLs are specified in Table 4.

**QA Lot Rejectable Quality Limits (RQL) (Table 4 Col. VII)** means a PWL value for an individual quality index parameter that will result in either a PF = 50; remove and replace or corrective action plan. RQLs are specified in Table 4.

**QA Sublot Rejectable Quality Limits (RQL) (Table 4 Col. V)** means a range of values defined in Table 4 that, if exceeded on a single QA test may result in the Construction Quality Manager issuing a Major Non-Compliance with Contract Requirements (Form 1165).

**QA Suspension Limits (Table 4 Col. IV)** means a range of values defined in Table 4 that, if exceeded on two consecutive QA tests may result in the Construction Quality Manager issuing a Major Non-Compliance with Contract Requirements (Form 1165).

**Quality Characteristic (Table 4 Col. I)** means the material and mixture characteristics of HMA that are deemed to have direct bearing on the quality and performance of the HMA pavement and for which specification limits have been established.

**QC Action Limits (Table 4 Col. II)** means a range of values established by Project Co in the HMA-Quality Plan or specified in Table 4 that, if exceeded on two consecutive QC tests, requires Project Co take corrective action to bring the mixture produced into conformance with the specifications.

**QC Suspension Limits (Table 4 Col. III)** means a range of values established by Project Co in the HMA-Quality Plan or specified in Table 4 that, if exceeded on a single QC test, requires Project Co suspend operations and determine, document and correct the cause before continuing production.

**Quality Index Parameter** means the HMA quality characteristics that are evaluated under the Construction Quality Manager's QA and WDBA Acceptance Programs and on which payment for HMA material is based. The Quality Index Parameters are VMA, Air Voids, Binder Content, and In-Place Density.

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**Rounding of Numbers and Significant Figures** means the rounding of numerical data will follow the Rounding Method as described in the *MDOT HMA Production Manual* and the associated *MTMs*.

**Single Test Acceptance (STA)** means acceptance criteria for non-PWL applications as outlined in section 6.9 of this special provision.

**Sublot** means a portion of a lot or an individual sample that is represented by a complete set of QA tests. Sublots will be approximately equal size of 1000 tons. WDBA and Project Co may agree to reduce the typical 1000 ton sublots based on project staging or other project conditions.

**Target Value** means a JMF parameter value which may be adjusted, if approved by the Construction Quality Manager and WDBA, to account for changes in the physical properties of the mixture.

**Unlimited Daily HMA Production** means unrestricted daily HMA production tonnage.

**Validation** means the WDBA's Verification acceptance testing will be the test of record. WDBA's Verification tests can be supplemented with Project Co QA tests if those tests are statistically validated by F&t statistical method. This validation method compares the two independent data sets (WDBA Verification & QA) of multiple test results to determine if the materials tested come from the same population. When the validation test confirms that both data sets represent the same population then both WDBA Verification & QA test results will be used in the Percent Within Limits calculations. If the validation test determines that the data sets do not represent the same population then only the WDBA Verification tests will be used in the Percent Within Limits calculations.

**Vibratory Exclusion Areas** means an area of inadequate base condition shown on the plans; or identified by Project Co's QC personnel, Project Co's QA personnel, or WDBA prior to or during the paving operation; or an area having conditions that are sensitive to vibration as determined by QC, QA, or WDBA. In these areas, during field production Percent of Maximum Specific Gravity ( $\%G_{mm}$ ) at the design number of gyrations, ( $N_d$ ) will be increased to 97.5 percent. The area, if limited, will be accepted using the STA methodology. If the area is large enough to constitute a Lot, it will be accepted using standard PWL acceptance criteria. The contract requirements for density still apply. Any additional asphalt cement required for regression will be included in the base price bid for that particular mix if the areas are identified on the plans. For areas not identified on the plans there will be no compensation for the additional asphalt if the total tonnage for vibratory exclusion areas are under 1000 tons. Oscillatory rollers are allowed in vibratory exclusion areas as long as the vibratory mode is turned off.

**Voids in Mineral Aggregate (VMA)** means the volume of void space between the aggregate particles of a compacted paving mixture that includes the air voids and the asphalt binder not absorbed into the aggregate, expressed as a percent of the total volume of mixture.

**WDBA Verification Lot HMA** means a lot made up of a discrete tonnage of one mixture used for material quality verification. Each WDBA Verification Lot HMA is typically made up of 6 WDBA Verification Sublots HMA and fifteen corresponding Project Co QA sublots.

**WDBA Verification Sublot HMA** means a portion of a lot or an individual sample that is represented by a complete set of WDBA verification tests. WDBA Verification Sublots HMA will be approximately equal size of 2500 tons. WDBA and Project Co may agree to reduce the typical WDBA Verification and QA subplot size based on project staging or other project conditions.

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## 2. PROJECT CO QUALITY CONTROL (QC)

Be responsible for the quality of the HMA produced and placed and perform QC sampling and testing, provide inspection, and exercise management control to ensure that work conforms to the contract requirements. Perform all testing in accordance with the accepted HMA-Quality Plan. Provide the Construction Quality Manager and WDBA the opportunity to observe sampling and testing. Sample, test, and evaluate all HMA mixtures in accordance with the requirements of this special provision.

Develop and follow an HMA-Quality Plan with QC requirements for HMA production and placement as required by the *MDOT HMA Production Manual* and herein. Utilize personnel and testing equipment capable of providing a product that conforms to contract requirements. Do not start work on the subject items without a WDBA-accepted HMA-Quality Plan.

Perform QC sampling, testing, and inspection during all phases of the work at the minimum guidelines specified for that item or at an increased frequency sufficient to ensure that the work conforms to the contract requirements. Continual production of nonconforming material at a reduced price in lieu of making adjustments to bring material into conformance is prohibited.

WDBA will not sample or test for QC or assist in controlling the HMA production and placement operations. The results of WDBA's Verification testing may not be available for use in QC activities and should not be included in the HMA-Quality Plan discussion.

### 2.1 HMA-Quality Plan: Quality Control

Develop and follow an HMA-Quality Plan that addresses personnel; sampling and testing equipment and calibration records; supplies and facilities for obtaining samples, performing tests, and documenting results; and other activities to control the quality of the product to meet contract requirements. Include methodology for addressing material that appears to be inconsistent with similar material being sampled. Perform all QC sampling and testing according to the *MDOT HMA Production Manual* and herein unless specifically documented in the HMA-Quality Plan.

(a) Plan Submittal

Submit the HMA-Quality Plan to the Project Co Quality Manager and WDBA for review and acceptance prior to production paving.

(b) Plan Acceptance

Revisions to the HMA-Quality Plan may be required by the Project Co Quality Manager and WDBA prior to its acceptance. The Project Co Quality Manager or WDBA will request plan revisions in writing prior to production paving. If revisions are required by the Project Co Quality Manager or WDBA, these revisions must be made and the HMA-Quality Plan accepted before HMA production or placement commences.

Acceptance of the QC portion of the HMA-Quality Plan does not imply any warranty by the WDBA that the HMA-Quality Plan will result in production of HMA that complies with all contract requirements. It remains the responsibility of Project Co to demonstrate such compliance.

(c) Plan Modification

The QC portion of the HMA-Quality Plan may be refined or modified as work progresses. Such refinements or modifications are subject to review and acceptance by the Project Co Quality Manager and WDBA.

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## 2.2 HMA-Quality Plan QC Contents

Include the following QC-specific items in the HMA-Quality Plan.

(a) Quality Control Organization

Include an organization chart showing key personnel involved in production, placement, compaction, and QC for this project. Provide the names of the Construction Quality Control Manager and Quality Control Technician(s) [QCT(s)]. Clearly identify all subcontractor personnel involved in HMA QC.

Maintain consistency in the QC organization throughout the life of the project to the extent practicable. Substitution of qualified personnel is allowed provided that the names are forwarded to the Project Co Quality Manager and WDBA and approved by the Project Co Quality Manager prior to the substitution.

(b) Quality Control Personnel Qualifications and Responsibilities

Provide the qualifications of each individual or position listed on the organization chart and a brief narrative of their area of responsibilities. Describe the coordination of the activities of the Construction Quality Control Manager and the QCT(s).

(i) Construction Quality Control Manager

This individual will be responsible for administering the QC portion of the HMA-Quality Plan and will institute any actions necessary to successfully implement the QC portion of the HMA-Quality Plan.

(ii) Quality Control Technicians (Plant)

All equipment calibration; QC sampling and testing; and QC documentation must be performed by qualified technicians. Document the certification of all QCT(s) through the Michigan Bituminous QC/QA Technician Certification Program or other approved program.

(iii) Placement Personnel

Identify the personnel that will be responsible for inspecting all transport, lay down and compaction equipment to ensure it is operating properly and for verifying that all lay down and compaction conforms to the contract requirements.

(c) HMA Mix Design

Provide the approval status and a copy of the HMA mix design for all HMA mixtures to be produced for this contract and the plant location for production of each mixture.

(d) Quality Control Sampling and Testing

Develop and include the schedule of QC testing for the quality characteristics shown in Table 7-1-10-1. For each quality characteristic listed, define test method; minimum sampling and testing frequency; when the sampling and testing will be performed in relationship to production; and sampling location. Describe the random sampling method used.

Minimum QC sampling locations must be determined independently from QA sampling locations. In addition to the minimum QC sampling required by Table 7-1-10-1, additional

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non-random QC testing may be included in the HMA-Quality Plan, except as otherwise specified.

(e) Quality Control Laboratory Facilities

Provide the location of the testing facilities and include a copy of the plant certification. All laboratories that are used to prepare HMA mix designs or perform QC testing of HMA materials must demonstrate that they are equipped, staffed, and managed so as to be capable of mixing and testing HMA in accordance with the applicable test methods.

(f) Corrective Action

Tables 7-1-10-2 and 7-1-10-4 specify the action limits and/or list the quality characteristics for which action limits must be defined in the HMA-Quality Plan. Complete and include Tables 7-1-10-2 and 7-1-10-4 with the QC Action Limits defined as indicated. Describe the procedures that will be followed to ensure that test results are properly reviewed and that corrective action, based on the test results, is taken and documented when necessary to control HMA quality.

(g) Suspension of Production

Table 7-1-10-4 specifies the QC Suspension Limits. Discuss the steps to be taken when any suspension criteria is met. Steps must include notifying the Construction Quality Manager and WDBA and making all necessary corrections whenever production is suspended. Include discussion of the following suspension criteria, as a minimum.

- (i) QC Suspension limits specified in Table 7-1-10-4 Col. III for any of the quality characteristics that are exceeded.
- (ii) The PWL for VMA, Air Voids, Binder Content, or In-Place Density is below 50 for any lot.
- (iii) The QC aspects of the HMA-Quality Plan are not followed.
- (iv) Visible pavement distress occurs such as segregation or flushing.
- (v) Additional QC suspension criteria may be included.

(h) Control Charts

Discuss the use of control charts for all quality characteristics listed in Table 1. Include examples of the control charts to be used. As a minimum, the control charts must identify the project number, the pay item code, the test number, test parameter, the specification limits, the action limits, suspension limits, and the test results. Keep the control charts current and available in an accessible location at the laboratory facility.

(i) Plant Reports

At the request of WDBA, provide copies of plant certification and electronic daily cumulative project tonnage report.

### 3. QUALITY CONTROL SAMPLING AND TESTING DURING PRODUCTION

- (a) Fifteen cores approximately 6 inches in diameter will be allowed per lot of material for QC of In-Place Density.

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- (b) At the time any QA or QC cores are taken, remove free standing water from the core hole; apply tack coat to the interior of the core hole, fill with hot mixture, and compact. Obtain and document approval for the type of mix to be used for filling holes and for obtaining compaction prior to production paving.
- (c) At the time any QA or QC sample is collected from behind the paver, provide and place loose mixture according to *MTM 324* or as directed by the Construction Quality Manager.
- (d) Sample and test the plant produced material in accordance with the approved HMA-Quality Plan.

#### 4. HMA-QUALITY PLAN: QUALITY ASSURANCE

The Construction QA Manager will develop and follow the QA aspects of the HMA-Quality Plan, which may be submitted as a part of the Construction Quality Management Plan or separately as a Review Submittal. The Construction QA Manager will submit the HMA-Quality Plan to the WDBA a minimum of 15 days prior to production for review and acceptance. The HMA-Quality Plan will be reviewed prior to production and any proposed changes will be documented.

All QA sampling and testing will be performed according to the *MDOT HMA Production Manual* and herein unless specifically documented in the Quality Management Plan.

(a) Quality Assurance Technicians

All QA and testing; and QA documentation will be performed by qualified technicians, as defined in the *MDOT HMA Production Manual*. All QAT(s) will be certified through the Michigan Bituminous QC/QA Technician Certification Program or other approved program. Certifications required for QAT(s) will be included in the project files.

(b) Construction Personnel

The personnel responsible for field inspection and for obtaining QA samples will be identified. Certifications/qualifications required for individuals collecting QA samples will be included in the Electronic Project Collaboration System.

(c) Laboratory Facilities

The testing facilities with responsibility for QA testing on this project will be identified. All laboratories that perform QA testing of HMA materials must demonstrate that they are equipped, staffed, and managed so as to be capable of testing HMA in accordance with the applicable test methods.

#### 5. INITIAL PRODUCTION LOT (IPL) PROCEDURE

The purpose of the IPL is to verify that the produced mixture is within specification limits; to verify test results, procedures, and equipment used are capable of generating Project Co QC and QA test results that agree with WDBA results to within allowable tolerances; and to establish roller patterns that will achieve the desired compaction results.

Prior to proceeding with unlimited daily HMA production, Project Co shall meet the acceptance requirements of Section 5.3 of this special provision. The IPLs will be placed on the Site at locations including: mainline, shoulders, temporary pavement, detour paving or other mutually agreed upon locations within the Site. Substitution of an equal or better mix may be allowed at an alternate location than specified for purposes of an IPL. There will be no unit price adjustment from the original plan pay

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items other than quality adjustments as noted in section 11 of this special provision. An alternate location off the jobsite at no cost to the WDBA may be allowed.

The In-Place Density QC Suspension Limits (Table 4 Col. III) do not apply to IPLs.

### 5.1 JMF Adjustment Requests

JMF adjustments may be requested prior to the IPL run based on test data submitted from previous use of the approved mix designs. The previous usage may be on commercial, local agency, or state construction projects. JMF adjustments may also be requested based on the IPL(s) results.

JMF adjustments will be in accordance with the *MDOT HMA Production Manual's* section on PROCEDURES FOR JOB MIX FORMULA ADJUSTMENTS. All JMF adjustments must meet Superpave mix design requirements and consensus properties.

### 5.2 Initial Production Lot (IPL)

An IPL will consist of one day of HMA production ranging from 400 tons to 1000 tons. Each IPL will be evaluated as a single lot. Project Co will be allowed to construct three IPLs for a given mixture. The mixture will be subject to pay adjustments and/or removal based on test results for a complete IPL.

### 5.3 Initial Production Lot (IPL) Sampling and Testing

Each IPL will consist of four approximately equal sublots.

- (a) The Construction QA Manager and WDBA will:
  - (i) Collect one 45,000 gram IPL split sample per subplot, and provide Project Co Construction QC Manager with splits of all subplot samples, for testing of all quality characteristics listed in Table 1. These split sample test results will be evaluated using the current lab correlation procedure found in the *MDOT HMA Production Manual*. The WDBA and QA split portion will be used as the basis of acceptance testing.
  - (ii) Collect an additional 45,000 gram IPL split sample per subplot, and provide the Construction Quality Control Manager with splits of all subplot samples, for testing of all quality characteristics listed in Table 1. These split sample test results will be evaluated using the current lab correlation procedure found in the *MDOT HMA Production Manual*. The WDBA and Construction Quality Manager split portion will be used as the basis of acceptance testing.
  - (iii) Collect two independent 20,000 gram sample per subplot using the same random number as the 45,000 gram sample for possible dispute resolution of the IPL results.
  - (iv) Locate and mark four random core locations per subplot, take possession of the cores when extracted by Project Co and test the In-Place Density.
- (b) The current lab Correlation Procedure in the *MDOT HMA Production Manual* will be used to evaluate Project Co's QC and QA test results to WDBA's test results for IPL split samples.

If the IPL split subplot sample test results do not correlate, Project Co and WDBA will jointly review the results, check equipment and review the test procedures for all testing

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laboratories to determine if there is an identifiable cause for the discrepancy; recalibrate equipment; and arrange for independent assurance sampling and testing reviews for the QAT(s) and QCT(s), if necessary, before continuing with production or conducting tests on a subsequent IPL. If the vacuum extraction process is used to determine the binder content, WDBA and Project Co will communicate the number of washes used.

#### **5.4 Initial Production Lot (IPL) Sampling and Testing to Verify Mix Design Total Aggregate Bulk Specific Gravity**

In addition to the sampling required in Section 5.3.

- (a) The Construction QA Manager and WDBA will:
  - (i) Collect four 15,000 gram (g) samples per IPL. Provide Project Co Construction QC Manager with a sample for performing extractions and determining the total aggregate bulk specific gravity, Gsb. Provide the Construction Field Services HMA laboratory with a sample for possible verification testing.
  - (ii) Quarter or eighth out 2000 g samples (Number of samples needed will vary depending on mix type. If vacuum extraction is performed for the testing outlined in Section 5.3(a)(i), the extracted material can be used to determine combined aggregate specific gravity). Perform vacuum extraction per MTM 325 and Gradation per MTM 311. Determine combined aggregate specific gravity (Gsb) per MTM 320 and MTM 321. Complete all tests and report all results to Project Co and to Construction Field Services.
- (b) Project Co Construction QC Manager shall:
  - (i) Quarter or eighth out 2000 g samples (Number of samples needed will vary depending on mix type. If vacuum extraction is performed for the testing outlined in Section 5.3(a)(ii), the extracted material can be used to determine combined aggregate specific gravity). Perform vacuum extraction per MTM 325 and Gradation per MTM 311 on the sample collected by the QCAT. Determine combined aggregate specific gravity (Gsb) per MTM 320 and MTM 321.
  - (ii) Complete all tests and report all results to WDBA and the Construction QA Manager.

### **6. QUALITY ASSURANCE SAMPLING AND TESTING**

Quality Assurance is the responsibility of the Construction QA Manager and will be accomplished by conducting QA sampling and testing, monitoring Project Co's adherence to the HMA-Quality Plan, and inspection of field placed material.

#### **6.1 Random Sampling**

Except as modified herein, QA sample locations will be determined as outlined in Section 1.06 of the MDOT *Materials Quality Assurance Procedures Manual*.

#### **6.2 Production Lot Size**

Each lot will be divided into sublots of approximately equal size but not greater than 1000 tons for QA sampling and testing.

If only one or two sublots remain at the end of production of a mixture, the test results for these sublots will be combined with the previous lot for evaluation of PWL and PF.

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### 6.3 Plant Produced Material (Mixture) Quality Assurance Sampling

Location of QA sample sites within each subplot will be by a random process managed by the Construction QA Manager. Immediately after the Construction QA Manager acquires the samples, fill the voids with HMA in accordance with *MTM 324*.

The Construction QA Manager will sample the mixture in accordance with *MTM 324* or *MTM 313*, Sampling HMA Loose Mix from Mini-stockpile, collecting one 20,000 gram sample at each sample site. This is the QA sample. The Construction QA Manager will assign an identifier to each sample consisting of contract ID, mixture, lot and subplot and deliver the sample to the testing facility identified in the HMA-Quality Plan where it will be tested.

Sampling for wedging operations will be in accordance with *MTM 313*, Sampling HMA Loose Mix from Mini-stockpile.

### 6.4 Plant Produced Material (Mixture) Quality Assurance Testing

Plant produced material acceptance testing will be completed by the Construction QA Manager within 4 days after the Construction QC Manager has taken the samples from the Site. The QAT will conduct the following tests.

- (a) Maximum Specific Gravity,  $G_{mm}$  (*MTM 314*)
- (b) Bulk Compacted Density,  $N_{des}$  (*AASHTO T312-08*)
- (c) Air Voids,  $N_{ini}^*$ ,  $N_{des}$ , (*AASHTO R35-04*) (\* for information only)
- (d) Voids in Mineral Aggregate, VMA (*AASHTO R35-04*)
- (e) Voids Filled with Asphalt, VFA\* (*AASHTO R35-04*) (\* for information only)
- (f) Ratio of Fines to Effective Asphalt Binder,  $P_{\#200}/P_{be}$
- (g) Composition of the Mixture (Using one of the following methods)

Method 1. Asphalt binder content based on ignition method (*MTM 319*). Gradation (*ASTM D 5444*) and Crushed particle content (*MTM 117*) based on aggregate from *MTM 319*. If method 1 is selected, the incineration temperature will be established prior to production paving meeting. Project Co will provide a laboratory mixture sample to the QA Acceptance Laboratory to establish the correction factor for each mix. This sample must be provided to the QAT 14 days prior to production.

Method 2. Asphalt binder content based on vacuum extraction by *MTM 325* and the "Checklist for HMA Mixture Analysis Vacuum Extraction", of the *MDOT HMA Production Manual*. Gradation (*ASTM D 5444*) and Crushed particle content (*MTM 117*) based on extracted aggregate from *MTM 325*.

The method selected cannot be changed during mix production without submitting a new mix design to the Construction Field Services HMA Laboratory for WDBA verification.

### 6.5 In-Place Density Quality Assurance Sampling

The Construction QA Manager will locate and mark all QA core locations. All QA coring operations will be completed by Project Co including dispute resolution and subplot retest coring. The Construction QA Manager will test all QA cores. If, for any reason, a core is damaged or

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determined not to be representative at the time of coring, the Construction QA Manager will evaluate and document the problem and determine if re-coring is necessary.

Core sample locations will be marked after final rolling. Core sample locations will be marked at the completion of a QA subplot and cores will be taken, prior to traffic staging changes, or at another time that is independent of paving operations. The QAT will identify four core sample locations for each QA subplot based on longitudinal and transverse measurements.

Any core disqualified based on the minimum thickness criteria will be discarded and a new core location will be selected by the Construction QA Manager. All previous pavement, base aggregate or bond coat material will be sawed off the bottom of the core samples by the QAT.

The minimum core thickness for each mixture type is:

Hot Mix Asphalt Minimum Core	
<u>Mixture No.</u>	<u>Thickness</u>
2	3 inch
3	2¼inch
4	1½inch
5	1⅞inch
LVSP	1¼inch

(a) Alternate Acceptance In-Place Density Method

Density acceptance for Hand Patching, Joint Repairs, Driveways, Scratch Course, and Widening/Tapers/Gores of less than or equal to 5 feet will be as follows. Density acceptance for these processes will be by density gauge. Establish the compaction effort for each pavement layer to achieve the required in place density values. After the final rolling, the Construction Quality Manager will use a density gauge using the  $G_{mm}$  from the JMF for acceptance. A minimum of six random locations per QA subplot will be tested for density. If the average of the density values is equal to or greater than 92.00 percent of the  $G_{mm}$ , the pavement density will be accepted. If the average of the QA subplot density tests are less than 92.00 percent of the  $G_{mm}$ , Project Co must take corrective action to achieve a minimum average of 92.00 of the  $G_{mm}$ . Density values will not be used in the PWL spread sheet; the alternate density application in the drop-down of the PWL spreadsheet should be selected.

Sampling will be in accordance with *MTM 313*, Sampling HMA Loose Mix from Mini-stockpile.

## 6.6 In-Place Density Quality Assurance Testing

Pavement In-Place Density acceptance testing will be completed by the Construction QA Manager within 4 days after the Construction Quality Manager has taken possession of the cores at the project site. Testing will be in accordance with *MTM 315*.

## 6.7 Quality Assurance Stop Production Criteria

The Construction QA Manager or WDBA may issue a Major Non-Compliance with Contract Requirements, if Project Co has not suspended operations and taken corrective action. HMA production must stop when any one or more of the following criteria are met or exceeded:

- (a) One or more of the QA Suspension Quality Limits in Table 4 Col. IV is exceeded for consecutive QA tests.

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- (b) One or more of the QA Sublot Rejectable Quality Limits in Table 4 Col. V is exceeded for a single QA test.
- (c) The PWL for VMA, Air Voids, Binder Content or In-Place Density is below 50 when calculated according to section 11 of this special provision.
- (d) The HMA-Quality Plan is not followed.

Resume production only after making all necessary adjustments to bring the mixture into conformance with all applicable specifications; documenting these adjustments as discussed in the HMA-Quality Plan; and receiving a Notice to Resume Work from the Construction QA Manager.

## 6.8 Sublot Removal and Replacement Criteria

Exceeding one or more of the QA Sublot Rejectable Quality Limits in Table 4 Col. V may result in removal and replacement of the associated subplot of material.

## 6.9 Single Test Acceptance (STA) Criteria

STA (for Density use the average of four cores) applies to specific mixtures between 500 and 5000 tons, and the following applications regardless of tonnage: Hand Patching, Joint Repairs, Driveways, Scratch Course, and Widening of less than or equal to 5 feet. The STA subplot size must not exceed 1000 tons. If a day's production is less than 1000 tons the days tonnage will be considered a subplot. If a day's production exceeds 1000 tons the tonnage will be divided into approximately equal subplot sizes. For hand patching with daily quantities of less than 200 tons, obtain 1 random STA sample for each day of production for up to 5 days of paving. One of the daily samples will be randomly selected and tested for acceptance. If the QA results are not subject to a negative price adjustment per section 1, the test result may represent multiple days of paving (up to 5 days). All tested samples will have buy down calculated according to section 1. For individual mix quantities of 500 tons or less, Visual Inspection (*Materials Quality Assurance Procedures Manual* Section 1.07) may be used in lieu of STA. Sampling will be in accordance with *MTM 324* or *MTM 313*, Sampling HMA Loose Mix from Mini-stockpile. The IPL requirements of Section 5 of this special provision will not apply to STA. Dispute Claim Process will be in accordance with Sections 7 and 8 of this special provision. All QA sampling and testing procedures and acceptance criteria described in this special provision will apply.

Sampling will be in accordance with the provisions stated herein or *MTM 313* where applicable.

## 7. WDBA VERIFICATION SAMPLING AND TESTING

Verification is the responsibility of WDBA and will be accomplished by conducting Verification sampling and testing, monitoring Project Co's adherence to the HMA-Quality Plan, and inspection of field placed material. Verification sampling and testing will be conducted in the same manner as the QA sampling and testing but at a reduced frequency, with the following exception: an additional sample will be collected at each sample site. The additional samples are the dispute resolution samples. Random sample locations will be determined as outlined in Section 1.06 of the *Materials Quality Assurance Procedures Manual*. WDBA Verification samples will be obtained independently of any QC or QA samples. Each WDBA Verification Lot HMA will be divided into 6 sublots of approximately equal size but not greater than 2500 tons for sampling and testing. The WDBA Verification Lot HMA will be statistically compared to the corresponding 3 QA Lots.

PWL pay factor calculations for the Michigan Interchange Buy-Down Amount will be based on WDBA Verification and statistically validated QA sampling and testing results. For the US POE and the Bridge

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project components, the WDBA Verification and statistically validated QA sampling and testing PWL calculations yielding less than 50 PWL will result in a Major Non-Compliance Report.

## **8. DISPUTE RESOLUTION PROCESS FOR PLANT PRODUCED MATERIAL (MIXTURE)**

### **8.1 Lot Dispute Resolution**

#### **(a) WDBA Verification Lot HMA Dispute Resolution Criteria**

The WDBA Verification results for a lot, including an initial production lot, may be eligible for Dispute Resolution if the F&t statistical analysis shows that the QA testing results (15 tests) and the WDBA Verification testing (6 tests) are not part of the same population for VMA, Air Voids, and Binder Content. The Dispute Resolution test results will replace the WDBA Verification test results. The Dispute Resolution test results (6 tests) will be compared statistically (F&t test) to the original QA test results (15 tests) to determine if they are part of the same population for VMA, Air Voids, and Binder Content. If they are part of the same population, the combined results (21 tests) will be used to recalculate the PF for Air Voids, Binder Content, and VMA. If they are not part of the same population, only the dispute resolution test results will be used to recalculate the PF for Air Voids, Binder Content, and VMA.

### **8.2 Dispute Resolution Testing Process**

- (a) All subplot dispute resolution samples will be tested for all mix properties. Binder Content will be determined using the method specified by Project Co for the specific mix.
- (b) All dispute resolution results will replace original WDBA Verification test results.
- (c) The OLPF and the lot pay adjustment for the lot under Dispute Resolution will be recalculated.
- (d) If the recalculated OLPF is less than or equal to the original OLPF, all costs associated with completing the Dispute Resolution sample testing will be borne by Project Co.
- (e) If the recalculated OLPF is greater than the original OLPF, all costs (excluding traffic control) associated with completing the Dispute Resolution sample testing will be borne by WDBA.

### **8.3 Single Test Acceptance Dispute Resolution**

#### **(a) Single Test Acceptance Dispute Resolution Criteria**

The WDBA's Verification results for a STA subplot, may be eligible for Dispute Resolution if the OSPF from independent random QA test results from the corresponding subplot is 5 percent or larger than the OSPF for WDBA's Verification results. The PFs for Air Voids, VMA, Binder Content and Density will be recomputed based on the results of the dispute sample. If the recalculated OSPF is greater than the original QA OSPF, all costs (excluding traffic control) associated with completing the Dispute Resolution sample testing will be borne by WDBA.

### **8.4 Dispute Resolution Testing Process**

- (a) Subplot dispute resolution samples will be tested for all mix properties. Binder Content will be determined using the method specified by Project Co for the specific mix.
- (b) All dispute resolution results will replace original WDBA Verification test results.

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- (c) The OSPF for the subplot under Dispute Resolution will be recalculated.

## 9. DISPUTE RESOLUTION PROCESS FOR IN-PLACE DENSITY

### 9.1 Lot Dispute Resolution

- (a) WDBA Verification Lot HMA Dispute Resolution Criteria

WDBA's Verification In-Place Density results for a lot, including an initial production lot, may be eligible for Dispute Resolution if the lot PF for In-Place Density based on the QA test results is larger than the corresponding PF based on WDBA's Verification test results. Only independent random QA test results (minimum of two random subplot cores from each subplot) from the corresponding lot under Dispute Resolution will be used by WDBA when processing the Dispute Resolution request. The Dispute Resolution test results will replace WDBA's Verification test results and the lot PF for In-Place Density will be recomputed based on the Dispute Resolution sample test results.

- (b) Dispute Resolution Testing Process

- (i) Dispute Resolution Cores

WDBA will locate and mark new random Dispute Resolution core locations in accordance with Section 6.1 of this special provision. WDBA will take possession of the cores when cut and extracted by Project Co and submit them to MDOT Construction Field Services HMA Laboratory for testing. The Dispute Resolution density cores will be tested in accordance with MTM 315 and in the same manner as the original WDBA's Verification cores. The  $G_{mm}$  from the original WDBA's Verification test results will be used to calculate the new In-Place Density values. If volumetric properties are in Dispute Resolution for the same lot, the new  $G_{mm}$  value will be used to calculate the new Dispute Resolution In-Place Density values.

- (ii) All WDBA Verification Lot HMA Dispute Resolution core samples will be tested.
- (iii) All WDBA Verification Lot HMA Dispute Resolution core results will replace original WDBA Verification test results.
- (iv) The OLPF and the lot pay adjustment for the lot under Dispute Resolution will be recalculated.
- (v) If the recalculated OLPF is less than or equal to the original OLPF, all costs associated with completing the Dispute Resolution sample testing will be borne by Project Co.
- (vi) If the recalculated OLPF is greater than the original OLPF, all costs (excluding traffic control) associated with completing the Dispute Resolution sample testing will be borne by WDBA.

- (c) Single Test Acceptance (STA) Dispute Resolution

- (i) Single Test Acceptance (STA) Dispute Resolution Criteria

The WDBA Verification results for a STA subplot, may be eligible for Dispute Resolution if the OSPF from independent random QA test results from the corresponding subplot is 5 percent or larger than the OSPF for QA results. The Dispute Resolution test results will replace the WDBA Verification test results and

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the lot PF for In-Place Density will be recomputed based on the Dispute Resolution sample test results.

(A) WDBA will locate and mark new random Dispute Resolution core locations in accordance with Section 6.1 of this special provision.

(B) The MDOT Construction Field Services HMA Laboratory will complete all Dispute Resolution testing. If there is a Dispute Resolution in process for Air Voids, Binder Content, or VMA, MDOT Construction Field Services HMA Laboratory will complete all Dispute Resolution testing.

(d) Dispute Resolution Testing Process

(i) Dispute resolution Cores

WDBA will locate and mark new random Dispute Resolution core locations in accordance with Section 6.1 of this special provision. WDBA will take possession of the cores when cut and extracted by Project Co and submit them to MDOT Construction Field Services HMA Laboratory for testing. The Dispute Resolution density cores will be tested in accordance with MTM 315. The  $G_{mm}$  from the original WDBA Verification test results will be used to calculate the new In-Place Density values. If volumetric properties are in Dispute Resolution for the same lot, the new  $G_{mm}$  value will be used to calculate the new Dispute Resolution In-Place Density values.

(ii) All subplot Dispute Resolution core samples will be tested.

(iii) All subplot Dispute Resolution core results will replace original QA test results.

(iv) The OSPF and the lot pay adjustment for the lot under Dispute Resolution will be recalculated.

(v) If the recalculated OLPF is less than or equal to the original OSPF, all costs associated with completing the Dispute Resolution sample testing will be borne by Project Co.

(vi) If the recalculated OSPF is greater than the original OSPF, all costs (excluding traffic control) associated with completing the Dispute Resolution sample testing will be borne by WDBA.

## 10. DOCUMENTATION

The following documentation must be kept current and available for review by WDBA as stated herein.

### 10.1 Quality Control Records

Maintain a complete record of all QC tests and inspections. Make these records available at the laboratory facility at all times for WDBA to review. The records must contain, as a minimum, the accepted HMA-Quality Plan, signed originals of all QC test results and raw data, random numbers used and resulting calculations made for QC sampling locations if applicable, control charts, and summaries of all test results.

### 10.2 Quality Assurance Records

The Construction Quality Manager will maintain a complete record of all QA tests and inspections. Records will be updated within 1 working day of test completion. Copies of

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individual records, random numbers and associated field calculations for completed sublots will be furnished to WDBA upon request. The records will contain, as a minimum, the HMA-Quality Plan, signed originals of all QA test results and raw data, random numbers used and resulting calculations made for QA sampling locations if applicable, and summaries of all test results.

All Quality Control and Quality Assurance records shall be available to WDBA, starting no later than 5 Business Days after a result is generated, at all times via the Electronic Project Collaboration System.

## 11. PWL - QUALITY INDEX ANALYSIS

The WDBA Verification and statistically validated QA test results for HMA (mixture) and In-Place Density will be evaluated according to the MDOT *PWL Worksheet*. The upper and lower specification limits used in the quality index analysis are shown in Table 3. WDBA will statistically validate QA test results, calculate PWL, PF and Buy Down for all HMA material covered by this special provision using the MDOT *PWL Worksheet*. All values of PWL and OLPF in these formulae are percents not decimals. All values of PWL are rounded to whole numbers. All values of PF are rounded to two decimal places.

### 11.1 Pay Factor for Air Voids ( $PF_{AV}$ )

- (a) If PWL for Air Voids ( $PWL_{AV}$ ) is between 100 and 71 inclusive, use the following formula to determine  $PF_{AV}$ .

$$PF_{AV} = 55 + (0.5 \times PWL_{AV})$$

- (b) If  $PWL_{AV}$  is between 70 and 50 inclusive, use the following equation to determine  $PF_{AV}$ .

$$PF_{AV} = 37.5 + (0.75 \times PWL_{AV})$$

- (c) If  $PWL_{AV}$  is less than 50, WDBA will issue a Major Non-Compliance. If the WDBA Verification Lot HMA  $PWL_{AV}$  is located within the Michigan Interchange Area, WDBA may elect to do one of the following:

- (i) Require removal and replacement of the entire WDBA Verification Lot HMA with new sampling and testing and repeat the evaluation procedure.
- (ii) Allow the lot to remain in place and apply an OLPF of 50.
- (iii) Allow submittal of a corrective action plan for the applicable Project Work and WDBA approval. The corrective action plan may include removal and replacement of one or more sublots. If one or more sublots are replaced, the subplot(s) will be retested and the OLPF will be recalculated according to this special provision. If WDBA does not approve the plan for corrective action, subsections (i) or (ii) above will be applied.

### 11.2 Pay Factor for Binder Content ( $PF_{BINDER}$ )

- (a) If PWL for Binder Content ( $PWL_{BINDER}$ ) is between 100 and 71 inclusive, use the following formula to determine  $PF_{BINDER}$ .

$$PF_{BINDER} = 55 + (0.5 \times PWL_{BINDER})$$

- (b) If  $PWL_{BINDER}$  is between 70 and 50 inclusive, use the following equation to determine  $PF_{BINDER}$ .

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$$PF_{\text{BINDER}} = 37.5 + (0.75 \times PWL_{\text{BINDER}})$$

- (c) If  $PWL_{\text{BINDER}}$  is less than 50, WDBA may elect to take one of the actions specified in Section 11.1(c) above.

### 11.3 Pay Factor for VMA ( $PF_{\text{VMA}}$ )

- (a) If PWL for VMA ( $PWL_{\text{VMA}}$ ) is between 100 and 71 inclusive, use the following formula to determine  $PF_{\text{VMA}}$ .

$$PF_{\text{VMA}} = 55 + (0.5 \times PWL_{\text{VMA}})$$

- (b) If  $PWL_{\text{VMA}}$  is between 70 and 50 inclusive, use the following equation to determine  $PF_{\text{VMA}}$ .

$$PF_{\text{VMA}} = 37.5 + (0.75 \times PWL_{\text{VMA}})$$

- (c) If  $PWL_{\text{VMA}}$  is less than 50, WDBA may elect to take one of the actions specified in Section 11.1(c) above.

### 11.4 Pay Factor for In-Place Density ( $PF_{\text{D}}$ )

- (a) If PWL for In-Place Density ( $PWL_{\text{D}}$ ) is between 100 and 71 inclusive, use the following formula to determine  $PF_{\text{D}}$ .

$$PF_{\text{D}} = 55 + (0.5 \times PWL_{\text{D}})$$

- (b) If  $PWL_{\text{D}}$  is between 70 and 50 inclusive, use the following equation to determine  $PF_{\text{D}}$ .

$$PF_{\text{D}} = 37.5 + (0.75 \times PWL_{\text{D}})$$

- (c) If  $PWL_{\text{D}}$  is less than 50; WDBA may elect to take one of the actions specified in Section 11.1(c) above.

### 11.5 Overall Lot Pay Factor (OLPF). Round the value of the OLPF to whole numbers

$$\text{OLPF} = (0.40 \times PF_{\text{D}}) + (0.30 \times PF_{\text{AV}}) + (0.15 \times PF_{\text{BINDER}}) + (0.15 \times PF_{\text{VMA}})$$

## 12. SINGLE TEST ACCEPTANCE (STA)

WDBA's and validated QA test results for plant produced material (mixture) and In-Place Density will be evaluated according to the MDOT *STA Worksheet*. WDBA will calculate PF and payment for all Non-PWL HMA material covered by this special provision using the MDOT *STA Worksheet*. All values of PF in these formulae are percentages, not decimals. All values of PF are rounded to two decimal places as shown in the MDOT *STA Worksheet*.

### 12.1 Pay Factor for Air Voids ( $PF_{\text{AV}}$ )

- (a) If the single test deviation for Air Voids is less than or equal to 1.00, use the following formula to determine  $PF_{\text{AV}}$ .

$$PF_{\text{AV}} = 105 - (5 \times \text{Deviation from Target})$$

- (b) If the single test deviation for Air Voids is between 1.01 and 2.00 inclusive, use the following formula to determine  $PF_{\text{AV}}$ .

$$PF_{\text{AV}} = 140 - (40 \times \text{Deviation from Target})$$

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- (c) If the single test deviation from the target for Air Voids is greater than 2.00 WDBA will issue a Major Non-Compliance. If the WDBA Verification subplot  $PF_{AV}$  is located within the Michigan Interchange, WDBA may elect to do one of the following:
- (i) Require removal and replacement of the entire WDBA Verification subplot with new sampling and testing and repeat the evaluation procedure.
  - (ii) Allow the subplot to remain in place and apply an OLPF of 50.
  - (iii) Allow submittal of a corrective action plan for the licensed design professional responsible for the applicable Project Work and WDBA approval. The corrective action plan may include removal and replacement of the subplot.

### 12.2 Pay Factor for Binder Content ( $PF_{BINDER}$ )

- (a) If the single test deviation for Binder Content is less than or equal to 0.45, use the following formula to determine  $PF_{BINDER}$ .
- $$PF_{BINDER} = 105 - (11.1111 \times \text{Deviation from Target})$$
- (b) If the single test deviation for Binder Content is between 0.46 and 1.00 inclusive, use the following formula to determine  $PF_{BINDER}$ .
- $$PF_{BINDER} = 181.8181 - (181.8181 \times \text{Deviation from Target})$$
- (c) If the single test deviation from the target for Binder Content is greater than 1.00 WDBA may elect to take one of the actions specified in Section 12.1(c) above.

### 12.3 Pay Factor for VMA ( $PF_{VMA}$ )

- (a) If the single test deviation from the target for VMA is less than or equal to 1.00, use the following formula to determine  $PF_{VMA}$ .
- $$PF_{VMA} = 105 - (5 \times \text{Deviation from Target})$$
- (b) If the single test deviation for VMA is between 1.01 and 2.00 inclusive, use the following formula to determine  $PF_{VMA}$ .
- $$PF_{VMA} = 168 - (69 \times \text{Deviation from Target})$$
- (c) If the single test deviation from the target for VMA is greater than 2.00 WDBA may elect to take one of the actions specified in Section 12.1(c) above.

### 12.4 Pay Factor for In-Place Density ( $PF_D$ )

- (a) If the test result for In-Place Density is greater than 94.00 the In-Place Density ( $PF_D$ ) = 105
- (b) If the test result for In-Place Density is between 92.00 and 94.00 inclusive, use the following formula to determine In-Place Density ( $PF_D$ ).
- $$PF_D = (2.5 \times \text{Density}) - 130$$
- (c) If the test result for In-Place Density is less than 92.00 but greater than or equal to 90 use the following formula to determine  $PF_D$ .

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$$PF_D = (10 \times \text{Density}) - 820$$

- (d) If the single test result for In-Place Density is less than 90.00 WDBA may elect to take one of the actions specified in Section 12.1(c) above.

**12.5 Overall Sublot Pay Factor (OSPF). Round the value of the OSPF to the whole number**

$$OSPF = (0.40 \times PF_D) + (0.30 \times PF_{AV}) + (0.15 \times PF_{BINDER}) + (0.15 \times PF_{VMA})$$

If the OSPF result for a sublot is less than 50 WDBA may elect to do one of the following:

- (a) Require removal and replacement of the entire sublot with new sampling and testing and repeat the evaluation procedure.
- (b) Allow the sublot to remain in place at the calculated OSPF.
- (c) Allow submittal of a corrective action plan for the licensed design professional responsible for the applicable Project Work and WDBA approval. The corrective action plan may include removal and replacement of the sublot

**13. BUY DOWN CALCULATIONS**

Michigan Interchange Buy-Down Amount for HMA, (type) will be calculated on an WDBA Verification lot-by-lot basis.

The OLPF will be used to determine the lot buy down as follows:

$$\text{Lot Buy Down} = (OLPF-100)/100 \times (\text{Contract Base Price}) \times (\text{Lot Quantity}).$$

HMA Michigan Interchange Buy-Down Amount (Non-PWL) - Buy Down for HMA, (type) will be calculated on a sublot-by-sublot basis.

The OSPF will be used to determine the sublot Michigan Interchange Buy-Down Amount as follows:

$$\text{Sublot Buy Down} = (OSPF-100)/100 \times (\text{Contract Base Price}) \times (\text{Sublot Quantity}).$$

The Buy Downs include positive pay adjustments that can be used to offset any negative pay adjustments in the final Michigan Interchange Buy-Down Amount calculation.

**TABLE 7-1-10-1  
MINIMUM QUALITY CONTROL SAMPLING AND TESTING REQUIREMENTS**

Quality Characteristic	Test Method	Minimum Test Frequency	Sampling Location	Sampling Method
Aggregate Gradation (optional)	As defined in HMA-Quality Plan	As defined in HMA-Quality Plan	As defined in HMA-Quality Plan	Random AASHTO T 2
Aggregate Moisture	As defined in HMA-Quality Plan	As defined in HMA-Quality Plan		
PG Binder Content	As defined in HMA-Quality Plan	1 per day	As defined in HMA-Quality Plan	Random AASHTO T 168

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Combined Mixture Gradation	As defined in HMA-Quality Plan	1 per day	As defined in HMA-Quality Plan	Random AASHTO T 168
Maximum Theoretical Specific Gravity	MTM 314	1 per day	As defined in HMA-Quality Plan	Random MTM 313
Bulk Specific Gravity	As defined in HMA-Quality Plan	1 per day	As defined in HMA-Quality Plan	Random AASHTO T 168
Volumetrics: Air Voids	As defined in HMA-Quality Plan	1 per day	As defined in HMA-Quality Plan	Random AASHTO T 168
Volumetrics: VMA	As defined in HMA-Quality Plan	1 per day	As defined in HMA-Quality Plan	Random AASHTO T 168
Fines to Effective Binder	As defined in HMA-Quality Plan	1 per day	As defined in HMA-Quality Plan	Random AASHTO T 168
In-Place Density(a)	As defined in HMA-Quality Plan	1 per day	From compacted HMA	Random AASHTO T 168
a. A maximum of 15 cores per lot of material will be allowed.				

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**TABLE 7-1-10-2  
ACTION AND SUSPENSION LIMITS FOR COMBINED GRADATION (FROM JMF)**

Sieve Size	HMA Mixture									
	5		4 & GGSP		3		2		LVSP	
	QC Action	QC Suspension	QC Action	QC Suspension	QC Action	QC Suspension	QC Action	QC Suspension	QC Action	QC Suspension
3/4 inch	Defined		Defined		Defined	± 10	Defined	± 10	Defined	
1/2 inch	In the		In the	± 10	In the	± 10	In the	± 10	In the	± 10
3/8 inch	HMA-Quality	± 10	HMA-Quality	± 10	HMA-Quality	± 10	HMA-Quality	± 10	HMA-Quality	± 10
No. 4	Plan	± 8	Plan	± 8	Plan	± 8	Plan	± 8	Plan	± 8
No. 8		± 8		± 8		± 8		± 8		± 8
No. 30		± 6		± 6		± 6		± 6		± 6
No. 200		± 2		± 2		± 2		± 2		± 2

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**TABLE 7-1-10-3  
PWL - HMA QUALITY INDEX PARAMETER SPECIFICATION LIMITS**

Quality Index Parameter	Specification Limits
Air Voids, (%@ N <sub>des</sub> )(a)	Target Air Voids ± 0.90
VMA	Target VMA ± 0.90
	VMA Targets
LVSP	15.00
2	13.00
3	14.00
4	15.00
5	16.00
GGSP (Gap SMA)	18.00
Binder Content (b)	JMF ± 0.35
Mat Density, %G <sub>mm</sub>	92.50% minimum
<p>a. Unless noted otherwise on the plans, all mixtures must be designed to 96.0% of Maximum Specific Gravity (%G<sub>mm</sub>) at the design number of gyrations, (N<sub>d</sub>). During field production Percent of Maximum Specific Gravity (%G<sub>mm</sub>) at the design number of gyrations, (N<sub>d</sub>) will be increased to 97.0%.</p> <p>b. The Binder Content used as the target will be the value on form 1911.</p>	

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**TABLE 7-1-10-4  
QUALITY CONTROL AND QUALITY ASSURANCE LIMITS**

Col. I - Quality Characteristic	Col. II - QC Action Limits (a)	Col. III - QC Suspension Limits (b)	Col. IV - QA Suspension Limits Form 1165 (a)	Col. V - Sublot RQL Form 1165 (c)	Col. VI - Lot AQL (d)	Col. VII - Lot RQL (d)
Aggregate Gradation (optional)						
Aggregate Moisture						
Binder Content	± 0.50 JMF	± 0.75 JMF			PWL <sub>BINDER</sub> ≥ 90 For any lot	PWL <sub>BINDER</sub> < 50 For any lot
Combined Mixture Gradation	Defined in the HMA-Quality Plan	Refer to Table 2				
Maximum Theoretical Specific Gravity	± 0.013 JMF	± 0.020 JMF				
Bulk Specific Gravity						
Volumetrics: Air Voids	Defined In the HMA-Quality Plan	± 0.90 of Target Air Voids		+ 2.00, -1.50 of Target Air voids	PWL <sub>AV</sub> ≥ 90 For any lot	PWL <sub>AV</sub> < 50 For any lot
Volumetrics: VMA	Defined In the HMA-Quality Plan	± 0.90 of VMA Targets in Table 3		± 2.00 of VMA Targets in Table 3	PWL <sub>VMA</sub> ≥ 90 For any lot	PWL <sub>VMA</sub> < 50 For any lot
Fines to Effective Binder	Defined In the HMA-Quality Plan	0.60 – 1.40 (a)	0.60 – 1.40			
In-Place Density	Defined in the HMA-Quality Plan	Defined in the HMA-Quality Plan		Average Sublot Value < 90.00%	PWL <sub>D</sub> ≥ 90 For any lot	PWL <sub>D</sub> < 50 For any lot
<p>a. Limits apply to two consecutive QC or QA tests.</p> <p>b. Limits apply to single QC tests.</p> <p>c. Specified. Limits apply to a single QA sublot Air Void or VMA test or on the sublot average In-Place Density.</p> <p>d. Specified. Limits apply on a lot-by-lot basis. Based on QA results for the lot.</p>						

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**SCHEDULE 7****QUALITY MANAGEMENT****PART 2****NON-COMPLIANCE****1. DEFINITIONS**

Unless defined specifically in this Part 2, or unless the context otherwise requires, capitalized but other undefined terms in this Part 2 shall have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of this Project Agreement. Each Appendix to this Part 2 forms an integral part of this Part 2.

In this Part 2, the following terms have the meanings set out in this Section 1.

**Critical Non-Compliance** means a Non-Compliance raised by WDBA or Project Co that requires all or any portion of Project Co Accepted Works to be removed or repeated because such Project Co Accepted Works have, or would reasonably be expected to have, a significant adverse or material adverse impact on:

- (i) the safety of the Project, the environment, or the public;
- (ii) the quality of the Project Infrastructure; or
- (iii) the durability of the Project Infrastructure.

**Medium Non-Compliance** means a Non-Compliance raised by WDBA or Project Co for all or any portion of Project Co Accepted Works that is not a Critical Non-Compliance.

**Monthly Non-Compliance Report** has the meaning set out in Section 6.2(k).

**Non-Compliance Tracking System** means a non-compliance tracking system implemented and maintained by Project Co to monitor the status of all Non-Compliance Reports initiated by WDBA or Project Co as described in this Part 2.

**Part 2** means part 2 of this Schedule.

**Project Co Accepted Works** means all physical elements of the Project Infrastructure that have been accepted by Project Co as meeting its acceptance criteria for the Infrastructure pursuant to the Inspection and Test Plan.

**Regular Non-Compliance** means, subject to Section 5, any Non-Compliance which is not a Critical Non-Compliance or a Medium Non-Compliance. Any Non-Compliance raised by WDBA or Project Co that involves Project Co Accepted Works cannot be a Regular Non-Compliance.

**Schedule** means this Schedule 7 [*Quality Management*] unless it is clear that such term refers to another schedule or part of a schedule to this Project Agreement.

All references to a Section number in this Part 2 means a Section number of this Part 2 unless such Section number clearly refers to a Section of the body of this Project Agreement or another schedule or part of a schedule of this Project Agreement.

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## 2. INTRODUCTION

This Part 2 specifies how Non-Compliances are to be identified and reported and the requirements for the correction of Non-Compliances by Project Co.

## 3. STANDARDS

Project Co shall perform the activities pertaining to Non-Compliances in accordance with ISO 9001:2015 *Quality Management Systems - Requirements*, unless otherwise provided in this Part 2.

## 4. REQUIREMENTS FOR RESOLVING NON-COMPLIANCES

### 4.1 Non-Compliance Reporting

The NCR process, from initial NCR creation through to closeout, shall follow the process in this Section 4.

- (a) If Project Co or WDBA discovers a Non-Compliance at any time, it shall initiate an NCR in accordance with the ISO 9001 :2015 Standard and as follows:

(i) **Project Co-initiated NCRs**

Upon detecting a Non-Compliance, Project Co shall within 2 Business Days of detecting the Non-Compliance, issue an NCR which both identifies and categorizes the Non-Compliance, by posting the NCR on the Electronic Project Collaboration System and actively notifying WDBA of the posting of the NCR on the Electronic Project Collaboration System; and

(ii) **WDBA-initiated NCRs**

If at any time WDBA is notified or otherwise becomes aware of any Non-Compliance or if WDBA, acting reasonably, believes the NCR issued by Project Co does not meet the requirements of the Project Agreement, WDBA may, without prejudice to any other right or remedy available to WDBA, issue an NCR which identifies and categorizes the Non-Compliance, by posting the NCR on the Electronic Project Collaboration System and actively notifying Project Co of the posting of the NCR on the Electronic Project Collaboration System.

- (b) At a minimum, an automatic notification shall advise Project Co and WDBA of each new posting of an NCR to the Electronic Project Collaboration System. On being notified of the posting of an NCR, Project Co shall activate the NCR process described in this Section including recording the date and time of NCR posting, which shall mark the formal start of the period for which the NCR has 'open' status.
- (c) Project Co shall investigate and respond to all NCRs within 10 Business Days of receipt. In exceptional cases where in the opinion of WDBA, acting reasonably, the magnitude and/or nature of the NCR means that it would be impractical to prepare a corrective action plan within such time period, WDBA may extend the time period for submission of the corrective action plan. Such an extension shall be requested by Project Co as part of the NCR with supporting documentation and action plan with a schedule. The Project Co Quality Manager shall, in response to the NCR, identify a root cause, describe a corrective action in compliance with the ISO 9001:2015 Standard, describe improvements to be implemented that prevent or reduce undesired effects, including actions to eliminate recurrence, in compliance with the ISO 9001:2015 Standard. If the

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Non-Compliance occurs after the commencement of the Interim OM Period, the OMR Manager shall approve the proposed remedial action.

- (d) An NCR initiated under this Section shall be without prejudice to any right or remedy available to WDBA with respect to the Non-Compliance identified in such report.
- (e) In response to each NCR, Project Co shall:
  - (i) designate one of the permitted Non-Compliance status responses specified in Table 7-2-1 to such Non-Compliance;
  - (ii) as applicable, state the implemented or intended correction of the Non-Compliance;
  - (iii) as applicable, state any corrective action arising from the NCR in accordance with the ISO 9001 Standard;
  - (iv) as applicable, state the response time by which the correction of the Non-Compliance must be implemented; and
  - (v) as applicable, classify the Non-Compliance as a Critical Non-Compliance, a Medium Non-Compliance or Regular Non-Compliance. WDBA may send a written objection to Project Co in respect of to any classification of a Non-Compliance by Project Co within 5 Business Days of such classification. If such objection has not been resolved by agreement, either party within a further 5 Business Days, may refer the matter for resolution pursuant to the Dispute Resolution Procedure.
- (f) Project Co shall rectify each Non-Compliance in accordance with the correction details, time period for correction and, if applicable, the corrective action stated by Project Co pursuant to Section 4.1(e).
- (g) Once the Non-Compliance corrective action has been completed, it shall be subject to re-verification by Project Co Quality Manager to demonstrate conformity with the requirements. Project Co Quality Manager shall then change the Non-Compliance status to closed and send a notification through the Electronic Project Collaboration System to WDBA.

#### 4.2 WDBA NCRs

The following requirements apply only to NCRs initiated by WDBA.

- (a) In response to notification of a Non-Compliance and/or receipt of an NCR, Project Co shall propose a resolution to the Non-Compliance and, if applicable, shall prepare a corrective action plan for submission to WDBA within 10 Business Days of completion of the notification of Non-Compliance and/or receipt of the NCR. However, in exceptional cases where in the opinion of WDBA, acting reasonably in this determination, the magnitude and/or nature of the NCR means that it would be impractical to prepare a corrective action plan within such time period, WDBA may extend the time period for submission of the corrective action plan to not more than 25 Business Days, such extension being notified by WDBA to Project Co as part of the NCR.
- (b) Project Co may send a written objection to any NCR issued by WDBA within 5 Business Days after the issuance of the NCR. If such objection has not been resolved by mutual

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agreement between the parties within a further 5 Business Days, then Project Co may refer the matter for resolution pursuant to the Dispute Resolution Procedure.

- (c) If Project Co fails to object to the issue by WDBA of an NCR within 5 Business Days, then Project Co will be deemed to have accepted that NCR and the categorization of the Non-Compliance as Critical Non-Compliance, a Medium Non-Compliance or a Regular Non-Compliance.
- (d) After completing the corrective work to address an NCR issued by WDBA, the Project Co Quality Manager will update the Non-Compliance status to closed and send a notification through the Electronic Project Collaboration System to WDBA. Such notice from Project Co shall be accompanied by all appropriate documentation and records in evidence of the corrective work undertaken necessary to enable WDBA to assess the corrective work done.
- (e) On receiving such request from Project Co, WDBA shall determine whether the corrective work undertaken has or has not satisfactorily remedied the Non-Compliance.
- (f) If WDBA determines that the corrective work has not satisfactorily addressed the Non-Compliance, then WDBA may object to the closure of the NCR. If such objection has not been resolved by agreement between WDBA and Project Co within 10 Business Days of receipt by Project Co of such notice of objection from WDBA, then WDBA or Project Co may refer the matter for resolution pursuant to the Dispute Resolution Procedure.

**Table 7-2-1**  
**Permitted responses by Project Co to an NCR**

Permitted NCR status responses	Correction	Corrective action (if applicable)
<b>1. Correction has been undertaken by Project Co.</b>	Project Co shall describe the nature of the correction undertaken (for example, re-design, re-work, repair or reject) and provide confirmation that the correction has remedied the Non-Compliance as applicable.	Describe any improvements to Project Co's processes to prevent reoccurrence.  Provide a plan committing to scope and timing of the improvements to Project Co's processes.
<b>2. Correction has been proposed by Project Co and approved by Project Co's licensed design professional responsible for the applicable Project Work and Durability Plan preparer</b>	Project Co shall describe the nature of the correction to be undertaken (for example, re-design, re-work, repair or reject) and provide confirmation that the correction will remedy the Non-Compliance as applicable and with respect to any related Durability Plan and Handback condition implications.	Describe any improvements to Project Co's processes to prevent reoccurrence.  Provide a plan committing to scope and timing of the improvements to Project Co's processes.
<b>3. Project Co objects to the NCR and no corrective action is proposed by Project Co.</b>	Not applicable.	Not applicable.

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## 5. UNCORRECTED NON-COMPLIANCES

WDBA may issue further NCRs if a Non-Compliance identified in a previous NCR continues uncorrected beyond its identified time for correction and/or similar types of Non-Compliances are detected on other parts of the Project Work.

If a Regular Non-Compliance remains unresolved for a period beyond 90 days following the first existence of such NCR or if a materially similar Regular Non-Compliance reoccurs more than 10 times in any consecutive 6 month period, the Regular Non-Compliance will be reclassified as a Medium Non-Compliance. If an accepted corrective action plan completion date is beyond 90 days from the first existence of a Regular Non-Compliance, then it shall be reclassified as a Medium Non-Compliance if the planned corrective action completion date is exceeded.

## 6. NON-COMPLIANCE REPORT TRACKING SYSTEM

### 6.1 Tracking System

Project Co shall implement and maintain an NCR tracking system to store and to monitor the status of all NCRs initiated by WDBA and Project Co. The NCR tracking system shall be an integral part of the Electronic Project Collaboration System.

### 6.2 Functionality

The NCR tracking system shall be operational within 90 days of the Commencement Date. At a minimum, the NCR tracking system shall have the following functionality:

- (a) comprise a single repository containing all NCRs;
- (b) store all relevant information pertaining to an individual NCR, including:
  - (i) the NCR;
  - (ii) unique reference numbers of the NCR;
  - (iii) categorization of the Non-Compliance as a Critical Non-Compliance, Medium Non-Compliance or a Regular Non-Compliance;
  - (iv) proposed correction by Project Co;
  - (v) if applicable, proposed corrective action by Project Co;
  - (vi) date and time at which the Non-Compliance was identified;
  - (vii) the entity that initiated the NCR;
  - (viii) the status of the NCR;
  - (ix) description of any follow-up requirements;
  - (x) the date and time at which the NCR was closed by the Project Co Quality Manager; and
  - (xi) record of whether the NCR is the subject of a Dispute;

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- (c) have the ability to attach supporting material such as photographs, documents and reports;
- (d) provide live access at all times to Project Co and WDBA, to all NCRs and the status of each NCR;
- (e) record, as applicable, a DB Period NCR and/or a Failure Event pursuant to the deduction process described in Schedule 25 [*Payment Mechanism (OMR)*];
- (f) allow searches to identify open, pending, disputed and closed NCRs;
- (g) allow searches by date;
- (h) allow searches by key word and topic;
- (i) generate summary reports by time period (for example, a summary report of all NCRs of a specific status between any two given dates);
- (j) restrict users' permission to change the status of an NCR in accordance with the relevant requirements of this Project Agreement; and
- (k) produce and submit to WDBA a summary report each month, to be submitted by the 10<sup>th</sup> day of the month, (the "**Monthly Non-Compliance Report**") containing the following:
  - (i) the number of NCRs entering the following status within the last month: "open," "in progress," and "closed";
  - (ii) the number of Failure Events in each category, accrued within the last month, pursuant to Schedule 25 [*Payment Mechanism (OMR)*];
  - (iii) the number of Design and Construction NCRs accrued within the last month; and
  - (iv) cumulative totals, summary statistics, and historic trends since the Commencement Date for the items listed in this Section 6.2.

### 6.3 Performance Measures

Project Co shall eliminate each Non-Compliance before the date set out in the Non-Compliance Report for that Non-Compliance.

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**SCHEDULE 8****RECORDS AND MANDATORY REPORTS****1. DEFINITIONS**

Unless defined specifically in this Schedule or unless the context otherwise requires, capitalized but otherwise undefined terms in this Schedule shall have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretations*] of this Project Agreement.

In this Schedule, the following terms have the meanings set out in this Section 1.

**Annual Average Daily Traffic** has the meaning set out in Section 6.2(b).

**Irregular Transactions** has the meaning set out in Section 6.2(d).

**Major Road Collison** has the meaning set out in Section 7(c).

**Mandatory Report** means each report required to be prepared by Project Co and delivered to WDBA or the Independent Certifier pursuant to this Project Agreement, including this Schedule.

**Schedule** means this Schedule 8 [*Records and Mandatory Reports*] unless such term clearly refers to another schedule of this Project Agreement.

All references to a Section number in this Schedule means a Section number of this Schedule, unless such Section number clearly refers to a Section of the body of this Project Agreement or to another schedule or part of a schedule of this Project Agreement.

**2. REQUIRED RECORDS - GENERAL**

- (a) Project Co shall produce, maintain, and update all Required Records in accordance with all applicable requirements of the Project Agreement, including Section 59 (*Mandatory Reports, Records, Audit and Information*) of the Project Agreement and the Records Management Protocol.
- (b) All Required Records shall be made available for audit or inspection by WDBA upon request, and WDBA will be entitled to take copies of any such Required Records at Project Co's cost. All Required Records shall be created, maintained, managed, retained and disposed of by Project Co in accordance with the Records Management Protocol as submitted and updated from time to time in accordance with the Review Procedure, or as otherwise required by the Project Agreement. The requirements of this Section shall be without prejudice to any Applicable Law that requires keeping specified Required Records for a longer period than indicated in this Project Agreement or the production and maintenance of additional Required Records or to any express requirements of WDBA from time to time.
- (c) Subject to the foregoing and without limiting any other requirements or obligations of Project Co in respect thereof, as part of the Records Management Protocol, Project Co shall comply with the following conditions, at a minimum:
  - (i) all Required Records of operational aspects of Project Co's recordkeeping system shall be retained and shall be systematically and periodically updated and filed so as to be readily retrievable by WDBA or as it may direct until such time as they have been delivered to WDBA or are no longer required by Project

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Co with respect to any requirements of the Project Agreement or any Applicable Law;

- (ii) Required Records that have been superseded but are still of historical or legal importance shall be retained and filed in an electronic archive in compliance with the requirements of Applicable Law pertaining to electronic documents, but in any event, for no less than 10 years after being superseded so that such documents are available to be submitted as evidence to a Governmental Authority or an arbitration tribunal; and
  - (iii) Required Records that are obsolete and are of no historical or legal significance shall be retained and filed in an electronic archive in compliance with the requirements of Applicable Laws pertaining to electronic documents so that such documents are available to be submitted as evidence to a Governmental Authority or an arbitration tribunal. These documents may be destroyed and/or deleted and wiped from any electronic archive, following the latest of: (i) 7 years after the date such documents were create and; (ii) 7 years following the date a Certificate relating to a Certification Event for which such documents were prepared, has been issued by the Independent Certifier, as applicable. WDBA, acting reasonably, may require Project Co to maintain such documents to such later date as WDBA may direct.
- (d) Project Co shall cause all Subcontractors at any tier and Project Co's Affiliates to comply with the requirements of this Section 2 as if they were Project Co.

### 3. REQUIREMENTS FOR RECORDS MANAGEMENT PROTOCOL

The Records Management Protocol shall provide for implementation and maintenance of systems and processes to ensure compliance with Applicable Law and the following requirements.

- (a) The Records Management Protocol shall be consistent, and comply, with Project Co's Quality Management System, Quality Documentation, and all other provisions of this Project Agreement.
- (b) The Records Management Protocol shall set forth minimum retention periods for each class of Required Records produced and maintained by Project Co.
- (c) Required Records shall be retained primarily in the format of electronic copy, provided, however, that hard copies may also be requested by WDBA.
- (d) Project Co shall safely and securely store and shall allow only access to all Required Records in a manner that ensures the integrity and security of the Required Records. During the DB Period, Required Records relating to construction in Michigan which are physical in nature only, shall be stored at a location acceptable to WDBA in Michigan. Subject to the forgoing exception, all Required Records shall be stored in within Canada in one or more locations acceptable to WDBA.
- (e) Project Co shall ensure that a designated and appropriately qualified person is at all appropriate times responsible for the creation, maintenance, management, retention and disposal of the Required Records and for liaison with WDBA in connection with all matters relating thereto.
- (f) Project Co shall not sell or transfer the physical custody of the Required Records to another person or remove them from Canada.

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- (g) Project Co shall not disclose the existence or the contents of any of the Required Records except as expressly permitted or required in accordance with the provisions of the Project Agreement.

#### 4. MANDATORY REPORTS - GENERAL

- (a) All Mandatory Reports shall be created, updated, maintained, managed, submitted, delivered, retained and disposed of as required under the Project Agreement, including those specified in the Technical Requirements and this Schedule. In addition to any paper copies of Mandatory Reports required to be prepared and delivered by Project Co, all Mandatory Reports shall be filed by Project Co in the Electronic Project Collaboration System.
- (b) All Mandatory Reports shall be submitted in such number and at such times as required by the Project Agreement and the applicable Technical Requirements, which may be due on specified dates or may be periodical (daily, monthly, bimonthly, quarterly, and/or annual) whether during the DB Period, the Interim OM Period, the OMR Period or otherwise. Where no such number or time is specified, Mandatory Reports shall be submitted in such number and at such times as may be reasonably required by WDBA from time to time. Unless otherwise specified in the Project Agreement, Mandatory Reports shall be in such form as reasonably required in writing by WDBA or, where a Mandatory Report is required to be submitted periodically, in the same form as such Mandatory Report was previously submitted until otherwise required by WDBA. If neither the Project Agreement nor WDBA specifies the form of the Mandatory Report it shall be provided in both paper and electronic formats.
- (c) Project Co shall submit to WDBA a list and a schedule providing the submittal date of each periodical Mandatory Report that is to be delivered pursuant to, and consistent with the terms of, the Project Agreement, as applicable, and in accordance with the Review Procedure, within 60 days following the Commencement Date. Subject to the foregoing and without limiting any other requirements or obligations of Project Co in respect thereof, Project Co shall comply with the following conditions, at a minimum:
  - (i) Mandatory Reports that have been submitted to WDBA and have been superseded but are still of historical or legal importance shall be retained and filed in an electronic archive in compliance with the requirements of Applicable Law pertaining to electronic documents, but in any event, for no less than 10 years after being superseded so that such documents are available to be submitted as evidence to a Governmental Authority or an arbitration tribunal; and
  - (ii) Mandatory Reports that have been submitted to WDBA and are obsolete and are of no historical or legal significance shall be retained and filed in an electronic archive in compliance with the requirements of Applicable Law pertaining to electronic documents so that such documents are available to be submitted as evidence to a Governmental Authority or an arbitration tribunal. These documents may be disposed of following the latest of: (i) 7 years after the date such documents were created; (ii) 7 years following the date a Certificate relating to such documents has been issued, as applicable; and (iii) such date, within 7 years of the documents' creation, as WDBA may direct.

#### 5. REQUIREMENTS FOR PERIODIC MANDATORY REPORTS DURING THE DB PERIOD

During the DB Period, Project Co shall submit to WDBA on any date specified in the Project Agreement and if not so specified within 10 Business Days after the end of each day, month, bimonthly period,

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quarter or year, as applicable, the following three types of reports titled: "Project Work", "Payment Report" and "Other Activities". Each type shall respectively contain, at a minimum, the information set out in this Section 5.

### 5.1 Project Work Reports

Project Work reports during the DB Period shall include the following information which, unless otherwise specified, shall be provided on a monthly basis:

- (a) the DB Schedule and associated reports as required to be submitted pursuant to Schedule 9 [*Project Schedule*];
- (b) human resources information, updated as applicable, including:
  - (i) annual statistics for the benefits arising out of the Project Work including labour statistics, training statistics and occupational health and safety statistics; and
  - (ii) organization charts specifying all human resources.
- (c) information related to communications in accordance with Schedule 18 [*Communication Protocol*], including:
  - (i) communications of the past month including complaints, complaint resolution, damage claims, damage claim resolution; and
  - (ii) the support to be provided to WDBA with respect to communications and public consultation over the next 3 months.
- (d) traffic management information, including:
  - (i) assessment for the past month of traffic management issues related to traffic on the Site; traffic on highways, ramps, local roads, and streets within or in the immediate vicinity of the Site; and traffic issues having impacted the provincial or interstate roadway network;
  - (ii) Permit requests, lane closures, and ramp closures; and
  - (iii) forecast for the next 3 months in connection with the elements identified in clauses (i) and (ii) above.
- (e) all other information required pursuant to Part 15 [*Traffic Management – Construction*] of Schedule 10 [*Design and Construction Specifications*], Part 19 [*Traffic Management - Deductions*] of Schedule 10 [*Design and Construction Specifications*], Part 8 [*Maintenance of Traffic*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*], Schedule 16 [*Environmental*] and Schedule 18 [*Communications Protocol*];
- (f) Environmental Management System information as required under the Project Agreement, including Schedule 16 [*Environmental*] are as follows:
  - (i) monthly non-compliance information and report supported by photographs, as applicable, and corrective or preventative measures implemented;
  - (ii) monthly statement of the environmental monitoring conducted and the results of environmental monitoring;

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- (iii) monthly report on Species at Risk training;
  - (iv) results of the environmental tracking of aquatic environments, wetlands, surface water, the eco-territory, remedial areas for damage to the fish habitat, revegetation, contaminated soils, contaminated groundwater, measures taken with regard to the soundscape (monthly assessment) and visual surroundings;
  - (v) any contamination identified, including any contaminated soil, sediment, surface and groundwater encountered and quantities and its treatment, disposal or other management; and
  - (vi) waste and accidental spills or the presence of Hazardous Material and its disposal.
- (g) quarterly information on the Quality Management System, required in accordance with Part 1 [*General*] of Schedule 7 [*Quality Management*];
  - (h) asset information to be added to the asset management information system in accordance with Part 1 [*General*] of Schedule 6 [*Project Management*]; and
  - (i) incident reporting as described in Part 5 [*Security*] of Schedule 10 [*Design and Construction Specifications*].

## 5.2 Payment Reports

Payment Reports during the Construction Period shall include the following information which, unless otherwise specified, shall be provided on a monthly basis:

- (a) a detailed calculation of all Construction Period Payments in accordance with the provisions of the Project Agreement, including Schedule 21 [*Certification Procedure*], and Schedule 26 [*Construction Period Payments*]; and
- (b) the relevant request for payments forms required for disbursement of the Construction Period Payments in accordance with the provisions of Schedule 26 [*Construction Period Payment*].

## 5.3 Other Activities reports

Other activities reports during the DB Period shall include the following information, on a monthly basis:

- (a) a summary report of all events (including manifestations, protests, suicide attempts, thefts, fire, and detection of major defects) relating to Infrastructure located on the Site or within surrounding areas impacted by Construction, that have occurred during the previous month that have affected or that may have had an effect on the normal operation of such Infrastructure, the environment, or the safety or the structural integrity of such Infrastructure or any portion thereof, including the following:
  - (i) categorization of all such events by location on the road network, in accordance with the usual categorizations of the MTO, MDOT, and the civil engineering community in Ontario and Michigan, and by type including chemical spills and structural defects;
  - (ii) description of how each event impacted the normal operation or safety of the Infrastructure located on the Site, the surrounding Infrastructure, and the environment; and

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- (iii) total number of such events;
- (b) a report on the measures taken or proposed to be taken by Project Co in collaboration with WDBA to deal with or resolve complaints or requests for information made to WDBA or to Project Co received from users and third parties regarding the Site or the surrounding areas, including existing overpasses and existing roads, the conduct of operations; and
- (c) details of Utility Work in progress or planned at the Site or the surrounding areas by Project Co or, to the knowledge of Project Co, by any third party.

## 6. REQUIREMENTS FOR PERIODIC MANDATORY REPORTS DURING THE OMR PERIOD

During the OMR Period, Project Co shall submit to WDBA such Mandatory Reports as are required, and at such times as are specified, under the Project Agreement, including Schedule 11 [*Operations, Maintenance and Rehabilitation*]. These reports shall be divided into the following four types of reports titled: "Technical Reports", "Tolling Activity Reports", "Payment Reports" and "Other Activities Reports". Each type shall respectively contain, at a minimum, the information set out in this Section 6.

### 6.1 Technical Reports

Technical reports during the OMR Period shall include the following information:

- (a) reports, as set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*] including:
  - (i) Monthly Progress Report – submitted monthly;
  - (ii) Operations Report – submitted quarterly; and
  - (iii) Maintenance Work Report – submitted quarterly;
- (b) on a quarterly basis, the Environmental Management System information, including such information required pursuant to Schedule 16 [*Environmental*] as follows:
  - (i) notices of change in connection with the International Organization for Standardization certification;
  - (ii) quarterly report concerning the information on the Environmental Management System and Environmental Management System review reports required in Schedule 16 [*Environmental*];
  - (iii) changes in the Environmental Management System;
  - (iv) tracking of measures incidental to the soundscape;
  - (v) any Contamination identified, including any Contaminated soil, sediment, surface and ground water encountered and quantities and its treatment, disposal or other management; and
  - (vi) waste and accidental spills or the presence of Hazardous Material and its disposal;
- (c) information on the Quality Management System and Quality Management System reports as required by the Project Agreement, including Part 1 [*General*] of Schedule 7 [*Quality*]

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*Management*] and the notices of any changes in the International Organization for Standardization certification;

- (d) monthly summary of the communications activities, as contemplated in Schedule 18 [*Communication Protocol*], including communication activities in the prior month, planned communications activities over the next three months, any requests for information, inquiries or complaints received from the public in the prior month, details of actions taken in response to any such public requests for information and inquiries and corrective actions in response to any such complaints, and a summary of meetings of the Communications Committee or meetings with the public, if any, held during the prior month;
- (e) on a monthly basis, unless otherwise required in the Project Agreement, information regarding Availability Failures, Service Failures and Failure Events, as required in Schedule 25 [*Payment Mechanism (OMR)*];
- (f) on a real-time basis, any audit reports and performance reports, as required in Part 22 [*Tolling Infrastructure*] of Schedule 10 [*Design and Construction Specifications*]; and
- (g) incident reporting as described in Part 5 [*Security*] of Schedule 10 [*Design and Construction Specifications*].

## 6.2 Tolling Activity Reports

Tolling activity reports during the OMR Period shall include the following information, which, unless otherwise specified, shall be provided monthly as part of the Monthly Progress Report, subject to the requirements of Schedule 13 [*Tolling Operations*]:

- (a) information on the Tolling Infrastructure performance pursuant to Part 22 [*Tolling Infrastructure*] of Schedule 10 [*Design and Construction Specifications*];
- (b) the following Traffic Data as of the dates indicated below:
  - (i) the annual average daily traffic (the “**Annual Average Daily Traffic**”):
    - (A) within 10 Business Days following each month of the first year of the OMR Period, the average number of vehicles per day during all months preceding the date of calculation; and
    - (B) within 10 Business Days following each subsequent year of the OMR Period, the average number of vehicles per day during such year;
  - (ii) the Annual Average Daily Traffic for each month shall be presented in a table, the form of which shall be submitted by Project Co to WDBA for its approval;
  - (iii) daily traffic – a gross traffic number (both northbound and southbound) should be provided of the previous day’s traffic by 5:00 p.m. the next day. This reports shall include a breakdown by direction (southbound or northbound), by classification type in accordance with Schedule 13 [*Tolling Operations*], a year-over-year comparison and a column showing events that could influence traffic (sporting, concert, holidays etc.);
  - (iv) monthly traffic – the monthly traffic report shall include a comprehensive breakdown of each category of traffic, by method of payment (cash, credit, loyalty

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- program), by direction (northbound and southbound) and by classification type in accordance with Schedule 13 [*Tolling Operations*], including a year-over-year comparison;
- (v) yearly traffic – a comprehensive yearly summary should be provided, utilizing the monthly traffic reports. An unaudited summary shall be finalized promptly after any anomalies are identified and corrected and in any event 3 days after the discovery of such anomaly;
  - (vi) the data set forth in subsections (iii), (iv) and (v) are to be presented in a table, the form of which shall be submitted by Project Co to WDBA for its acceptance; and
  - (vii) information for each category of vehicle regarding the number of active client accounts for the current and preceding months, presented in a table, the form of which shall be submitted by Project Co to WDBA for its acceptance;
- (c) the following information on the Tolling Services Operation Centre required pursuant to the Technical Requirements describing, where applicable, the reasons that the prescribed performance levels were not reached:
- (i) processing of requests to open a client account;
  - (ii) management of client account;
  - (iii) requests for information on a client account;
  - (iv) client account statements;
  - (v) updating the following financial information:
    - (A) collection of revenue and reconciliation of accounts;
    - (B) monthly closings and monthly reconciliation;
    - (C) telephone system;
    - (D) loyalty program;
    - (E) monthly maintenance activities; and
    - (F) software support and databases;
- (d) the following information on transactions recorded but unpaid (the “**Irregular Transactions**”) conducted during the month:
- (i) processing of Irregular Transactions (review of video images and issuance of Irregular Transaction notices);
  - (ii) updating of the following financial information:
    - (A) collection of revenue and reconciliation of bank accounts; and
    - (B) monthly closings and monthly reconciliations;

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- (iii) total number of Irregular Transactions;
  - (iv) number of warnings sent out;
  - (v) number of notices sent;
  - (vi) number of cancelled Irregular Transactions (classified justified/non justified);
  - (vii) number of irregular transactions associated with vehicles registered outside Ontario;
  - (viii) number of Irregular Transactions associated with any government vehicle (federal, provincial, and municipal);
  - (ix) number of payments received; and
  - (x) amount paid;
- (e) loyalty program reports shall be submitted monthly and include the following for both Canadian and US currencies:
- (i) program sign-ups/transponders activated during the current month;
  - (ii) loyalty accounts/transponders in default during the current month;
  - (iii) program drops/transponders removed from service during the current month;
  - (iv) loyalty accounts that switch currency during the current month;
  - (v) loyalty program website visits;
  - (vi) loyalty account holder complaints and resolution;
  - (vii) number of transponders replaced during the current month due to a technical failure; and
  - (viii) number of loyalty lanes open at peak times; and
- (f) Lists of Transponders presented in a table, the form of which shall be submitted by Project Co to WDBA for its acceptance.

If the toll system interoperability is mandated by WDBA during the Term, such table shall be required to be shared electronically on a daily basis with third parties designated by WDBA.

### 6.3 Payment Reports

Payment Reports during the OMR Period shall include the following information, subject to the requirements of Schedule 13 [*Tolling Operations*]:

- (a) a detailed calculation of all Monthly Payments payable during the OMR Period for the relevant Contract Month in accordance with the provisions of the Project Agreement, including Schedule 25 [*Payment Mechanism (OMR)*];
- (b) the Tolling Revenue corresponding to the tolling statistics and data set out in Section 6.2, in Part 22 [*Tolling Infrastructure*] of Schedule 10 [*Design and Construction Specifications*] and Schedule 13 [*Tolling Operations*] on the first Business Day of each

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month in respect of the immediately preceding month; presented in a table, the form of which shall be submitted by Project Co to WDBA for its approval;

- (c) on a monthly basis, as part of the Monthly Progress Report, in accordance with Schedule 11 [*Operations, Maintenance and Rehabilitation Specifications*] the detailed calculation of the Availability Failure Deductions calculated in accordance with Schedule 25 [*Payment Mechanism (OMR)*], including, at a minimum, the following information on all Availability Failures:
  - (i) the nature, place, direction, date and time (rounded off to the nearest minute) of the beginning of each Availability Failure;
  - (ii) the name of the person and, where applicable, the organization that reported the Availability Failure;
  - (iii) details on the Crossing Sections or Functional Units within the POE Buildings affected by the Availability Failure;
  - (iv) the date and time (rounded off to the nearest minute) of the end of the Availability Failure and the duration of the Availability Failure; and
  - (v) in the event of a Crossing Section Availability Failure and a concurrent Tolling Operations Availability Failure, the information required by subsections (i) to (iv) of this Section 6.3 for both events; and
- (d) detailed calculations of the Service Failure Deductions set out in Schedule 25 [*Payment Mechanism (OMR)*] that shall include, at a minimum, the following information on all Service Failures:
  - (i) the attribute (as identified in Schedule 25 [*Payment Mechanism (OMR)*]), place, direction, date and time (rounded off to the nearest minute) of the detection of each event that became a Service Failure;
  - (ii) the name of the person and, where applicable, the organization that reported the Service Failure;
  - (iii) the cure period for Service Failure and the type of Service Failure;
  - (iv) the date and time (rounded off to the nearest minute) that the Service Failure was corrected and the duration of the Service Failure; and
  - (v) in the event of concurrent Service Failures, information required by subsections (i) to (iv) of this Section 6.3 for all events.
- (e) detailed computation of the deductions referred to in Schedule 25 [*Payment Mechanism (OMR)*]

#### **6.4 Other Activities Reports**

Other activities reports during the OMR Period shall include the following information:

- (a) copy of the insurance report prepared by the Independent Third Party in accordance with Schedule 29 [*Insurance Requirements*];

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- (b) a report of the number and type of requests for information and complaints received from users and others regarding the Site or the surrounding areas, the conduct of the operations, and the measures taken or proposed to be taken by Project Co to deal with or resolve such complaints; and
- (c) details of any the Utility Work that is in progress or projected.

## 7. COLLISION REPORTS

Subject to any other requirements of this Project Agreement, Project Co shall provide during the Term the following Mandatory Reports and related documentation relating to collisions at the Site:

- (a) a summary report concerning all collisions at the Site during the reporting period (including all collisions for which a Mandatory Report relating to collision has previously been made), including:
  - (i) categorization of all collisions at the Site involving personal injury or property damage:
    - (A) by location of collision;
    - (B) by collision severity, divided into fatal injury, injury, and property damage;
    - (C) by type of users or vehicles, according to the categories of vehicles to be established pursuant to the Tolling Business Rules;
    - (D) by road condition (including lighting conditions), weather conditions, and time of day; and
    - (E) presence of contaminants and Hazardous Material;
  - (ii) total number of collisions at the Site; and
  - (iii) rate of reported collisions involving road users and the comparison of this rate with the MTO in the Province of Ontario or State of Michigan Traffic Crash Report Manual (UD-10) in Michigan of the threshold for the critical rate of collisions highlighting, as applicable, years when the rate of collisions exceeds the critical rate of collisions with a reliability of at least 85% for similar road configuration and road operating conditions, and also highlighting the event or lack of measures that may have contributed to the increase in the collision rate.
- (b) As soon as practicable and in any event no later than 24 hours following the occurrence of any Major Road Collision at the Site, Project Co shall submit to WDBA a Mandatory Report setting out details of such Major Road Collision and, to the extent they are known, the causes of such Major Road Collision. Project Co shall forthwith report to WDBA any additional details of such collision or its causes that become known to Project Co.
- (c) A major road collision (“**Major Road Collision**”) means any collision at the Site, including the following:
  - (i) any vehicle collision resulting in a fatality;
  - (ii) any vehicle collision involving six vehicles or more;
  - (iii) any vehicle collision in which a truck has overturned or has lost its load or cargo;

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- (iv) any vehicle collision involving a bus or a public transit vehicle resulting in serious damage or injury;
- (v) any vehicle collision resulting in structural damage; and
- (vi) any vehicle collision involving a vehicle transporting Hazardous Material.

## 8. FINANCIAL REPORTS

Project Co shall provide documentation and Mandatory Reports containing the following information:

- (a) as soon as they shall have been finalized, but in any event no later than 90 days after the end of each of its financial years, a copy of the audited financial statements of Project Co and, if appropriate, consolidated financial statements of Project Co and its subsidiaries with regard to that period prepared in accordance with the Accounting Principles, together with copies of all related directors' and auditors' reports;
- (b) for each calendar month a report stating loyalty credit card sales, credit card sales, and purchases made through the on-line app;
- (c) Lender Advance Documentation as per Schedule 26 [*Construction Period Payments*]; and
- (d) for each quarter, a report of principal outstanding under the Lending Agreements.

If, at any time after submission to WDBA of the documents referred to in this Section 8, WDBA notifies Project Co of any matter that gives it concern and that arises in connection with anything in such documents, and if Project Co cannot resolve the issue by its own means, Project Co shall, at its own expense, instruct its auditors to prepare within a reasonable period a report on that matter, giving such further information, additional detail, or explanation as is reasonable with regard to the contents of WDBA's notice. Project Co shall provide WDBA with a copy of that report within 5 Business Days of Project Co's receipt of it from its auditors.

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## SCHEDULE 9

### PROJECT SCHEDULE

#### 1. DEFINITIONS

Unless defined specifically in this Schedule or unless the context otherwise requires, capitalized but otherwise undefined terms in this Schedule shall have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of this Project Agreement.

In this Schedule, the following terms have the meanings set out in this Section 1.

**Baseline Schedule** has the meaning set out in Section 3.7.

**Critical Path** means the longest sequence, in terms of time, of logically connected activities through the project network from start to finish on the current DB Schedule ending with the Substantial Completion Date where the total duration is longer than any other sequence of activities.

**Critical Activities** means any activity on the Critical Path, or having '0' or negative float.

**DB Critical Path Report** has the meaning set out in Section 3.11.

**DB Schedule** has the meaning set out in Section 3.3.

**Float** means the amount of time an activity can be delayed or extended before it impacts the specified activity completion dates.

**Interim Baseline Schedule** has the meaning set out in Section 3.7.

**Revised Baseline Schedule** has the meaning set out in Section 3.7(c).

**Schedule** means this schedule 9, unless such term clearly refers to another schedule of this Project Agreement.

**Schedule Comparison** means the comparison of a DB Schedule to that of a previous DB Schedule. The Comparison would normally indicate, at a minimum, changes to; (i) added activities; (ii) durations, and (iii) logic.

**Work Breakdown Structure** or **WBS** has the meaning set out in Section 3.3(d).

All references in this Schedule to a Section number means a Section number of this Schedule, unless such Section number clearly refers to a Section of the body of this Project Agreement or to another schedule or another part of a schedule of this Project Agreement.

#### 2. GENERAL

- (a) Project Co shall be responsible for the scheduling and schedule management of the Project Work, which shall be undertaken in accordance with Good Industry Practice.
- (b) Project Co is responsible for producing and keeping the DB Schedule up to date. Project Co shall ensure that the DB Schedule presents an accurate record of the planned timing and duration of the activities and events listed in such schedule.
- (c) Project Co shall ensure that the DB Schedule accurately reflects the durations of any activities that are dependent on interaction with WDBA, the Independent Certifier,

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Governmental Authorities and/or third parties, including other persons working and/or planning to work in the vicinity of the Site. Project Co is responsible for all necessary advance coordination, as described in the Technical Requirements, with WDBA, Governmental Authorities and third parties in order to ensure that Project Co has suitable information to take due account of all relevant scheduling factors that will affect or have the potential to affect the DB Schedule.

- (d) Project Co shall ensure that the DB Schedule includes any preparatory elements of OMR Work, including submission of certain documents as Review Submittals, which this Agreement requires to be undertaken during the DB Period.

### **3. SCHEDULE FOR DB WORK**

#### **3.1 Software format**

During the DB Period, the schedules issued to WDBA by Project Co shall be in the format of Oracle Primavera® P6 scheduling software (\*.xer file format) version 8.x or newer with all associated, related and utilized files and/or information that may not be present in the \*.xer file format, including, but not limited to, schedule layouts, WBS dictionary, activity codes, calendars, schedule filters and any necessary information that may be required to open, view and analyze the issued schedules to WDBA satisfaction. Project Co shall issue with any schedule file format (\*.xer file) a printout of the same schedule in \*.pdf file format. Project Co shall, if requested by WDBA, upgrade to newer versions of the P6 software that may be issued by Oracle during the DB Period.

#### **3.2 Archiving**

Project Co shall electronically archive all versions of the schedules issued by Project Co to WDBA. The archived versions shall be kept in both of the following file formats:

- (a) electronically-searchable portable document format (PDF) file; and
- (b) Primavera \*.xer native file format of the scheduling software adopted pursuant to Section 3.1.

The archived schedules in both formats shall be accessible at all times to WDBA and the Independent Certifier through the Electronic Project Collaboration System.

#### **3.3 DB Schedule**

- (a) Project Co shall produce and keep up to date a logic-based schedule using the critical path method that shall encompass all DB Work from the Commencement Date to Final Completion, including variations and shall include at a minimum mobilization, surveys and investigations, Handover, commissioning, permitting processes and coordination with Relevant Authorities, Utility Work, Design Work including design checking, any third-party interactions affecting schedule, Construction Work, Commissioning, certifications, Substantial Completion and Final Completion. Such schedule (the "**DB Schedule**") is updated from time to time. The DB Schedule shall be developed taking into account the expected dates for the availability of the Lands set out in Appendix 4-6 and Appendix 4-7 of Schedule 4 [*Lands and Site*] of this Project Agreement.
- (b) The DB Schedule shall also include at a minimum the following significant dates:

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- (i) dates for Stage 1 Design Plan for each Component as required by Part 2 [Review Procedure] of Schedule 6 [Project Management] of this Project Agreement;
  - (ii) Review Submittals;
  - (iii) key dates for obtaining permits based on the process of each Relevant Authority;
  - (iv) building envelope completion; and
  - (v) long lead items with expected fabrication dates and delivery.
- (c) The DB Schedule shall take due account of any seasonal constraints, any holiday shutdowns, work days per week, work shifts per day, and hours per shift. The DB Schedule shall be fully compatible with the schedule for Review Submittals (as specified in Part 2 [Review Procedure] of Schedule 6 [Project Management]) and Project Co's scheduling of Requests for Certification in accordance with Schedule 21 [Certification Procedure].
- (d) The DB Schedule shall include the start date and duration (in days) for all DB Work activities, a detailed work plan with a hierarchical breakdown ("**Work Breakdown Structure**" or "**WBS**"). Project Co is responsible for devising the WBS, including the number of levels (nodes) and appropriate subdivision of the DB Work into components. The WBS shall be submitted to WDBA for review and comment prior to the submittal of the DB Schedule and within 10 Business Days after the Commencement Date.
- (e) The DB Schedule shall only use project based codes and calendars and not global codes or calendars.
- (f) The DB Schedule may include Project Co milestones for tracking purposes but must assign independent WBS elements to keep them separate from the milestones in Section 3.5 of this Schedule.

### 3.4 Updates to DB Schedule

- (a) Project Co shall provide an updated DB Schedule to WDBA and the Independent Certifier on the 10th Business Day of each month along with a progress schedule report through the last Business Day of the prior month as described in this Section.
- (b) Subject to the restrictions set out in Section 3.7(c), Project Co shall not require the approval of WDBA to make changes to the DB Schedule as long as it does not:
- (i) delay any milestone dates described in Section 3.5;
  - (ii) affect the Substantial Completion Date;
  - (iii) reduce the period of time between any Scheduled POE Handover Date and the Scheduled Substantial Completion Date; or
  - (iv) make changes to WDBA activities such as property acquisition.
- (c) In the case of changes to the DB Schedule which would result in a change in Construction Costs of more than \$500,000 in a month, Project Co shall provide clarifications and explanations of the changes to the DB Committee and Independent Certifier. Clarification and reconciliation of changes do not require WDBA approval.

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Project Co shall provide timely responses to WDBA and the Independent Certifier with respect to these clarifications and reconciliations. If any of these clarifications results in a change in the DB Schedule, Project Co shall provide an updated schedule to WDBA and the Independent Certifier within 5 Business Days of the change.

- (d) Each update of the DB Schedule shall be accompanied by a progress schedule report that sets out:
- (i) a summary of significant progress since the previous DB Schedule was issued, including elements started or completed during the period;
  - (ii) a brief explanation of any alterations in the DB Schedule since the previous DB Schedule was issued, including any alterations (whether increments or decrements) made to the original duration (duration in the Baseline Schedule or approved revisions) of activities listed in the DB Schedule and any alterations to the sequencing of work which will impact the Critical Path;
  - (iii) confirmation that details of all third-party items, including Project Work activities dependent on and/or subject to third-party actions, included in the DB Schedule are accurately represented as documented by the third-party in the schedule to the best of Project Co's knowledge; and
  - (iv) a statement by Project Co that there either (A) has, or (B) has not been, any alteration to the Critical Path since the previous DB Schedule was issued.
- (e) For any month that major revisions to the DB Schedule have been carried out as described in Section 3.7 of this Schedule, Project Co shall supply WDBA with a half-step schedule and corresponding Primavera Claim Digger or similar schedule comparison tool, depending on the version of Primavera being used, reports detailing at a minimum logic changes, added activities, and duration changes. The monthly submittal of the DB Schedule \*.xer files shall be submitted under one of the following:
- (i) If progress only has been carried out since the previous DB Schedule submittal, then only one \*.xer progress file shall be submitted.
  - (ii) If DB Schedule revisions have been carried out, and prior to progress, since the previous DB Schedule submittal, then two \*.xer files shall be submitted, clearly marked - "Revised Only" and "Progressed" as follows:
    - (A) the half-step schedule showing revisions only with an accompanying Schedule Comparison report of comparisons made against the previously submitted DB Schedule; and
    - (B) progress will then be carried out to the half-step schedule and submitted as the final progressed DB Schedule. All reports required under this Schedule 9 shall be created from the Schedule Comparison.
  - (iii) If revisions have been carried out following the progress update then two \*.xer files will be submitted, clearly marked - "Progress Only" and "Revisions" as follows:
    - (A) for the half-step schedule showing progress only, no Schedule Comparison report is required; and

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- (B) revisions will then be carried out to the progressed DB Schedule and submitted as the final progressed DB Schedule. All reports required under this Schedule 9 will be created from this updated DB Schedule and will have an accompanying Schedule Comparison report made against the previously submitted DB Schedule.
- (iv) If revisions have been carried out since the previously submitted DB Schedule, and then progress applied and then further revisions made, then the following three clearly marked \*.xer files and reports are to be submitted:
  - (A) a half-step schedule showing revisions only, prior to progress, with an accompanying Schedule Comparison report using the previously submitted DB Schedule;
  - (B) progress shall then be carried out on this half-step schedule; and
  - (C) revisions shall then be carried out to the progressed DB Schedule and submitted as the final progressed DB Schedule. All reports required under this Schedule 9 shall be created from this DB Schedule and will have an accompanying Schedule Comparison report made against the half-step schedule prior to progress.
- (f) Each update of the DB Schedule shall be accompanied by a slippage report from Primavera which shall detail all activities that should have started or finished since the previous update but were not started or finished, if such slippage is more than 20 Business Days. The time frame for the report will be 2 months prior to the data date and 1 month following the data date. The report shall include the activities start or finish dates as set out in the previous two DB Schedule updates (a copy of these schedules will be added as baselines to the current progress schedule update) and include columns indicating the variance between the current and previous dates. The two baselines will also be shown as bars on the P6 Gantt chart. A full explanation shall accompany the report for any activity that has slipped more than 20 Business Days with high emphasis on those that impacted the Critical Path which would be included as part of the Critical Path report described in Section 3.11(c). The Critical Path report is not required to detail all activities but rather those that are the controlling activity of a sequence of activities.
- (g) Each update of the DB Schedule shall be further accompanied by a revisions report from Primavera which shall detail any revisions carried out by Project Co and the reasons therefor. Such revisions report shall accompany the reports required in Section 3.4(d).

### 3.5 Milestone Dates

- (a) The DB Schedule shall include the following milestone dates:
  - (i) Commencement Date;
  - (ii) the expected dates for the availability of Lands as described in Appendix 4-6 and Appendix 4-7 of Schedule 4 [*Lands and Site*] of this Project Agreement;
  - (iii) the scheduled closure dates for all Permanent Road Segments subject to the access provisions of Schedule 4 [*Lands and Site*] of this Project Agreement;
  - (iv) the Scheduled Canadian POE Agency Buildings Handover Date;

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- (v) the Scheduled US POE Agency Buildings Handover Date;
- (vi) the Scheduled Substantial Completion Date; and
- (vii) the Scheduled Final Completion Date.

### 3.6 DB Schedule Supporting Documentation

Project Co shall provide to WDBA, as a minimum, the following documentation to support the DB Schedule:

- (a) network detail schedules for each work site and work stages as described in the Project Requirements;
- (b) progress S-Curves, overall providing planned and actual monthly incremental progress;
- (c) the basis for defining the Work Breakdown Structure; and
- (d) narrative plan for addressing slippage for all Critical Activities.

### 3.7 Baseline Schedule and Interim Baseline Schedule

- (a) The first version of the DB Schedule shall be issued by Project Co to WDBA as a Review Submittal for WDBA approval no later than 40 Business Days after the Commencement Date. WDBA will complete its review of the initial submittal of the DB Schedule within 20 Business Days and each re-submittal within 15 Business Days. Until such first DB Schedule is approved by WDBA, acting reasonably, (the "**Baseline Schedule**"), the schedule for the DB Work submitted as part of the Financial Submission, as it may have been amended and approved by WDBA on or before the Commencement Date, with any amendments made prior to the Commencement Date with the prior consent of WDBA, shall be the interim baseline schedule ("**Interim Baseline Schedule**"). The Interim Baseline Schedule shall be in force and effect until the Baseline Schedule is approved.
- (b) Project Co shall demonstrate whether a Supervening Event or Change may require a revision to a portion of the Baseline Schedule. Should any change caused by a Supervening Event or Change require a revision to a portion of the previous Baseline Schedule, Project Co will prepare and provide to WDBA a new Baseline Schedule.
- (c) Changes to the Baseline Schedule shall only be allowed for Supervening Events or Changes or at such times as requested by Project Co for major resequencing of remaining Construction Work if agreed by WDBA, acting reasonably. Baseline Schedule changes may include modifications to the date of any Certification Event as a result of approved Supervening Events, or Changes in accordance with Schedule 22 [*Change Procedure*]. Revisions to the Baseline Schedule to accommodate the events described in this Section 3.7(c) must be reviewed and approved by WDBA, acting reasonably, and shall be made using the latest DB Schedule that was available at the time of the change. If WDBA is not in receipt of this schedule then a copy of it must be submitted alongside the revised Baseline Schedule ("**Revised Baseline Schedule**"). While the Revised Baseline Schedule is being reviewed, Project Co shall continue to progress the DB Schedule and a copy of the Revised Baseline Schedule (which will be revised as needed to include any changes as a result of the review process) in parallel until such time as the Revised Baseline Schedule has been approved. Upon approval, the Revised Baseline Schedule shall supersede the previous Baseline Schedule. The Revised Baseline Schedule that has been used to record progress in the interim alongside the DB

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Schedule shall now be considered as the DB Schedule moving forward and must be clearly marked to show its revised baseline revision number. Project Co shall archive the previous DB Schedule, clearly mark the file archived and shall store the file.

- (d) This Section 3.7(d) describes changes to the DB Schedule versus changes to the Baseline Schedule.
  - (i) Resequencing of work where there is no Supervening Event or Change that would require an updated DB Schedule but not a Revised Baseline Schedule include the following:
    - (A) general changes that do not affect the milestone dates and would only be applied to the DB Schedule.
    - (B) resequencing of Critical Activities that do not affect the milestone dates and would only be applied to the DB Schedule.
    - (C) resequencing of Critical Activities that has affected the milestone dates and been caused by Project Co which would only be applied to the DB Schedule as Project Co has the responsibility to mitigate its own delays. Even though this would not require a Revised Baseline Schedule a detailed report would be required as part of the progress update as required in Section 3.4 of this Schedule.
  - (ii) Resequencing of work where there is no Supervening Event or Change shall require a Revised Baseline Schedule and shall include the following:
    - (A) major resequencing of non-critical activities that would not affect the milestone dates including substantial changes to the sequence of large elements of work (e.g., switching the construction sequence of the Springwells Street Bridge with the Clark Avenue Bridge) or a Change that adds or deletes a substantial number of activities.
    - (B) resequencing of Critical Activities to mitigate slippage impacts controlled by Project Co to bring the milestone dates back on track, regardless of cause.
- (e) The Baseline Schedule and Revised Baseline Schedule activities shall be cost loaded at 2 WBS levels below the Schedule of Values WBS structure level. For the Baseline Schedule, the cost loading shall be consistent with the Schedule of Values and the construction cost profiles as set forth in Schedule 26 [*Construction Period Payments*]. Cost loading shall include labor, equipment, and material costs.

### 3.8 Deleted Project Work Activities

Once the DB Schedule has been approved in accordance with Section 3.7, no activity will be deleted for any reason. In the event that an activity or group of activities are no longer required (in that the scope of Project Work that the activities represent have been removed from this Agreement) then the affected activities will be moved to a Work Breakdown Structure element (positioned at the end of the Work Breakdown Structure for the DB Work) called "deleted". Logic tying these deleted activities to the DB Schedule shall be removed. The DB Schedule logic shall be adjusted to ensure that the removal of these deleted activities does not leave any open ends and that the integrity of the schedule logic is not compromised. A start and finish milestone (with an appropriate description) will be added to this Work Breakdown Structure on the first instance

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of an activity deletion. The start milestone will have a predecessor of Commencement Date and the finish milestone a successor of Final Completion. These milestones shall be used as the predecessor and successor to the deleted activities to ensure that they do not appear in any open ended report. All such deleted Project Work activities shall have an actual start and finish date applied applicable to the month and year of deletion (the day prior to the data date of that month) and at completion duration of 0 days.

### 3.9 Level of Detail for DB Schedule

- (a) The level of detail expected in the DB Schedule must enable WDBA to fully undertake the detailed review and analyses of progress to ensure that milestone dates will be met.
- (b) The DB Schedule shall take due account of any seasonal constraints (including winter working and limits on road haulage in thaw periods), any holiday shutdowns, other constraints such as Land availability, material availability, Lane Closure restrictions, work days per week, work shifts per day, and hours per shift (a detailed list of such constraints shall be supplied by Project Co to WDBA as part of the initial submission of the Baseline Schedule). Each activity in the DB Schedule shall:
  - (i) express all durations in days;
  - (ii) have a unique activity ID and a clear description of the activity;
  - (iii) activity codes (a detailed list of activity codes shall be supplied by Project Co to WDBA as part of the initial submission of the Baseline Schedule) shall be applied for organizing and filtering the DB Schedule activities and information as necessary for managing the DB Schedule. By applying these codes to the activities of the DB Schedule, this coding structure shall also enable the roll up of the appropriate groups of activities within the DB Schedule;
  - (iv) include location as a separate field where appropriate;
  - (v) not exceed 20 days without the approval of WDBA;
  - (vi) include early and late start and finish dates;
  - (vii) include actual start with percent complete (duration) or actual start and finish dates when showing progress; and
  - (viii) include WDBA requested text/code fields including for example, "Responsibility", "Works Location", "Parcel Number", etc. which WDBA shall supply 90 Business Days before the Commencement Date.
- (c) The DB Schedule shall incorporate the following activity and milestone relationships and schedule logic requirements:
  - (i) no date constraints shall be used, except for the Commencement Date and (if appropriate) milestone completion dates as described in Section 3.5 (by use of a finish on or before constraint);
  - (ii) not include open-ended activities (that is, activities having no predecessor or no successor) except for the first and final activities in the schedule;
  - (iii) not contain negative lag;

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- (iv) no use of positive lag shall be permitted on a finish-to-start activity type (e.g., concrete curing time), such lag to be represented as an activity;
- (v) no use of preferential logic which sequences activities not in a manner driven by constructability considerations;
- (vi) the total number of critical path activities shall be less than 30% of the total activities, and the number of near-critical activities shall be less than 50% of the total activities;
- (vii) sequestering/suppression of float shall not be permitted (i.e., manipulation of network logic to remove float that would otherwise be available); and
- (viii) the Critical Path shall be continuous, logic driven, and determined based on unmodified software calculation with no use of additional filters. The Critical Path shall consist only of activities that have the longest path through the project schedule to Substantial Completion (due to Primavera® calendars it is anticipated that there may be activities with small negative or positive total float). Project Co shall also be able to define and calculate the longest path for each of the Project Elements including each POE, the Bridge and the Michigan Interchange. For the Baseline Schedule Critical Path, the total float value shall be zero to establish the initial baseline Critical Path to which all future DB Schedules will be measured against.

### 3.10 Work Breakdown Structure

- (a) Project Co is responsible for developing the Work Breakdown Structure in accordance with Good Industry Practice. The WBS shall be a project-wide model providing a framework for project management and control and shall subdivide the entirety of the Project Work into discrete work element and components, together with their work content, duration, resources and other items.
- (b) Project Co shall develop the WBS from the highest level to the lowest levels and shall account for the following:
  - (i) the differing geographical locations where elements of the Project Work are planned to be procured or carried out;
  - (ii) the entire scope of Project Work as specified in the Project Agreement and all elements of the Project Work; and
  - (iii) engineering content on a discipline by discipline basis including the processes of developing the Design as specified in Section 7, of Part 1 [*General*] of Schedule 6 [*Project Management*] of this Project Agreement.
- (c) Project Co shall be responsible for ensuring that the development of schedules and other data conforms to the approved Work Breakdown Structure, including the Project Work undertaken by all Subcontractors. Project Co shall ensure that such data/ information produced by Subcontractors is in a like format to data/ information compiled by Project Co. The WBS is subject to change from time to time and subsequently, no further approval of WBS changes will be required. WDBA shall be notified as part of the progress schedule report.

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- (d) The WBS shall be the basis for the level of detail of network activity definition in the DB Schedule.

### 3.11 DB Critical Path Report

Project Co shall provide to WDBA, the Independent Certifier and the DB Committee, a DB critical path report ("**DB Critical Path Report**") on the 10th Business Day of each month for DB Work through the last Business Day of the prior month. The DB Critical Path report shall include the following, encompassing all DB Work from the Commencement Date to Final Completion:

- (a) a Gantt Chart schedule that shows the Critical Path of the Project as well as near-Critical Path activities. Near-Critical Path activities shall be activities having less than 20 days total float.
- (b) Gantt Chart schedules that show the individual Critical Paths through each POE completion, Bridge completion and Michigan Interchange completion if not detailed in the overall Project Critical Path.
- (c) Critical Path analysis including the following:
  - (i) actual progress against baseline target dates for each Critical Path or near-Critical Path activity;
  - (ii) any Critical Path or near-Critical Path activities and/or milestones that are more than 20 days behind schedule, relative to the Baseline Schedule;
  - (iii) any Critical Path or near-Critical Path activities and/or milestones that are more than 20 Business Days behind schedule relative to the current or previous version of the DB Schedule;
  - (iv) a narrative that describes the changes in the Critical Path or near-Critical Path activities since the issuance of the current version of the DB Schedule;
  - (v) assessment and analysis of the risk of delay to the DB Schedule and the mitigation of these risks in a tabular form;
  - (vi) provisions for addressing the behind-schedule Critical Path or near-Critical Path activities such that each POE Handover will occur on its Scheduled POE Handover Date and Substantial Completion will occur on the Scheduled Substantial Completion Date; and
  - (vii) at a minimum, a four to six week look ahead schedule, dependent on the progress meeting frequency, as required in the Design Management Plan and Construction Management Plan.

### 3.12 DB Committee

- (a) The DB Committee shall meet monthly to review the DB Critical Path Report. Draft minutes of such meetings shall be prepared and distributed by Project Co within 5 Business Days after each meeting for review and comment. Project Co shall issue revisions to the minutes within 5 Business Days after receipt of comments. Minutes shall be approved at the subsequent DB Committee meeting. Such update of the DB Critical Path Report will take account of any variations in the progress of the DB Work (whether

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acceleration or deceleration) and/or other events that affect the Critical Path and near-Critical Path activities, including any Supervening Events as applicable.

- (b) Project Co acknowledges that the DB Schedule may need to change due to construction activities and conditions, change in land acquisition schedule and utility relocations schedules. Project Co shall work collaboratively with the DB Committee and WDBA to plan for and resolve scheduling issues and changes with minimal impact to cost and risk as and when they arise.

#### 4. SCHEDULES FOR OMR ACTIVITIES

The specific requirements for schedules for OMR Work in the OMR Period are specified in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

#### 5. SCHEDULES FOR HANDBACK WORK

The specific requirements for schedules for Handback Work are specified in Schedule 14 [*Handback*].

#### 6. REVIEW SUBMITTALS (DELIVERABLES)

At a minimum, the Review Submittals pertaining to Project scheduling shall include the plans listed in Table 9-1.

**Table 9-1**  
**List of Review Submittals for Project Schedule**

<b>Deliverable</b>	<b>Delivery schedule</b>	<b>Section Reference</b>
Work Breakdown Structure	Not later than 10 Business Days after the Commencement Date	3.3(d)
Baseline Schedule	Not later than 40 Business Days after the Commencement Date	3.3
DB Critical Path report	Tenth Business Day of each month	3.6
DB Schedule update	Tenth Business Day of each month after submission of the first schedule	3.3
DB Schedule revision	Not later than 10 Business Days after acceptance of Supervening Event or Change	3.3

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**SCHEDULE 10**

**DESIGN AND CONSTRUCTION SPECIFICATIONS**

**[REDACTED]**

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**SCHEDULE 11**

**OPERATIONS, MAINTENANCE AND REHABILITATION**

**[REDACTED]**

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## SCHEDULE 12

### OPERATIONAL TRAFFIC MANAGEMENT

#### 1. DEFINITIONS

Unless defined specifically in this Schedule or unless the context otherwise requires, capitalized but other undefined terms in this Schedule have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of this Project Agreement.

In this Schedule, the following terms have the meanings set out in this Section 1.

**Project Co Provided Emergency Response Vehicle** has the meaning set out in Section 5.

**Schedule** means schedule 12 [*Operational Traffic Management*] of this Project Agreement, unless such term clearly refers to another schedule of this Project Agreement.

All references to a Section number in this Schedule means a Section number of this Schedule unless such Section number clearly refers to a Section of the body of this Project Agreement or another schedule or part of a schedule of this Project Agreement.

#### 2. GENERAL REQUIREMENTS

This Schedule specifies the required traffic management processes and requirements for the Facility during the OMR Period.

#### 3. PROJECT CO GENERAL RESPONSIBILITY

Project Co must comply with all traffic management requirements set out in this Schedule during all maintenance activities throughout the OMR Period. Project Co must also comply with the applicable traffic management requirements including traffic control, notifications processes, lane closure set-ups, which are required in Part 15 [*Traffic Management – Construction*] of Schedule 10 [*Design and Construction Specifications*] and in Part 8 [*Maintenance of Traffic*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*]. Closures shall also comply with the WDBA Lane Closure Policy described in Schedule 11 [*Operations, Maintenance and Rehabilitation*] which may be modified from time to time. As required by Schedule 11 [*Operations, Maintenance and Rehabilitation*], Project Co shall submit an Operations and Maintenance Plan as part of the Project Management and Execution Plan and emergency response and mitigation plans for all possible emergency situations.

The Canadian POE and the US POE are to be included within these requirements, along with any roadways that provide access to either or both of the Canadian POE and the US POE.

#### 4. TRAFFIC MANAGEMENT

Project Co shall operate the Traffic Management Centre as identified in Part 23 [*Intelligent Transportation System*] of Schedule 10 [*Design and Construction Specifications*], 24 hours/day, 365 or 366 days/year, as applicable. Project Co shall provide at least one Traffic Management Centre operator and one Traffic Management Centre supervisor in the Traffic Management Centre at all times. Project Co shall also assess and set out in the Operations and Maintenance Plan, requirements and procedures regarding traffic management functions during peak times.

The Traffic Management Centre operators and Traffic Management Centre supervisors provided by Project Co shall be skilled, trained and experienced in traffic management centre operations and shall be specifically trained in the use of the traffic management software and the ITS field equipment provided by Project Co for the Facility.

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The Traffic Management Centre operator shall use the pan, tilt and zoom features of CCTV cameras to sweep all portions of publically accessible roadway in the Facility at least once per hour to check for any debris, blockages, disabled vehicles, anomalies etc. Upon discovering any debris, blockages, disabled vehicles or anomalies, the Traffic Management Centre operator will immediately initiate the appropriate response set out in the approved Operations and Maintenance Plan.

The Traffic Management Centre operators shall check the health of all ITS field equipment in the Facility at the beginning of every shift and immediately log and report any issues to ITS maintenance personnel for correction. If, during the course of their work a Traffic Management Centre operator discovers any ITS equipment malfunction the Traffic Management Centre operator shall immediately log and report the issue to ITS maintenance personnel for correction.

The Traffic Management Centre operator shall regularly monitor the lane control signs to ensure that the lane streaming messages match the operations at the primary inspection lanes and toll booths as to type of vehicles.

The Traffic Management Centre operator shall expeditiously answer any incoming calls to the Traffic Management Centre and provide appropriate response and take necessary resulting action as described in or contemplated pursuant to Schedule 11 [*Operations, Maintenance and Rehabilitation*].

Project Co shall, prior to the commencement of the OMR Period, create operating procedures for the Traffic Management Centre in cooperation with WDBA. Such operating procedures shall be submitted to WDBA for review and acceptance 140 Business Days prior to Substantial Completion. The operating procedures shall, among other things:

- (a) outline the duties of the Traffic Management Centre operators including required repetitive activities;
- (b) provide time frames for completion; and
- (c) identify any rules or prohibitions with respect to operations including protection of privacy of the travelling public, dealing with public calls and working with emergency responders.

Once finalized, the Traffic Management Centre shall be operated in accordance with the final operating procedures.

Project Co shall determine proficiency requirements for Traffic Management Centre operators and Traffic Management Centre supervisors in written job descriptions, which shall be submitted for review and acceptance by WDBA. Project Co shall submit a training manual for review and acceptance by WDBA, which includes training requirements and testing procedures to measure Traffic Management Centre operator proficiency and shall put those in place for Traffic Management Centre operators.

## **5. TRAFFIC INCIDENT RESPONSE**

The Traffic Management Centre operator shall respond to any detected or reported incidents within the Facility with a response from the ITS. This response will consist, as appropriate, of lane control signal messages, dynamic message sign messages and calls to emergency services. The maximum time from detection to the messages being displayed and contacts made shall be no more than 5 minutes measured on a monthly interval and no individual response shall exceed 10 minutes as set out in Appendix 11-1 [*Roadway Performance Requirements*] to Schedule 11 [*Operations, Maintenance and Rehabilitation*].

The Traffic Management Centre operator shall assess the incident and, with the support of the traffic management software, determine the emergency responders who need to be contacted. The emergency

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Schedule 12 [*Operational Traffic Management*]

responders will vary depending on the location of the incident in the Facility. The traffic management software will also recommend other contacts to be made based on the severity of the incident and location.

Project Co shall, prior to the commencement of the OMR Period, and twice per year during the OMR Period, coordinate with all emergency responders who may need to respond to incidents within the Facility to confirm which responders will respond to what types of incidents and at what locations.

When an incident is detected within the Facility, the Traffic Management Centre operator shall dispatch a Project Co Provided Emergency Response Vehicle. The Project Co Provided Emergency Response Vehicle shall respond to the scene of any detected incident within the parameters in and pursuant to Schedule 11 [*Operations, Maintenance and Rehabilitation*].

Project Co shall provide an emergency response vehicle (the “**Project Co Provided Emergency Response Vehicle**”), including a driver to be available for dispatch to an incident scene 24 hours/day, 365 days/year. The vehicle shall meet, among others, the following requirements:

- (a) 4 doors to accommodate stranded motorists in inclement weather;
- (b) flip up variable message sign for directing traffic around an incident scene;
- (c) well marked to improve safety and visibility in traffic;
- (d) equipped with a push bumper to allow movement of disabled vehicles out of lanes;
- (e) equipped with tools to change car tires and do minor repairs and fire extinguishers to deal with minor fires;
- (f) equipped with small amounts of fuel and water to deal with out of fuel or overheated vehicles;
- (g) equipped with battery booster cables; and
- (h) equipped with a VHF Radio in order to facilitate communication with the Traffic Management Centre.

Project Co shall provide operators for the Project Co Provided Emergency Response Vehicle who have appropriate training to undertake minor vehicle repairs and work in a roadside emergency situation. The operators shall also be provided with uniforms and appropriate personal protective equipment to identify them as authorized staff of Project Co.

The Traffic Management Centre and the Project Co Provided Emergency Response Vehicle shall coordinate to manage the incident in cooperation with any responding emergency services. The goal shall be to safely and expeditiously reopen all lanes.

Lane Clearance times shall comply with the requirements established in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

Project Co shall schedule and lead after action reviews for any Unplanned Closure that exceeds 2 hours. The goal of the after action reviews is to review what went well and what didn't and determine opportunities for improvement. WDBA and all emergency responders shall be invited to after action reviews.

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## 6. EMERGENCY VEHICLE ACCESS

Access for emergency vehicles (fire, ambulance, and police) must be maintained throughout the OMR Limits at all times. Specific procedures and strategies proposed to manage incidents that occur in the work zone shall be as set out in the various plans, protocols and procedures contemplated in Schedule 11 [*Operations, Maintenance and Rehabilitation*] including, as may be set out in the Operations and Maintenance Plan.

Notify the police, emergency medical services, and fire departments a minimum of 5 days prior to the implementation of any road closures, bridge closures, shoulder closures, lane closures, ramp closures, traffic shifts, or detours.

## 7. LANE CLOSURE RESTRICTIONS – CANADA

Temporary closures of any lanes of traffic on the Site or on any roadway providing access to the Canadian POE within the Site are prohibited except during permitted maintenance-related activities as scheduled pursuant to the Operations and Maintenance Plan.

Project Co shall be responsible for notifying CBSA and CFIA of lane closures within the Canadian POE in accordance with the Operations and Maintenance Plan.

For all lane closure restrictions within the Canadian PAR, Project Co shall comply with the provisions of the Part 1 [*Canadian Perimeter Access Road Maintenance and Handover*] of Schedule 43 [*Canadian Roads*].

## 8. LANE CLOSURE RESTRICTIONS – US

All lanes of the Michigan Interchange and mainline freeway must remain open at all times during the entire OMR Period, except during maintenance-related activities as scheduled pursuant to the Operations and Maintenance Plan or as otherwise permitted under Schedule 11 [*Operations Maintenance and Rehabilitation*] or Schedule 25 [*Payment Mechanism (OMR)*].

Project Co shall be responsible for notifying GSA and CBP of lane closures within the US POE in accordance with the Operations and Maintenance Plan.

If any lane closures are required outside of the OMR Limits, Project Co shall complete the Lane/Shoulder/Ramp/Structure Closure Request Form attached to Part 15 [*Traffic Management – Construction*] of Schedule 10 [*Design and Construction Specifications*] and Part 8 [*Maintenance of Traffic*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*], and shall submit the form to WDBA for approval of any closure at least 5 Business Days prior to the implementation of any lane closures, traffic shifts, and/or detours.

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**SCHEDULE 13****TOLLING OPERATIONS****1. DEFINITIONS**

Unless defined specifically in this Schedule or unless the context otherwise requires, capitalized but otherwise undefined terms in this Schedule shall have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of this Project Agreement.

In this Schedule, the following terms have the meanings set out in this Section 1.

**Cash Handling Procedure** has the meaning set out in Section 4.4(b).

**Customer Webpages** means customer facing webpages within the Project Website dedicated to tolling and which meet the requirements set out in Part 22 [*Tolling Infrastructure*] of Schedule 10 [*Design and Construction Specifications*].

**Float Amount** has the meaning set out in Section 4.5(d).

**Lane Assignment Policy** has the meaning set out in Section 4.5(l).

**Maintenance Online Management System** or **MOMS** means the management system meeting the requirements set out in Section 4.5(j).

**Operations Management Plan** has the meaning set out in Section 5.1.

**PCI DSS** has the meaning set out in Section 4.9(b).

**Revenue Shortfall** has the meaning set out in Section 4.9(i).

**Schedule** means this schedule 13 [*Tolling Operations*] unless such term clearly refers to another schedule of this Project Agreement.

**Tolling Monitor** has the meaning set out in Section 4.5(b).

**Training Plan** has the meaning set out in Section 5.2.

**Transponder** means electronic devices which identify vehicles crossing the Bridge from the US to Canada and from Canada to the US which are owned by WDBA and are leased or otherwise provided to customers using the Bridge.

All references to a Section number in this Schedule means a Section number of this Schedule unless such Section number clearly refers to a Section of the body of this Project Agreement or of another schedule or part of a schedule of this Project Agreement.

**2. SCOPE**

Subject to Section 4.1, this Schedule describes tolling operations to be provided during the OMR Period and covers activities to be performed by Project Co to process customers from a tolling perspective, collecting tolls in all forms and supporting customers both on and off the Canadian POE.

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### 3. PROJECT CO GENERAL RESPONSIBILITY

Project Co shall conduct all work necessary to meet the requirements for the Tolling Operations of the Project consistent with Good Industry Practice. These activities are highlighted in this Schedule and in Part 22 [*Tolling Infrastructure*] of Schedule 10 [*Design and Construction Specifications*] and include equipment rehabilitation, transaction management, customer account management, financial audit of Tolling Revenues, equipment maintenance and the deployment of a safe and efficient method of toll collection.

#### 3.1 Administrative Requirements

(a) *Personnel*

Project Co personnel assigned to this Project and the Facility must meet the Good Industry Practice standards associated with education, experience, training and conduct to be considered fit for performing their respective positions and roles on this Project and at this Facility. Project Co shall configure and manage the Tolling Operations such that each person is allowed only the level of access to the system required for the duties of their role and position and shall be prohibited from accessing the system for any other purpose. Additionally, each person shall be required to pass a drug and alcohol test as well as a background check to be deemed qualified for employment. Background reviews should identify possible conflicts with toll collection and working with currency.

(b) *Standards*

Project Co shall manage the Facility in accordance with Good Industry Practice and shall consider the guidance described in the following document in the design and operation of the Tolling Infrastructure:

FHWA, Toll facilities workplace safety study report to congress, Chapter 4: Findings - factors affecting safety at toll plazas. United States Department of Transportation Federal Highway Administration Report Number: FHWA-IF-08-001 (August 18, 2010).

### 4. OPERATIONAL REQUIREMENTS

#### 4.1 Prior to Substantial Completion

Notwithstanding Section 4.2, starting 9 months prior to Substantial Completion, customers shall be able to establish toll accounts, order transponders and toll account cards and make payments to toll accounts. Project Co shall be responsive to customers in accordance with the requirements set out in Section 4.2(b)(ii).

#### 4.2 Performance Requirements

(a) *Availability*

Sufficient personnel shall be available to perform their respective duties so that operation of the Tolling Infrastructure at the performance levels specified are available 24 hours per day, 365 (or, if applicable 366) days per year. It shall be the responsibility of Project Co to manage its resources, including the most efficient and cost-effective scheduling of its personnel to meet this requirement.

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At least one toll lane in each direction shall be designated to manual toll collection at all times. Project Co shall provide manual toll operation services for regular traffic, and for heavy commercial traffic. In addition, at least one toll supervisor shall be stationed at the Toll Services Operations Centre at all times.

If a lane, or lanes, are operating and designated for automatic toll collection, at least one of them shall be equipped with a dual height console.

A queue length in any lane in excess of 75 metres upstream of the toll gates, sustained for more than 5 minutes, shall trigger an alert. Once triggered, operational changes shall be put in place no longer than 15 minutes after an alarm is triggered. Failure to enact the operational changes within 15 minutes shall constitute a Category 1 Defect.

Operational changes to reduce queue length might be either opening additional lanes at the same operations mode as the congested lanes, or switching lanes from non-congested modes to the congested mode, up to the point where the facility is at capacity.

The facility is considered at capacity when all toll lanes are open and the queue length for each toll lane exceeds 75 metres, subject to the exception of minimum open lane requirements, by lane processing mode, as outlined in the Lane Assignment Policy. Changes in operational mode for a lane or lanes may be required before the facility can be declared at capacity.

(b) *Responsiveness*

(i) *Toll Operations*

Toll collectors shall be properly trained to achieve a transaction processing rate in manual mode lanes of 200 vehicles per hour, measured as an average over a monthly interval.

Transactions that require toll supervisors' support from the toll lane customers, including customer disputes shall be excluded from this calculation.

If a toll supervisor is acting as a toll collector, then this will be included in the calculation of the processing rate.

Toll supervisors shall respond to toll lane calls within 30 seconds at all times, measured on a monthly interval.

Instances when all toll supervisors are already occupied by other customer calls will be excluded from this calculation. If the toll supervisor is acting as a toll collector this will be included in the calculation.

(ii) *Customer Service*

The average time for Project Co to respond to all customer communications shall be no higher than the following, measured on a monthly interval:

(A) response to customer calls:

- (I) call pick up within 30 seconds, by either interactive voice response or a customer service representative; and

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- (II) call hold time shall not to exceed 4 minutes before reaching a customer service representative;
- (B) response to customer emails - 1 Business Day;
- (C) response to voicemails - 1 Business Day;
- (D) response to written correspondence - 3 Business Day

Less than 3% of customer calls shall be disconnected by a customer while the call is on hold.

Transponders and account cards shall be shipped to customers by mail within 3 Business Days of receipt of a completed registration.

Account payments processed by Project Co shall be posted accurately to the accounts within 5 minutes of clearance of payment notice from the financial institution, and shall be updated to the field subsystem within 1 hour of posting, allowing electronic/automatic toll processing. 99.9% of payments shall be processed accurately, measured on a monthly interval.

Project Co shall survey at least 1% of customers regarding the level of customer service provided. Of all customers surveyed, 75% shall indicate they are satisfied with their customer service experience, measured every 3 months.

#### 4.3 System Acceptance

Project Co shall achieve System Acceptance within 60 days of Substantial Completion. Failure to meet this requirement will result in a System Acceptance Deduction in accordance with Schedule 25 [*Payment Mechanism (OMR)*].

#### 4.4 Lane Operations

(a) *Customer Service Standards*

Project Co shall provide customer-facing staff who shall display appropriate conduct, timeliness, and attire.

At all times during toll collection, at least one toll supervisor shall be fluent in both English and French.

Toll collectors shall be properly trained to perform vehicle classifications and toll collection duties, including dispensing change.

(b) *Cash Handling Procedure*

All cash handling processes must follow the Project Co developed chain of custody procedure, which procedure must be approved by WDBA (such approved procedure, the "**Cash Handling Procedure**"). All Project Co personnel shall adhere to the Cash Handling Procedure, in accordance with their assigned role.

Toll collectors shall be responsible for collecting and depositing all monies due for each vehicle they process. Two secure cash trays with predefined amounts of US and Canadian currency and coins shall be provided to each of them by the toll supervisor

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prior to their starting their shift. Each toll collector shall in turn accept payment for each transaction and place it into the corresponding tray. They shall also use the tray to make change in the same receiving currency. Toll rates for cash operations shall always be rounded up to the nearest quarter as defined in the Toll Rate Structure.

During initial operations cash toll rates will be a constant value during any time-of-day and any day of the week and as such shall be defined in the toll rate structure. If WDBA decides to have variable toll rates, such variable toll rates will be considered a WDBA Change.

At the end of each toll collector's shift such toll collector shall deposit the collected monies in the money room, as required by Section 4.5(f).

(c) *Failure to Pay*

A driver refusing to pay, or claiming no payment method is available, shall be handed an envelope containing instructions for payment at a later date. If the driver is stopped at a lane operating in automatic or electronic mode, the vehicle shall be held at the lane until a toll collector from an adjacent lane or the toll supervisor is available to step out and hand over the envelope.

A toll supervisor shall be required to obtain the relevant information required in order to complete the relevant reports and finalize all such transactions, noting vehicle or driver identification details in the transaction record, before assigning the transaction a status of "Failure to Pay" in the system.

All of the foregoing shall be in accordance with the Operations Management Plan.

(d) *Exempt Vehicles*

Vehicles defined by WDBA and documented in the Tolling Business Rules as exempt from paying tolls shall be allowed through the toll lanes by the toll collector and their transaction assigned a "Non-Revenue" status. Exempt vehicles shall include at a minimum: emergency vehicles, and Project Co work vehicles. If the exempt vehicle is equipped with a transponder and automatically released, no action is required by the toll collector. Toll collectors are to be instructed to allow emergency vehicles (clearly marked police, ambulance and fire) through the toll lanes. Identification information can be gathered using video. When in doubt, the toll collector will ask the supervisor.

Project Co shall register its own work vehicles as exempt and equip them with one transponder per vehicle. Project Co will be allowed to use one transponder per registered work vehicle only.

All of the foregoing shall be in accordance with the Operations Management Plan.

#### **4.5 Tolling Services Operations Centre Activities**

(a) *General*

The primary goals of the tolling operation activities, contemplated to occur primarily within the Tolling Services Operations Centre, and to be performed by Project Co regardless of where they occur are:

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- (i) actively monitor the entire Tolling Infrastructure, and interfacing systems supporting Tolling Operations;
- (ii) coordinate maintenance activities to ensure high system availability; and
- (iii) meet or exceed all customer service levels and goals as set out in this Schedule.

Toll supervisors may be called upon to respond to customer issues in staffed toll lanes, as a higher level of authority, above the toll collector.

(b) *Tolling Monitor Application*

The tolling monitor application is the primary tool present in the tolling back-office. Its purpose is to allow toll supervisors to monitor the real-time operation of the Tolling Infrastructure, support Tolling Operations remotely, intervene in Tolling Operations when necessary, assess and execute operational changes in real-time and must include the specifications set out below (the "**Tolling Monitor**").

Real-time displays available as part of the Tolling Monitor shall include:

- (i) transactions – most recent transactions in each toll lane showing the data / time, vehicle class (by AVDC and/or operator), transponder ID and account (if present), and payment type
- (ii) traffic count - sum of transactions by class over a specified period. Totals could also be displayed for any lane, any collection mode, and each travel direction (each toll area)
- (iii) alarm – alarms that occurred during the last configurable time period
- (iv) equipment status – operational and/or functioning status of Tolling Infrastructure in the toll lanes and tolling back-office based on the Maintenance Online Management System data
- (v) server status – operational parameters of Tolling Infrastructure servers, whether located in the tolling back-office, Toll Services Operations Centre, or otherwise.

The Tolling Monitor shall incorporate security standards to prevent unauthorized access.

The Tolling Monitor shall allow multiple users simultaneously, and shall properly route intercom calls from toll lanes to available users, or if all are already on intercom calls, place them in a queue to be answered by the next available toll supervisor.

The Tolling Monitor shall process alerts from the Tolling Infrastructure in individual toll lanes concerning traffic flow through the toll lanes and alert toll supervisors to unusual events in real-time, such as a vehicle stopped at any point in the toll lane for an excessive length of time, or where it is not supposed to stop.

(c) *Toll Supervisor In-Lane Transaction Support*

Toll supervisors shall be available at all times to respond to customers stopped at the lane through the intercom system, whether the lane has a toll collector or not. Staffing levels shall be appropriate to respond to traffic volumes throughout the day and maintain service at required levels.

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Toll supervisors shall be able to operate the Tolling Infrastructure within any individual toll lane remotely from the Toll Services Operations Centre, change transaction parameters, and release vehicles as required. Toll supervisors shall verify lane conditions and vehicle parameters before, during and after performing toll lane operations using the toll area and toll lane CCTVs.

(d) *Float Amount*

Project Co shall estimate the amount of money that will be required on a daily basis to be available at all of the toll booths in order for the toll collectors to provide change along with particulars as to the currency and denominations required (the "**Float Amount**").

The Float Amount shall, at all times remain the property of Project Co and shall not in any case be counted as Tolling Revenue, a Project Co cost or expense or otherwise used by Project Co as or for compensation in any respect.

(e) *Change Bank Management*

The role of the toll supervisors shall, among other things, involve the management of a change bank. The toll supervisors shall, using the provided Float Amount, prepare the cash trays or replenish the cash trays during a toll collector's shift in order that the toll collector may provide change at the toll booth and shall at all times track all monies added to cash trays from the Float Amount.

(f) *Money Room Clerk*

A secured money room shall be used for counting tolls collected and confirming the Float Amount. The money room shall have a money room clerk, who shall be an individual who is not a toll collector.

Each toll collector shall deposit such toll collector's cash trays in the money room where monies shall be counted by the toll collector, thereafter, independently counted by a money room clerk, recorded appropriately in the relevant Tolling Infrastructure system and added to the cash already present in the vault. All actions shall follow the Cash Handling Procedure.

The money room clerk shall bundle accumulated currency as required, and create a daily bank deposit in the relevant Tolling Infrastructure system, comprised of all deposited monies for that day. The relevant Tolling Infrastructure system shall produce a corresponding deposit slip that itemizes all monies that shall be sent to WDBA's bank for deposit into WDBA's bank account.

The money room clerk shall be responsible for depositing the accumulated currency at the end of each day, unless otherwise instructed by WDBA, as per the Cash Handling Procedures.

Project Co shall generate and remit to WDBA a daily report which reconciles the accumulated currency on site, the Tolling Revenue collected for the day, and the amount deposited in WDBA's account.

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(g) *Cash Handling and Transportation*

Project Co shall provide all facilities for the safe on-site handling, processing and storage of monies such as safes, reinforced doors, and access control at a level appropriate for the amount of cash expected to be in Project Co custody at any given time.

Project Co shall safeguard cash deposits including collected monies and shall provide armored car services and other means to secure all monies in Project Co custody or control in accordance with security policies outlined in Section 5.1 of this Schedule.

All monies and cash deposits shall be considered to be within Project Co care, custody and control from the moment such monies are collected or received until such monies are deposited in WDBA's bank account.

(h) *Audit and Reporting*

Project Co shall perform a thorough and complete audit and reconciliation of all Tolling Revenue and statistical operations of the Tolling Operations, including daily, monthly and annual reports. Using the tools provided by the Tolling Infrastructure, Project Co authorized auditing personnel shall perform a forensic analysis of each toll collector's shift with the cash deposit, reporting on any discrepancies encountered.

These auditors shall be able to make the necessary corrections and annotations to reconcile any discrepancies either in the monies or traffic reported by the system. They shall also post all findings to a general ledger so as to provide certifiable verification of all revenues associated with this operation in accordance with applicable Accounting Principles. All such proposed necessary corrections and annotations must be reported to WDBA prior to such corrections and annotations being made in the Tolling Infrastructure system.

(i) *Maintenance Services*

Project Co shall retain maintenance staff at the Toll Services Operations Centre, or at another designated maintenance facility, at proper levels to meet the required response, remedy and repair times of the Tolling Infrastructure as described in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

Monthly schedules for routine and preventative maintenance shall be provided for WDBA approval at least 10 days prior to the start of each month. Systems and subsystems downtime will only be excluded from systems operations and performance requirements if incurred due to maintenance activity on each month's pre-approved routine and preventative maintenance schedules.

The maintenance staff shall have the proper training to perform all preventive and corrective maintenance actions to maintain Tolling Infrastructure, Tolling Operations as contemplated in in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

Maintenance staff shall exhibit proper professional conduct, and proper attire, whether they interact with the public or not. Work at the toll lanes, including at closed lanes shall uphold all safety and traffic management procedures to prevent impact on Tolling Operations or present a hazard to any person in the vicinity of works.

(j) *Maintenance Online Management System*

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Project Co shall provide a MOMS for use in Tolling Operations. The MOMS can be a separate system, or part of a larger Project-wide application. For the purpose of this Schedule, "**MOMS**" shall be used to describe either of the foregoing.

The MOMS shall be used to support maintenance operations for all software and hardware provided in connection with the Tolling Infrastructure or otherwise pursuant to the Project Agreement.

The MOMS shall interface with the Toll Monitor application, and provide real-time status indications to Toll Monitor users. Toll supervisors and maintenance staff shall be trained to operate the MOMS, which shall provide role-based access and security of the data.

The MOMS shall have two major components:

- (i) a system monitoring component that provides alerts in response to system failures or outages
- (ii) a configuration management and inventory management tool, to track the status and quantity of all equipment, components and parts in the system.

The MOMS shall monitor Tolling Infrastructure activities, provide alerts and generate work order tickets in real-time for all processes and unusual activity triggered by the Tolling Infrastructure and toll collectors or toll supervisors, including but not limited to: hardware, software, and communications.

Project Co shall report and log all maintenance activities into the MOMS. Project Co shall document all information and issues related to a failure condition, including all actions taken to complete the correction into the MOMS.

Maintenance staff shall have real-time access to the MOMS, including when present at the toll lane and Project Co shall establish and maintain all the required connections to ensure that the maintenance staff has remote access.

The MOMS shall record all configuration data, and log and retain that data in configuration control after each Tolling Infrastructure component change, including deployment of system patches, backup, archival, data restoration, disaster recovery data transfer and synchronization.

MOMS shall calculate corrective maintenance (see Schedule 11 [*Operations, Maintenance and Rehabilitation*]) statistics, such as response times, repair times, and down time from the data entered by the maintenance staff and automatically generated by the Tolling Infrastructure.

All preventive maintenance shall be scheduled through the MOMS and automatic work orders shall be generated at the scheduled times.

The MOMS system shall track all Tolling Infrastructure hardware and software elements from purchase to their disposal. These include but are not limited to: 1) all hardware and software items, locations and versions; 2) All maintenance and service agreements; 3) a list of suppliers from whom products were procured, original purchase order numbers, supplier numbers and reference numbers; 4) all warranty information for the individual item; 5) alerts prior to warranty expiration; and 6) automatic alerts for spare parts levels.

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The MOMS shall automatically generate reports demonstrating performance, exceptions, availability, and compliance to Performance Requirements (if applicable) for the Tolling Infrastructure and all of its components, including the interactive voice response and Project Website, including Customer Webpages. MOMS daily, weekly, monthly bimonthly, quarterly and annual reports shall be available on-demand or as indicated in Schedule 8 [*Records and Mandatory Reports*].

Project Co shall log any toll lane closures due to maintenance issues, corrective or preventive, into MOMS. Any unusual circumstances shall also be noted in the report. If the information can be tracked and reported separately in MOMS, it may be used to log traffic incidents as well. A toll lane closure report shall identify who closed the lane, start and end time of the closure, lane number closed and any comments or unusual events regarding the closure. The MOMS shall allow generation of a toll lane closure report, to be submitted to WDBA on a monthly basis.

(k) *Degraded Modes*

Upon receiving alerts from the MOMS regarding a potential degradation of system performance, due to faults or failures of field subsystem components, toll supervisors shall assess the situation and act based on the criteria outlines in Schedule 11 [*Operations, Maintenance and Rehabilitation*] for corrective maintenance of the Tolling Infrastructure.

Project Co shall outline, as part of the Operations Management Plan, specific procedures for managing Tolling Operations and responsive maintenance activities for different types of faults in various Tolling Infrastructure components.

(l) *Lane Assignment Policy*

Project Co shall submit a proposed policy and related procedures for the assignment of toll lanes to their operational mode (Closed, Manual, Automatic, Electronic) to WDBA for approval, such approved policy the ("**Lane Assignment Policy**"). WDBA shall have the right to review the Lane Assignment Policy quarterly and specify changes, which changes shall be incorporated by Project Co into the Lane Assignment Policy. These changes will only be considered a WDBA Change if they are in contradiction with the requirements specified in this Schedule, Part 22 [*Tolling Infrastructure*] of Schedule 10 [*Design and Construction Specifications*] and Schedule 11 [*Operations, Maintenance and Rehabilitation*].

The Lane Assignment Policy shall outline the number of toll lanes to be opened in each operational mode, at different times of the day, assuming different traffic patterns. The objective of the Lane Assignment Policy shall be to minimize the average queue lengths across all lanes and to adjust the operational modes accordingly. The Lane Assignment Policy shall detail average wait time per toll lane and per travel direction that are to trigger changes in the number of open toll lanes or changes in operational modes for already open toll lanes. The Lane Assignment Policy shall include directions and procedures designed to address the availability requirements outlined in Section 4.2(a) of this Schedule.

(m) *Lane Control Sign Operations*

The lane control sign for each toll lane shall reflect the current operational mode of that lane. The signage shall be controlled in either of two modes: local or remote.

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Local control shall be through the manual lane terminal present at the toll lane booth, and remote control shall be through the Tolling Monitor interface at the Toll Services Operations Centre. Local control shall override remote control of the sign when activated from the toll booth.

Manual mode (cash processing) shall be able to be activated and displayed on the changeable message signage through local manual lane terminal control only, to avoid such designation without the toll booth being staffed.

Changes in lane control sign message shall be verified and confirmed by the Toll Services Operations Centre through the toll areas CCTVs, regardless of who conducted the change.

(n) *Security*

The toll supervisors at the Toll Services Operations Centre shall have access to live video streams from the applicable surveillance and security system, showing the toll lanes, money room and the areas approaching the toll lanes.

Project Co shall configure the Toll Services Operations Centre to provide the proper quantity of monitors, video screens and other means of display to allow toll supervisors to use the Toll Monitor while maintaining full visibility of video streams for the toll lanes.

The Tolling Monitor shall alert the toll supervisors when a panic button is pressed in any of the staffed booths. This alert shall require acknowledgment by the toll supervisor at a console before any operation can be resumed.

(o) *Website Updates*

Project Co Toll Services Operations Centre staff shall update operational information in the Project Website, including Customer Webpages and verify that all information posted to the Project Website, including Customer Webpages is current, accurate and relevant.

The information shall include traffic updates, expected closures, special rates and other information that may be appropriate.

(p) *Reporting*

Refer to "Reporting" in Schedule 10 [*Design and Construction Specifications*] Part 22 [*Tolling Infrastructure*] for detailed reporting requirements.

(q) *Backup and Disaster Recovery*

Refer to "Disaster Recovery and Backup Site" in Schedule 10 [*Design and Construction Specifications*] Part 22 [*Tolling Infrastructure*] for general parameters.

(r) *Traffic Management Centre Interface*

In addition to the real-time system interface between the Tolling Infrastructure and the Traffic Management Centre, Toll Services Operations Centre staff shall communicate by phone or e-mail with Traffic Management Centre staff, and exchange any relevant information as needed.

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Information exchanged may include changes in traffic patterns, special events, special maintenance activities, emergency conditions, etc.

The Traffic Management Centre shall have access to all traffic-related video streams available at the Toll Services Operations Centre. Camera control shall be from the Toll Services Operations Centre only.

#### 4.6 Customer Service Centre

Project Co shall provide trained, competent and courteous customer service staff comprised of supervisors and customer service representatives to staff the customer service centre, and assist customers with any information and toll account operations, such as establishing, updating and cancelling accounts, order transponders and toll account cards, review disputed transactions, cancel transponders and make payments to toll accounts.

The customer service centre shall be located in Canada, including all call centre equipment and staff.

Further responsibilities of the customer service centre staff are described in "Customer Service subsystem" in Part 22 [*Tolling Infrastructure*] of Schedule 10 [*Design and Construction Specifications*].

Oversight of human resource issues such as timeliness, appropriate conduct and attire are the sole responsibility of Project Co.

The customer service centre staff shall utilize the customer service subsystem of the tolling back-office which shall allow them access to toll account information, toll transaction records, and surveillance video.

Project Co shall implement appropriate security and controls to protect all data from unauthorized use and unauthorized users in accordance with the Operations Management Plan.

Customers will be able to contact customer service through various channels – phone, e-mail, regular mail, fax, SMS/text, and through the Customer Webpages. In-person services may be provided on an interim basis, via the mobile customer service subsystem.

##### (a) Call Centre Operations

Refer to "Phone System and Interactive Voice response" in Part 22 [*Tolling Infrastructure*] of Schedule 10 [*Design and Construction Specifications*] for general parameters.

The interactive voice response and customer service centre staff shall verify a customer's identity before disclosing or making any updates to such customer's data. Customers will be required to submit this information only once per call.

The interactive voice response shall measure and report call answering performance for all calls transferred to customer service centre staff. The metrics shall include the total customer call duration from the start of the interactive voice response through completion on the automated system or with the customer service centre staff.

Other call centre statistics to be automatically tracked and reported are:

- (i) total number of calls received;

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- (ii) total number of calls accepted by customer service centre staff;
- (iii) average time to answer;
- (iv) maximum time to answer;
- (v) total number of calls that exceed configurable, specified hold times; and
- (vi) total number of abandoned calls.

All phone calls to the customer service centre shall be recorded and retained for a minimum period of 1 year or as required in accordance with Applicable Law whichever is greater.

At least 1% of all calls processed shall be reviewed for accuracy, efficiency, professionalism, and verification of friendly and courteous service.

(b) *Mobile Walk-Up Centre*

Refer to "Mobile customer service subsystem" in Part 22 [*Tolling Infrastructure*] of Schedule 10 [*Design and Construction Specifications*] for general parameters.

If required by WDBA as a WDBA Change, Project Co shall train customer service centre staff to use the mobile customer service subsystem in order to provide in-person services such as toll account registration, transponder and card distribution, and account management and to perform all customer-related functions present in the customer service centre.

(c) *Customer Service Standards*

Project Co policies and procedures shall support first contact resolution of any customer issues, and minimize transfers and follow-up calls.

The customer service centre staff shall identify potential system and service issues from their interactions with customers. Customer service centre staff shall communicate with and provide feedback to the Toll Services Operations Centre in a timely manner.

The customer service centre staff in a customer-facing role shall be fluent in both English and French.

The customer service centre staff shall monitor the interactive voice response and call centre to ensure Performance Requirements are met. The customer service supervisors shall assign staff to appropriate operational tasks to ensure performance levels meet or exceed the Performance Requirements.

(d) *Website Updates*

Project Co shall be responsible for managing and maintaining the customer webpages.

Project Co shall provide notices and daily informational updates to WDBA so that WDBA can update the Project Website as needed.

Project Co shall ensure that the Project Website, including Customer Webpages operations meet Performance Requirements by performing routine checks on the

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Customer Webpages account management system, and the Project Website including Customer Webpages informational page.

WDBA updates to the Project Website shall be accommodated by the customer service centre staff in accordance with the requirements outlined in Schedule 18 [*Communications Protocol*].

(e) *Account Management*

The customer service centre staff shall support customer toll account management through any and all communication channels, and shall perform all tasks in accordance to customer requests and the operations performance requirements designated herein, including, opening toll accounts, retrieving toll account information, updating toll account information, updating vehicle information, replenishing toll accounts, changing replenishment sources, managing discounts and loyalty programs, issuing new or replacement transponders and toll account cards, closing toll account, cancelling transponders, establishing and billing post-paid toll account, reversing error charges, refunding charges or remaining balances on closed toll account and assisting customers with troubleshooting and general information needs.

Any amounts incorrectly charged to any customer account shall remain the property of WDBA and shall be deposited by Project Co to WDBA's account and any such amounts incorrectly charged to any customer account shall be refunded to such customer by Project Co from its own funds.

When a customer requests to close their account, the account shall be queued for closure immediately, cancelling any account cards or transponders. The customer shall be informed that these cancellations and final account closure will take effect in no longer than 1 hour, and any toll charges incurred during this 1 hour shall revoke the account closure. Account with an outstanding balance must have approved payment processed prior to closure.

Refunds for closed pre-paid accounts shall be processed after this 1-hour period. Project Co shall issue cheques to customers for pre-paid balances above a set amount to be determined by WDBA.

If by error there are any further charges to a closed account, they will be the responsibility of Project Co.

If a customer reports a transponder as stolen or lost, the transponder shall be marked as invalid immediately. If by error there are any further charges to that account, they shall be reimbursed to the customer and they will be the responsibility of Project Co.

Project Co shall develop and implement, based on WDBA directions, loyalty programs and toll discount initiatives to promote transponder penetration rate and customer registration to pre-paid toll account with auto-replenishment. All programs and initiatives shall be approved by WDBA.

(f) *Transaction Auditing*

Project Co shall perform transaction audit (described below) using the Video Audit Application on a daily basis in several cases, including:

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- (i) review of disputed transactions with customers;
- (ii) review "Failure to Pay" transactions;
- (iii) review toll collector class overrides and/or exemptions;
- (iv) investigate system operations or abnormal occurrences;
- (v) verify findings in a performance report; and
- (vi) conduct sample audits to calculate the Tolling Infrastructure accuracy performance.

A transaction audit shall allow authorized customer service centre staff to modify transaction parameters to change the financial aspects of the transaction, such as:

- (A) change vehicle class and process a change in payment (for card or account transactions)
- (B) designate a transaction as "non-revenue" (exempt)
- (C) refund a card payment.

"Failure to Pay" transactions shall be monitored in accordance with the allotted deadline for payment noted on the customer payment instructions. If payment is not received by this deadline, customer service centre staff shall be prompted by the tolling system to generate additional correspondence warning the customer of the unpaid tolls and the potential consequences.

The threshold dollar amount for initiation of collection activities shall be set out by WDBA in the toll rate structure.

(g) *Unpaid Tolls and Collection*

All unpaid transactions, whether from a "Failure to Pay" case at the toll lane or from unpaid invoices from a postpaid account shall be monitored in accordance with the allotted time for payment set to be 30 days. If payment is not received 30 days after payment due date, customer service centre staff shall be prompted by the tolling system to generate additional correspondence reminding the customer of the unpaid tolls.

If payment is not received 60 days after payment due date, customer service centre staff shall:

- (i) send a second notice warning the customer of the potential consequences of unpaid tolls ;
- (ii) within 15 days compile and submit to WDBA an evidence package that will include photo evidence and detailed system information for the transaction or transactions belonging to the violating vehicles; and
- (iii) within 30 days set the corresponding transponders status to invalid.

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WDBA will be responsible for external collection of unpaid tolls and accounts. The threshold dollar amount for initiation of collection activities shall be set out by WDBA in the toll rate structure.

An evidence package shall also be compiled and submitted to WDBA in cases of damage to WDBA property resulting from vehicle or customer behaviour.

At the request of WDBA, Project Co shall refuse passage to any specified vehicle. This would apply in the case of a vehicle who has failed to pay in multiple occasions or postpaid account customers with unpaid tolls for longer than 90 days.

(h) *Customer Interaction Records*

Project Co shall maintain a written electronic record of all customer interactions with the Customer Service subsystem via all channels to form a complete history of account information. Phone calls to the customer service centre shall be recorded and retained as audio.

In cases where customers contact Project Co directly through mail or fax, these documents shall be scanned and processed into the customer account history records.

#### 4.7 **Transponder Management**

(a) *Transponder and Card Inventory*

Project Co shall be responsible to maintain appropriate levels of inventory for Transponders and toll account cards, such that they are always available for distribution to customers within 3 Business Days of receipt of a completed registration package from the requesting customer. Project Co shall be responsible for preparing a proposed procurement or purchase package for Transponders that shall be submitted for WDBA approval. The procurement or purchase package shall include all documentation satisfactory to WDBA documents supporting the proposed purchase of Transponders including vendors' quotes and proposed quantities. Project Co shall classify transponders costs as pass-through costs in accordance with Schedule 25. [*Payment Mechanism (OMR)*]

The Tolling Infrastructure shall accurately track and report the location and distribution of all transponders and cards.

Project Co shall take a weekly physical count of transponder and card inventory, and shall be responsible for inventory reconciliation every week, and when inventory is received, or transferred to and from locations. Inventory reports shall include minimum order levels. Project Co shall submit an annual reconciliation of the transponder inventory in addition to the history of each transponder. Project Co shall be responsible for the cost of any missing transponders. Inventory reports will be subject to WDBA audit.

(b) *Transponder and Card Distribution and Activation*

Project Co shall facilitate the distribution of Transponders and toll account cards to registering customers through the mail, or in-person through the mobile customer service subsystem, when deployed. Customers will receive their first transponder per vehicle free of charge and a maximum of 1 free replacement per year.

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Pre-paid toll account holders that have received transponders and/or toll account cards through the mail will be required to contact the customer service centre or use the Customer Webpages to activate them prior to use. Toll account cards and Transponders issued in-person shall be active and allow immediate use.

Post-paid toll account holders, if approved by WDBA, will be required to provide additional details and financial guarantees such as posting a bond or letter of credit.

Project Co shall keep transponder and card kits in inventory and include them with Transponders and toll account cards distributed. The kits shall include read prevention bags, Bridge maps, mounting instructions, terms and conditions, marketing and branding logo mailer.

Transponder kits shall include a paper pullout card with the transponder or ID, to be used by the customer to identify the tag when contacting customer service.

Project Co shall be responsible for maintaining an adequate inventory of Transponder and card kits.

Notwithstanding any other provision in this Agreement, the cost to Project Co of providing and distributing by mail transponders and toll account cards to customers shall be reimbursed by WDBA to Project Co as a pass-through cost on a monthly basis.

#### **4.8 Interoperability**

WDBA may, at a future date, form interoperability agreements with other toll agencies, and Project Co shall be required to accommodate the resulting operational interoperability processes. These operational interoperability processes will be considered a WDBA Change.

If so established, Project Co shall perform all processing of interoperable transactions including final settlement. The Customer Service Centre shall service toll account customers in their use of other toll authorities' facilities to the greatest extent possible as well as fully support "away" customers using the Tolling Infrastructure.

The Tolling Infrastructure shall be able to process toll transactions and financial transactions in the same way for both WDBA customers and interoperable customers so that both customer groups have similar customer experience.

#### **4.9 Financial Operations**

##### **(a) Revenue Management**

Project Co shall operate and administer all aspects of revenue collection and reconciliation for tolls paid by customers on behalf of WDBA. All Tolling Revenues are for the account of WDBA and any amounts received by Project Co shall be received in trust and promptly remitted on a daily basis or as otherwise specified by WDBA to the accounts designated by WDBA from time to time. Project Co shall not charge customers any amount for the account of Project Co and shall not collect any amounts from customers other than the Tolling Revenues as established by WDBA pursuant to the Tolling Business Rules or as otherwise expressly directed by WDBA in writing.

All monies paid by a customer via an electronic payment method shall be deposited directly into a WDBA account.

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Project Co's administration of Tolling Revenues on behalf of WDBA shall include administration in respect of cash transactions, card transactions, account transactions and interoperable transactions (if implemented) as they are applied to vehicle transaction generated by the toll lanes, such that each revenue transaction is correlated to a vehicle usage of the Bridge or a customer account.

Revenue sources shall include:

- (i) cash, credit, debit and all other payment card transactions at the toll lane
- (ii) customer account transactions at the toll lane
- (iii) cash, credit and debit transactions as well as all non-real-time financial transaction types described under Section (e) hereof, for pre-paid and post-paid accounts made over the phone, in person, by mail, or online; and
- (iv) money transfers from interoperable agencies, if implemented.

All revenue transactions shall be in either US or Canadian currency. Account transactions and interoperable transactions shall be in the currency of the applicable account.

(b) *Security and PCI Compliance*

All credit card, debit card and all other payment card payment processing in the Tolling Infrastructure, at the toll lane or otherwise, including through the tolling back-office, shall, at a minimum, be Payment Card Industry Data Security Standard ("PCI DSS") compliant.

The payment consoles and tolling back-office database shall comply with all applicable Standards issued by the PCI DSS, and will remain compliant throughout the Term.

All costs associated with PCI compliance including compliance auditing, e-commerce and merchant service costs shall be the responsibility of Project Co throughout the Term.

The Tolling Infrastructure shall provide data security and privacy. Data security and privacy shall be met by a combination of operational and systemic measures. The Tolling Infrastructure shall provide appropriate data security by configuring network firewalls, restricting data access with user roles, encrypting sensitive customer data, and other means necessary to ensure the privacy and security of customer account information (including billing, payment card and bank account data).

(c) *Cash Operations*

All cash operations shall follow the Cash Handling Procedure as described above.

(d) *Manual Operations*

The Tolling Infrastructure shall allow payment of tolls in cash at designated toll lanes staffed by toll collectors. Cash payments will be accepted in US or Canadian funds in either direction of travel. Only one type of fund should be permitted for each cash transaction.

Each toll booth shall include a toll terminal with separate cash trays or drawers for each currency. The toll terminal will maintain independent records in each currency. The cash

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trays or drawers will have locked covers and will be transferred to the money room at the end of each collector's shift.

Project Co shall safeguard cash transfer and deposits and shall provide any necessary or advisable armored car services and other means to secure all cash that is in Project Co custody or control.

(e) *Financial Institutions*

The tolling back-office shall process credit and debit transactions for all major credit cards and financial institutions. At a minimum, MasterCard and Visa credit cards shall be supported.

WDBA will contract directly with a credit card processor of choice to handle the processing of all credit card and debit card transactions. Project Co shall be responsible for providing the system interface based on the specific protocols and requirements of the selected clearinghouse, in compliance with the PCI DSS for all credit card payment processing. WDBA will be responsible for covering payment card transaction fees whether directly to the financial institution or as a reimbursement of Project Co.

The interface to the financial institutions shall enable all real-time (at the toll lane) financial transactions to be processed in near-real-time. Near-real-time is defined as having an authorization code provided within 10 seconds.

For non-real-time financial transactions (i.e. for registered accounts), the Tolling Infrastructure shall accept and process additional types of payments including automated clearing house, money order, cashier's cheque, traveler's cheque, and personal cheque, and shall track those payments and methods of payment, posting them to the appropriate account.

(f) *Account Replenishment*

Customers with pre-paid toll accounts shall be instructed, upon toll account establishment, that for the toll account to remain in good standing, a minimum positive balance must remain in the toll account at all times. Customers shall have the option to replenish the toll account balance to that minimum or above either manually, or by assigning auto-replenishment (by way of credit card, bank account, automatic clearing house or other payment card).

Accounts with no auto-replenishment method may be subject to additional fees or surcharges as outlined in the toll rate structure reflected in the Tolling Business Rules.

The customer service subsystem shall allow customers to make manual replenishment payments to their pre-paid toll accounts with credit cards, debit cards or other payment cards by phone, with a customer service representative, through the interactive voice response, and through the Customer Webpages. It shall be possible to use cheque or money order to make payments by mailing to the customer service centre, or with a customer service representative at a mobile centre customer service subsystem when deployed.

Project Co shall provide system functionality to encourage customers to establish auto-replenishment agreements to pre-paid toll accounts.

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Auto-replenishment agreements shall identify the toll account minimum balance that will trigger an automatic replenishment (which amount may be higher than the minimum balance as prescribed by the toll rate structure), and the method of payment to be used, including the information required to effect such payment. Customers shall have the option to provide a secondary method of auto-replenishment that will be used in case the primary method is declined.

Auto-replenishment of toll accounts shall be processed by the tolling back-office without staff intervention.

In the event the primary method for auto-replenishment on a toll account is declined, a system ticket shall be created to notify, or communicate this occurrence to the toll account holder, through such holder's preferred communication means.

(g) *Invoicing and Statements*

Invoices or statements, as applicable, shall be automatically issued (as a data file) monthly for all toll accounts, pre-paid or post-paid that have exhibited activity.

Customers shall have the option to receive the monthly invoice/statement by e-mail for free, by regular mail for a fee, or not have them sent. Invoices/statements shall also be available to review and print on the Customer Webpages, to registered customers logged into their toll account.

Customers shall also have the option to be notified when an invoice/statement is available on the Customer Webpages. Such notification shall be by text message or e-mail.

All invoices and statements shall include detailed information on transactions per toll account including transaction or trip listing for each transponder on such toll account, along with associated fees and any additional charges such as administrative fees or penalties.

Toll rates and fees shall be outlined in the toll rate structure and reflected in the Tolling Business Rules.

Invoices for post-paid toll account holders shall include information about toll account payment and methods of payment.

(h) *Accounting Standards and Reporting*

Project Co shall operate under Canadian Accounting Principles.

(i) *Reporting*

Project Co will be required to provide reports on a periodic basis as contemplated in Schedule 8 [*Records and Mandatory Reports*], for the duration of the Term. Subjects covered in reports shall include:

- (i) vehicle counts including classifications by date and time for a variety of periods including daily, monthly, quarterly and annually at a minimum;

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- (ii) transaction processing and reconciliation reports which follow vehicle transactions from creation, billing, payment and resolution of any issues and discrepancies;
- (iii) customer service reports which provide quantified reporting of customer service measures. Examples include telephone and e-mail response time, queues, time and number of hand-offs to resolve issues, billing accuracy and error follow up;
- (iv) financial report and flow of funds in all forms;
- (v) lane operations and statistics, including manual operations;
- (vi) as part of the Tolling Activity Report, a tolling performance report to be submitted monthly including data on the Tolling Infrastructure availability, performance, and queuing reports and real-time dashboards to measure availability of toll lanes, equipment performance in terms of errors, queuing and wait time;
- (vii) data backup and retention report to be submitted quarterly;
- (viii) daily lists of active, cancelled and 'gray' transponders (a gray transponder is associated to an account in default but not yet cancelled) for distribution to toll agencies for which an interoperability agreement has been executed;
- (ix) interoperable transaction report, documenting all transactions sent and received from or to interoperable agencies (if implemented);
- (x) Transponder and card reports including location and status for assigned transponders and cards, and inventory status, at various locations; and
- (xi) maintenance reports logging all maintenance activities undertaken, preventive and corrective. The report shall document all failure occurrences, actions taken, and spare part inventory.

Reports shall be submitted to WDBA as required on a daily, weekly, monthly, bimonthly, quarterly, annual or other basis in accordance with the reporting frequency as shall be agreed by WDBA in the Operations Management Plan and all reports shall be in accordance with the requirements set out in Schedule 8 [*Records and Mandatory Reports*] and this Schedule.

WDBA shall review all such reports, reconciliations and findings on a monthly basis at minimum or as required. In the event of a discrepancy or a shortfall between the amount deposited into WDBA's accounts and the amount calculated by the tolling system ("**Revenue Shortfall**") WDBA will set off this Revenue Shortfall against payments owing to Project Co by WDBA.

Notwithstanding reports submitted by Project Co, all data entered or generated in the Tolling Infrastructure shall be retrievable through reports, applications and screens via tools by authorized users at specified remote locations.

Project Co shall provide an enterprise commercial reporting system that shall allow WDBA or authorized users to view, create or edit reports within the Tolling Infrastructure with proper training.

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WDBA or its agent will conduct independent audits no less than once a year throughout the Term.

(j) *Tolling Business Rules*

The Tolling Business Rules shall be updated by Project Co from time to time during the OMR Period and all such updates and changes shall be submitted to WDBA for approval.

## 5. PROJECT DELIVERY

### 5.1 Operations Management Plan

Project Co shall provide a detailed draft operations management plan for approval by WDBA (the approved operations management plan referred to as “**Operations Management Plan**”) no later than 1 year following Financial Close. The draft operations management plan shall be submitted to WDBA as a Review Submittal.

The Operations Management Plan (including the draft thereof) shall include:

- (i) staffing and administration including uniforms for staff;
- (ii) customer management;
- (iii) tolling activities;
- (iv) revenue management and float procedures and amounts;
- (v) tolling system back-office activities;
- (vi) toll collections process;
- (vii) maintenance activities;
- (viii) inventory management;
- (ix) training;
- (x) audit frequency;
- (xi) reporting activities; and
- (xii) security policies (including transfer of money).

WDBA will perform an annual review of the Operations Management Plan to assess its appropriateness with measured performance and the performance requirements.

### 5.2 Training

Project Co shall use a training program for employees, such that those trained employees shall present a positive, professional image. This training program shall be reviewed and approved by WDBA. Employees shall be well-trained before handling customers’ money, customers’ toll accounts, or interacting with customers on the phone, through mail or e-mail.

Staff training program shall be ongoing and continuous.

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Project Co shall provide a detailed draft training plan (“**Training Plan**”) for approval by WDBA no later than 1 year following Financial Close.

The Training Plan (including the draft thereof) shall, among other things:

- (i) outline the training program and address all areas of the Tolling Infrastructure, including technical use of the Tolling Infrastructure, information regarding the Project and customer relations, including dealing with difficult customers and situations
- (ii) provide a list of all training courses planned to be delivered to new and existing staff on the Project
- (iii) describe training facilities, typical training equipment, and provide course outlines for the training program
- (iv) list and describe all user manuals
- (v) describe where and how the customer service centre staff and all other customer service professionals, toll collectors and toll supervisors shall be trained throughout the Term
- (vi) include a list and description of all user roles and access rights for the Tolling Infrastructure, which list shall include all users of the Tolling Infrastructure including WDBA designated representatives
- (vii) provide security awareness training and incorporate security training as required pursuant to Part 5 [*Security*] of Schedule 10 [*Design and Construction Specifications*].

WDBA and/or its representatives shall be invited to observe and participate in all elements of the training.

### **5.3 Human Resources Plan**

Project Co shall provide a draft human resources plan for approval by WDBA no later than 1 year following Financial Close.

It is required that Project Co compensate full-time and part-time employees with competitive, market-based salaries and all normal privileges and guarantees of employment that are afforded to regular and part-time employees holding similar roles and responsibilities.

### **5.4 Marketing and Communication**

Project Co shall make all reasonable efforts to promote the use of the Facility including in particular the use of transponders for the Bridge. Such reasonable efforts shall include managing marketing campaigns and mobile customer service subsystems starting before Substantial Completion, managing loyalty programs, discount programs and others described and in accordance with Schedule 18 [*Communications Protocol*]. Project Co acknowledges that marketing and communication is under the direction of WDBA and that marketing will be done through a collaborative marketing plan.

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## 5.5 List of deliverables

Project Co shall submit the following deliverables described in this Schedule:

Deliverable	Delivery schedule	Section:
Cash Handling Procedure	No later than 1 year following Financial Close	Section 4.4
Lane Assignment Policy	No later than 1 year following Financial Close	Section 4.5
Tolling Business Rules	No later than 1 year following Financial Close	Section 4.9
Operations Management Plan	No later than 1 year following Financial Close	Section 5.1
Training Plan	No later than 1 year following Financial Close	Section 5.2
Human Resources Plan	No later than 1 year following Financial Close	Section 5.3
Internal Control Framework	No later than 1 year following Financial Close	Section 6

## 6. INTERNAL CONTROLS

Project Co shall design effective internal controls over all aspects of accounting and reporting, including:

- (a) cash
- (b) exempt vehicles
- (c) transponders
- (d) account cards
- (e) tolling system (e.g. access, overrides, etc.)
- (f) changes to transaction parameters
- (g) account management
- (h) loyalty programs and toll discount initiatives
- (i) mobile customer service subsystem
- (j) failure to pay transactions
- (k) revenue collection and remittance
- (l) reporting
- (m) tolling system described in Part 22 [*Tolling Infrastructure*] of Schedule 10 [*Design and Construction Specifications*]
- (n) external interfaces
- (o) invoicing

Project Co will submit the proposed internal control framework to WDBA for approval and incorporate any comments from WDBA. Any changes to the internal control framework shall require WDBA approval prior to implementation. Project Co shall implement the approved internal control framework.

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On an annual basis, Project Co will assess and report to WDBA on the design and operating effectiveness of its internal controls.

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Schedule 13 [Tolling Operations]



**SCHEDULE 14****HANDBACK****1. DEFINITIONS**

Unless defined specifically in this Schedule or unless the context otherwise requires, capitalized but other undefined terms in this Schedule shall have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of this Project Agreement.

In this Schedule, the following terms have the meanings set out in this Section 1.

**Expiry Handback Costs** means the level of capital expenditure Project Co has allocated to spend in the same period pursuant to the Financial Model in respect of the performance of Handback Work.

**Final Residual Life Inspections** has the meaning set out in Section 7.8.

**Final Residual Life Inspection Report** or **Final RLIR** has the meaning set out in Section 7.9.

**Handback** means the hand back of the Project Infrastructure by Project Co to WDBA on the Expiry Date.

**Handback Amount** has the meaning set out in Section 7.14(a).

**Handback Escrow Account** means a separate, interest bearing bank account to be held and controlled by a third party to be agreed by WDBA and Project Co, upon commercially reasonable escrow terms acceptable to the parties.

**Handback Plan** has the meaning set out in Section 4.2.

**Handback Procedure** means the procedure to be complied with for the hand back of the Project Infrastructure to WDBA as prescribed by this Schedule.

**Handback Requirements** means the specifications and requirements set out in this Schedule and Schedule 11 [*Operations, Maintenance and Rehabilitation*], including Rehabilitation Work, which are imposed and necessary to for the hand back to WDBA of the Project Infrastructure on the Expiry Date.

**Handback Schedule** has the meaning set out in Section 5.

**Handback Security** means a bond or letter of credit in form and substance satisfactory to WDBA.

**Handback Useful Life** for an Element at the Expiry Date means the period between the Expiry Date and the date that the Element will next require reconstruction, rehabilitation, restoration, renewal, or replacement and applies only to those Elements that are contemplated to require rehabilitation or replacement during the Term.

**Handback Work** means all work required to ensure that the Project Infrastructure is repaired and rehabilitated to meet the Handback Requirements at the Expiry Date as prescribed by this Schedule and Schedule 11 [*Operations, Maintenance and Rehabilitation*] and includes all Rehabilitation Work, design, including the preparation of all construction drawings, final plans and survey plans, and all construction required for the carrying out of such work, including the performance of all project management, quality management, environmental management,

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communications management and other management services and activities required for the carrying out of the foregoing, the supply of all workers and the supply of all other materials, tools, implements, equipment, machinery, vehicles, buildings, structures and other property necessary for or used or to be used in the performance of such work and all other work, services and activities to be provided by Project Co in respect of the foregoing, all as set out and described in the OMR Specifications and any other applicable Project Requirements.

**Handback Work Costs** means the Handback Independent Certifier's estimate of the costs that would be required to perform the Handback Work.

**Handback Work Schedule** has the meaning set out in Section 7.12.

**Initial Residual Life Inspection** has the meaning set out in Section 7.4.

**Initial Residual Life Inspection Report** or **Initial RLIR** has the meaning set out in Section 7.5.

**Pre-Handback Cost Estimate** has the meaning set out in Section 3.5.

**Pre-Handback Escrow Account** means a separate, interest bearing bank account to be held and controlled by a third party to be agreed by WDBA and Project Co, upon commercially reasonable escrow terms acceptable to the parties for the purposes of the Pre-Handback Procedure.

**Pre-Handback Independent Certifier** has the meaning set out in Section 3.2(a).

**Pre-Handback Inspections** has the meaning set out in Section 3.3.

**Pre-Handback Inspection Reports** or **PHIR** has the meaning set out in Section 3.5.

**Pre-Handback Period** means the period starting in Contract Year 20 to 66 months prior to the Expiry Date.

**Pre-Handback Security** means a bond or letter of credit in form and substance satisfactory to WDBA for the purposes of the Pre-Handback Procedure.

**Residual Life** means the residual life for an Element as described in Table 14-2 (*Handback Life Requirements*).

**Residual Life Assessment Report** has the meaning set out in 7.3(c).

**Residual Life Inspections** has the meaning set out in 7.2(a).

**Residual Life Requirement** means for each Element, a Residual Life or Handback Useful Life that, at the Expiry Date, is equal to or exceeds the minimum value set out in Table 14-2, (*Handback Life Requirements*) as determined by the Residual Life Methodology.

**Residual Life Methodology** or **RLM** has the meaning set out in Section 6.1.

**Schedule** means Schedule 14 [*Handback*] of this Project Agreement unless such term clearly refers to another schedule of this Project Agreement or is part of another definition in this Schedule.

**Second Residual Life Inspections** has the meaning set out in Section 7.6.

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**Second Residual Life Inspection Report** or **Second RLIR** has the meaning set out in Section 7.7.

**Useful Life** for an Element means the period following its first installation, or following its last reconstruction, rehabilitation, restoration, renewal, or replacement, until the Element is expected or planned to next require reconstruction, rehabilitation, restoration, renewal, or replacement.

All references to a Section number in this Schedule means a Section number of this Schedule unless such Section number clearly refers to a Section of the body of this Project Agreement or another schedule or part of a schedule of this Project Agreement.

## 2. GENERAL

This Schedule describes the Handback Procedure and certain Handback Requirements.

Project Co will ensure that the Project Infrastructure will be handed back to WDBA on the Expiry Date consistent with Good Industry Practice such that all Elements of the Project Infrastructure within the OMR Limits will comply with the various specifications and requirements, including the Residual Life Requirements set out or referred to in this Schedule.

## 3. PRE-HANDBACK PROCEDURE

### 3.1 General

This Section 3.1 describes the procedure to be undertaken beginning no later than 6 years prior to the start of the Handback Procedure.

### 3.2 Pre-Handback Independent Certifier

- (a) Not less than 11 years prior to the Expiry Date, WDBA and Project Co shall jointly select a suitably qualified and experienced firm meeting the requirements set out in this Section 3.2 as the pre-handback independent certifier (the "**Pre-Handback Independent Certifier**"). The selection and appointment of the Pre-Handback Independent Certifier shall be made in accordance with WDBA's procurement policies then in effect.
- (b) The Pre-Handback Independent Certifier shall carry out inspections of the Project Infrastructure, prepare the reports and carry out the associated tasks described or otherwise pursuant to this Schedule.
- (c) The Pre-Handback Independent Certifier shall at a minimum, have the following qualifications:
  - (i) the Pre-Handback Independent Certifier must be a licensed registered engineering firm in the jurisdiction of the Project Work, qualified in the respective disciplines; and
  - (ii) the Pre-Handback Independent Certifier must not be an Affiliate of Project Co or of WDBA.
- (d) The Pre-Handback Independent Certifier shall be engaged by WDBA and Project Co, pursuant to an agreement satisfactory to WDBA and Project Co, each acting reasonably.
- (e) Project Co and WDBA shall share equally the responsibility for the payment of all fees and costs of the Pre-Handback Independent Certifier, and accordingly, Project Co shall

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reimburse WDBA for 50% of all fees and costs of the Pre-Handback Independent Certifier to a maximum of \$500,000. WDBA shall have the option of deducting Project Co's responsibility for its share of the Pre-Handback Independent Certifier fees and costs from any amounts to be paid by WDBA to Project Co.

- (f) In the event of the Pre-Handback Independent Certifier's engagement being terminated before it fully performs its inspections, WDBA and Project Co shall liaise and cooperate with each other in order to appoint a replacement as soon as reasonably practicable, and in any event within 10 Business Days of the termination of the prior Pre-Handback Independent Certifier's engagement.
- (g) In the event WDBA and Project Co fail to agree upon a Pre-Handback Independent Certifier pursuant to Section 3.2(a) or 3.2(f) of this Schedule by the specified deadline, then the Pre-Handback Independent Certifier shall be selected as follows:
  - (i) each of WDBA and Project Co shall within 22 Business Days thereafter select 3 independent and suitably qualified and experienced persons that would be acceptable to that party as the Pre-Handback Independent Certifier, and shall provide notice thereof to the other party; and
  - (ii) if WDBA and Project Co have both selected a common person, then such common person shall be the Pre-Handback Independent Certifier; or
  - (iii) if WDBA and Project Co have not selected a common person, then the Pre-Handback Independent Certifier shall be selected in accordance with Schedule 23 [*Dispute Resolution Procedure*].

### 3.3 Pre-Handback Inspection Requirements

Pre-handback inspections shall be completed by the Pre-Handback Independent Certifier beginning in Contract Year 20 and each year thereafter until the date of the Initial Handback Inspection (the "**Pre-Handback Inspections**"). The Pre-Handback Independent Certifier shall prepare a draft inspection plan that details the activities that will be undertaken to ensure that the following requirements are met:

- (a) that the Project Infrastructure is in full compliance with the Technical Requirements;
- (b) the Rehabilitation Work as set out in the WDBA accepted OMR Five Year Plan has been performed; and
- (c) Rehabilitation Work as set out in the current OMR Five Year Plan is appropriately scoped and timed to the current condition of each Element.

Project Co shall assist the Pre-Handback Independent Certifier and afford the Pre-Handback Independent Certifier such information as may reasonably be required to complete the Pre-Handback Inspections and the Pre-Handback Inspection Reports.

### 3.4 Pre-Handback Schedule

- (a) The Pre-Handback Inspection shall be performed after WDBA's receipt of the OMR Five Year Plan.
- (b) The Pre-Handback Inspection shall be completed within 2 months after the acceptance of the OMR Five Year Plan and continued annually following the submittal of the OMR Five

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Year Plan. Each Pre-Handback Inspection shall be based off the most current accepted OMR Five Year Plan.

- (c) Each Pre-Handback Inspection Report shall follow within 1 month of the completed inspection.

### 3.5 Pre-Handback Inspection Report

Pre-Handback Inspection reports shall be prepared for each Element scheduled to undergo Rehabilitation Work or has undergone Rehabilitation Work in the previous year as set out in the OMR Five Year Plan and all other information required pursuant to this Schedule (the “**Pre-Handback Inspection Reports**” or “**PHIR**”).

For each Element, the PHIR shall provide the following minimum information:

- (a) a description and location of the completed Rehabilitation Work;
- (b) a description and location of proposed Rehabilitation Work;
- (c) the respective Element's current condition;
- (d) photographs of each Element, including individual component and specific section evaluated to support the assessment of current asset condition;
- (e) confirmation that completed Rehabilitation Work has been constructed in accordance with the Technical Requirements ;
- (f) a list of Elements that the Pre-Handback Independent Certifier considers to meet the Rehabilitation Work as set out in the OMR Five Year Plan;
- (g) a list of Elements including scope, schedule and cost estimate that the Pre-Handback Independent Certifier considers would not continue to meet the Technical Requirements (the “**Pre-Handback Cost Estimate**”); and
- (h) an analysis of the OMR Five Year Plan against the list of recommendations including an allocation of cost in the Financial Model as relevant.

WDBA and Project Co shall review and respond to the PHIR within two months of receipt. Disputes regarding the PHIR shall be resolved pursuant to Section 3.7 below.

### 3.6 Additional Pre-Handback Inspection Reports

Additional PHIR shall be completed for years 2 through 5 of the Pre-Handback Period. Pre-Handback Inspections for years 2 through 5 shall begin no earlier than 11 months from receipt of the previous years PHIR.

### 3.7 Dispute

WDBA or Project Co may dispute a Pre-Handback Inspection Report, in accordance with Schedule 23 [*Dispute Resolution Procedure*].

In the event that a final determination in accordance with Schedule 23 [*Dispute Resolution Procedure*] specifies the Rehabilitation Work and the Rehabilitation Work costs are different than those set out in the applicable Pre-Handback Inspection Report, then such report shall be

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deemed to be amended accordingly and all deductions and payments permitted or required by this Schedule, shall be adjusted accordingly.

### **3.8 Payments to and from Pre-Handback Escrow Account**

- (a) Within 5 Business Days of receipt of the respective PHIR, Project Co shall provide to WDBA the Pre-Handback Security for the difference between the Pre-Handback Annual Cost Estimate and the remainder of the Rehabilitation Payments for the Pre-Handback Period.
- (b) If WDBA determines, based on review of the PHIR, that the Rehabilitation Work has not been completed in accordance with the Technical Requirements, WDBA shall hold back the Rehabilitation Payments for the following Contract Years, until such time that Project Co demonstrates, to the reasonable satisfaction of the Pre-Handback Independent Certifier, that the Rehabilitation Work has been completed in accordance with the Technical Requirements. WDBA will deposit the held back Rehabilitation Payments into the Pre-Handback Escrow Account.
- (c) Project Co may from time to time, but not more than once in any month, make a written request for release of funds from the Pre-Handback Escrow Account or reduction in the amount of the Pre-Handback Security. WDBA shall consider such request within 10 Business Days. If the funds in the Pre-Handback Escrow Account exceed the value of the Pre-Handback Cost Estimate, then WDBA shall pay the excess to Project Co within 10 Business Days, or reduce the Pre-Handback Security as relevant. Project Co shall include with its request all information reasonably required by WDBA to evaluate such request.
- (d) Following the date of any revised PHIR, the Pre-Handback Cost Estimate shall be recalculated and if the amount in the Pre-Handback Escrow Account and the Pre-Handback Security is less than the revised Pre-Handback Cost Estimate, then WDBA will request additional Pre-Handback Security until the end of the Pre-Handback Period.

## **4. HANDBACK WORK**

### **4.1 Handback Requirements**

Project Co shall continue with its operations and maintenance obligations as set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*] throughout the OMR Period, including the activities required to complete all Handback requirements. Project Co shall hand back the Project Infrastructure to WDBA on the Expiry Date having met all of the Handback Requirements, which requirements include:

- (a) that the Project Infrastructure is in full compliance with the Performance Requirements as specified in Schedule 11 [*Operations, Maintenance and Rehabilitation*], including any updates to the Performance Requirements that have been incorporated in line with Good Industry Practice;
- (b) for each Element, the Minimum Performance Criteria is met or exceeded;
- (c) for each Element, the Residual Life Requirement is met or exceeded;
- (d) for each Element as applicable, the Element has a Handback Useful Life on the Expiry Date equal to or exceeding the minimum value set out in Table 14-2, *Handback Life Requirements*;

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- (e) an up to date Maintenance Management System;
- (f) an up to date Asset Information Management System;
- (g) all records and manuals required to be handed over to WDBA have been updated in accordance with the Project Agreement; and
- (h) all as-built drawings, operations and maintenance manuals, users manuals, training manuals, training videos, equipment logs, files, specifications, and software licenses are to be provided.

#### 4.2 Handback Plan

Project Co shall prepare a draft handback plan that contains the methodologies, Handback Schedule, including a draft residual life methodology plan incorporating at a minimum the requirements set out in Section 6 of this Schedule including the Handback Schedule, and activities that will be undertaken or employed to ensure that the Handback Requirements are achieved at the end of the OMR Period. Project Co shall submit the draft handback plan, to WDBA for review and approval no later than 66 months before the anticipated expiration of the OMR Period or earlier termination of the Project Agreement. The approved draft handback plan is herein called the ("**Handback Plan**").

#### 4.3 Residual Life Requirements

- (a) Project Co shall perform all work necessary to meet or exceed the Residual Life Requirements on the Expiry Date.
- (b) Project Co shall facilitate the performance of all Residual Life Inspections by the Handback Independent Certifier as and when required by this Project Agreement, including in respect of all physical Elements within the Project, regardless of whether or not any Handback Work has been performed on a particular Element.
- (c) Within one month following performance of the Final Residual Life Inspection, the Handback Independent Certifier shall provide the findings of the Final Residual Life Inspections, test results, and Residual Life and Handback Useful Life calculations to WDBA and Project Co. Any dispute over the reports and calculations shall be resolved pursuant to Section 7.10.
- (d) On the Expiry Date, Project Co shall certify to WDBA that all physical Elements of the Project Infrastructure comply with their respective Residual Life Requirements.

### 5. HANDBACK SCHEDULE

Project Co shall submit a handback schedule (the "**Handback Schedule**") no later than 66 months before Expiry Date. All planned Handback Work shall be completed 8 months before the Expiry Date. The Handback Schedule shall include and provide for the completion of the following activities:

- (a) dates of major milestones, deliverables and activities to be undertaken by Project Co for the period commencing 66 months prior to and continuing until the Expiry Date according to the requirements of this Schedule; and
- (b) each of the activities listed under the column entitled "Handback Activity" in Table 14-1, *Handback Schedule* during the corresponding specified period in such table.

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**TABLE 14-1  
Handback Schedule**

[REDACTED]

**6. RESIDUAL LIFE METHODOLOGY**

**6.1** No later than 66 months prior to the Expiry Date, the Handback Independent Certifier shall prepare and submit to WDBA and Project Co for approval, acting reasonably, a draft residual life methodology, which shall at a minimum include:

- (a) the inspection requirements and residual life methodology requirements identified in Table 14-2, and the evaluation and calculation criteria to be adopted for the calculation of the Residual Life of all Elements as at the Expiry Date;
- (b) the scope of each Residual Life Inspection; and
- (c) for any Element of the Project Infrastructure for which a required final Residual Life or Handback Useful Life is not specified in Table 14-2, the Element shall have a required final Residual Life or Handback Useful Life equal to the closest analogous element in Table 14-2 or five years, whichever is greater.

Roadway pavement residual life methodologies shall, in addition to the foregoing, meet the following requirements:

- (d) minimum skid number (skid resistance) shall equal 30 and the Pavement Smoothness, IRI Values shall be less than or equal to the values in Table 11-3 (a) *Specified Maximum IRI Values* and Table 11-3 (b) *Specified Maximum IRI Values* as set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*];
- (e) differential settlement of the pavement surface at structure approach embankments shall comply with the requirements Part 4 [*Geotechnical*] of Schedule 10 [*Design and Construction Specifications*];
- (f) the structural capacity of 95% of pavement sections shall be such that a rehabilitation design for 10 years of traffic loading, starting as of the day immediately following the end of the OMR Period, will require no more than a 2-inch asphalt concrete overlay or cost equivalent treatment based upon the pavement type;
- (g) no pavement performance section shall have a calculated Residual Life of less than 5 years; and
- (h) the pavement surface, including lanes and shoulders, shall be free of any evidence of structural weakness, pitting, potholes, ravelling, segregation, scaling, delamination, localized roughness and all other deficiencies.
- (i) The approved residual life methodology is herein called the “**Residual Life Methodology**” or “**RLM**”).

WDBA and Project Co shall review and respond to the RLM proposed by the Handback Independent Certifier within 10 Business Days of receipt of the proposed RLM and may suggest any updates to Residual Life or Handback Useful Life values and the Residual Life Requirements, all of which shall be approved by WDBA. WDBA’s acceptance of the Residual Life Methodology, including updates, scope

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and schedule of Residual Life Inspections is required prior to the commencement of any Residual Life Inspections. Disputes regarding the RLM proposed by the Handback Independent Certifier shall be resolved pursuant to Section 7.10 below.

References in this Project Agreement to Table 14-2, *Handback Life Requirements* means the latest approved version of such table.

## **7. RESIDUAL LIFE INSPECTIONS**

### **7.1 Handback Independent Certifier**

- (a) Not less than 72 months prior to the Expiry Date, WDBA and Project Co shall jointly select a suitably qualified and experienced consultant firm meeting the requirements set out in this Section as the Handback Independent Certifier. The selection and appointment of the Handback Independent Certifier shall be made in accordance with WDBA's procurement policies then in effect.
- (b) The Handback Independent Certifier shall carry out inspections of the Project Infrastructure, prepare the reports and carry out the associated tasks described or otherwise pursuant to this Schedule.
- (c) The Handback Independent Certifier shall at a minimum, have the following qualifications
  - (i) the Handback Independent Certifier must be a licensed registered engineering firm in the jurisdiction of the Project Work, qualified in the respective disciplines; and
  - (ii) the Handback Independent Certifier must not be an Affiliate of Project Co or of WDBA.
- (d) The Handback Independent Certifier shall be engaged by WDBA and Project Co, pursuant to an agreement satisfactory to WDBA and Project Co, each acting reasonably.
- (e) Project Co and WDBA shall share equally the responsibility for the payment of all fees and costs of the Handback Independent Certifier, and accordingly, Project Co shall reimburse WDBA for 50% of all fees and costs of the Handback Independent Certifier to a maximum of \$500,000. WDBA shall have the option of deducting Project Co's responsibility for its share of the Handback Independent Certifier fees and costs from any amounts to be paid by WDBA to Project Co.
- (f) In the event of the Handback Independent Certifier's engagement being terminated before it fully performs its inspections, WDBA and Project Co shall liaise and cooperate with each other in order to appoint a replacement as soon as reasonably practicable, and in any event within 10 Business Days of the termination of the prior Handback Independent Certifier's engagement.
- (g) In the event WDBA and Project Co fail to agree upon a Handback Independent Certifier pursuant to Section 7.1(a) or 7.1(f) of this Schedule by the specified deadline, then the Handback Independent Certifier shall be selected as follows:
  - (i) each of WDBA and Project Co shall within 22 Business Days thereafter select three independent and suitably qualified and experienced persons that would be acceptable to that party as the Handback Independent Certifier, and shall provide notice thereof to the other party; and

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- (ii) if WDBA and Project Co have both selected a common person, then such common person shall be the Handback Independent Certifier; or
- (iii) if WDBA and Project Co have not selected a common person, then the Handback Independent Certifier shall be selected in accordance with Schedule 23 [*Dispute Resolution Procedure*].

## 7.2 Residual Life Inspections

- (a) All inspections, tests and measurements for compliance shall be performed on each Element by the Handback Independent Certifier in accordance with the requirements set out in this Schedule in order to determine each Element's respective Residual Life or Handback Useful Life (the "**Residual Life Inspections**") so that the results are representative of the Elements as a whole within the OMR Limits in accordance with Table 14-2, *Handback Life Requirements*.
- (b) If Project Co fails to arrange for or facilitate the Residual Life Inspection of an Element within the required or relevant time period, WDBA, shall, at the sole expense of Project Co, be entitled to arrange or otherwise facilitate the relevant Residual Life Inspection, following 5 Business Days' written notice to Project Co.
- (c) WDBA and Project Co shall be given the opportunity to witness any Residual Life Inspections and/or tests and shall be provided with a minimum of 10 Business Days' notice prior to the performance of any Residual Life Inspections and/or tests.
- (d) The Handback Independent Certifier shall review all Project Infrastructure inspection reports as the Handback Independent Certifier deems necessary and Project Co shall make such reports in its possession available.
- (e) The Handback Independent Certifier shall be required to deliver to WDBA and to Project Co the applicable RLIR within one month following the completion of a Residual Life Inspection.
- (f) Residual Life Inspections are in addition to all other inspection and reporting requirements and shall not constitute a replacement or substitute for any other inspection and reporting requirement set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].
- (g) Residual Life Inspections of deck wearing surfaces shall include tests necessary to demonstrate all of the following:
  - (i) integrity and ability to provide protection to the underlying structure;
  - (ii) ride quality, skid resistance, and rutting; and
  - (iii) any additional testing required to determine Residual Life according to the type of wearing surface usage.
- (h) Project Co shall provide to WDBA and the Handback Independent Certifier a record of maintenance documentation for each Element of the Project Infrastructure.

Residual Life Inspections shall be repeatable to the level of accuracy defined by the Residual Life Methodology, and shall include a proportion of inspections necessary to verify accuracy as defined by the Residual Life Methodology.

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### 7.3 Residual Life Inspection Report

A Residual Life Inspection Report (“**RLIR**”) shall be prepared for each Residual Life Inspection Element Category (as set out in Table 14-2, *Handback Life Requirements*), and shall contain the individual Residual Life Inspection results for each Element, the Handback Work Costs in respect of such Element and all other information required pursuant to this Schedule. The RLIR shall provide a record of the asset condition of all Elements and components of the Project Infrastructure in accordance with Table 14-2, *Handback Life Requirements*.

Each Residual Life Inspection shall use the results of previous inspections and maintenance records, as applicable, held by the Maintenance Management System. For each Element, the RLIR shall provide the following minimum information:

- (a) a description and location of each Element, with locations identified as follows:
  - (i) for non-fixed point Elements, identified by global positioning system coordinates for beginning and end section limits;
  - (ii) for fixed point Elements such as the Canadian POE Buildings and US POE Buildings, identified by column grid coordinates and floor plan layouts for interior Elements;
- (b) the respective Element’s current condition, and as applicable, and rating in accordance with respective Residual Life Methodology and Residual Life Inspection;
- (c) an assessment of the respective Element’s current Residual Life or Useful Life (the “**Residual Life Assessment Report**”);
- (d) photographs of each Element, including individual component and specific section evaluated to support the assessment of current asset condition;
- (e) calculation of estimated Handback Work Cost for each Element;
- (f) calculation of Residual Life or Handback Useful Life as at the Expiry Date for all Elements; and
- (g) all other information required pursuant to this Schedule.

### 7.4 Initial Residual Life Inspection

Project Co shall in collaboration with WDBA facilitate the initial Residual Life Inspections to occur approximately between 64 and 62 months before the Expiry Date in order to identify and establish the asset condition of all Elements of the Project Infrastructure and verify the extent of the Handback Work required before end of OMR Period (the “**Initial Residual Life Inspection**”).

Initial Residual Life Inspections must be conducted for all Elements set out in Table 14-2, *Handback Life Requirements*.

### 7.5 Initial Residual Life Inspection Report

Within one month following performance of the Initial Residual Life Inspections and in any event not later than 61 months before the end of the OMR Period, the Handback Independent Certifier shall submit to WDBA and Project Co the findings of the inspection (the “**Initial RLIR**”), setting

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out the Initial Residual Life Inspection results and calculation of Residual Life and Handback Useful Life for all Elements as at the Expiry Date.

The Initial RLIR shall also include the following minimum information:

- (a) Initial Residual Life Inspection results of all Elements of the Project Infrastructure as set out in Table 14-2, *Handback Life Requirements*;
- (b) a list of Elements that the Handback Independent Certifier considers to meet or exceed the minimum requirements for Residual Life in accordance with Table 14-2, *Handback Life Requirements* as at the Expiry Date without the need for Handback Work;
- (c) a list of Elements that the Handback Independent Certifier considers would not continue to meet the Performance Requirements in accordance with Schedule 11 [*Operations, Maintenance and Rehabilitation*] and would therefore require repairs, Handback Work, or other remedial action before the end of the OMR Period because their Residual Life would be less than the specified minimum Residual Life in accordance with Table 14-2, *Handback Life Requirements*;
- (d) identification, scope, schedule and cost estimate of all required rehabilitation work to repair Elements that are shown not to meet the Residual Life Requirements following the Initial Residual Life Inspections; and
- (e) load rating analysis for all bridge structure within the OMR Limits.

WDBA and Project Co shall review and respond to the Initial RLIR within two months of receipt of the Initial RLIR and in any event not later than 59 months before the end of OMR Period. Disputes regarding the Initial RLIR shall be resolved pursuant to Section 7.10 below.

## 7.6 Second Residual Life Inspection

Project Co shall arrange for and otherwise facilitate a second round of Residual Life Inspections by the Handback Independent Certifier between 18 and 15 months before the end of the OMR Period (the "**Second Residual Life Inspections**"). The Handback Independent Certifier shall perform the Second Residual Life Inspections of all identified Elements as set out in Table 14-2, *Handback Life Requirements*.

The Second Residual Life Inspection shall be performed for all Elements within the OMR Limits whether or not Handback Work has been undertaken for a particular Element in the period since the Initial Residual Life Inspection.

## 7.7 Second Residual Life Inspection Report

Within one month following performance of the Second Residual Life Inspection, but in any event not later than 14 months before the end of the OMR Period, the Handback Independent Certifier shall submit to WDBA and Project Co the findings of the Second Residual Life Inspection (the "**Second RLIR**"), including the Second Residual Life Inspection results and calculation of Residual Life and Handback Useful Life for all Elements as at the Expiry Date.

The Second RLIR shall also include the following minimum information:

- (a) Second Residual Life Inspection and test results of all Elements of the Project Infrastructure as set out in Table 14-2, *Handback Life Requirements*;

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- (b) a comprehensive summary of all Handback Work or other corrective action undertaken subsequent to the Initial Residual Life Inspection;
- (c) an updated Residual Life Assessment Report for each Project Element;
- (d) updated load rating analysis for all bridge structures within OMR Limits; and
- (e) identification, scope, schedule, and cost estimate of all required remaining work to repair Elements that are shown not to meet the Residual Life Requirements following the Second Residual Life Inspections, and calculated post-corrective-action Handback Useful Life value.

WDBA and Project Co shall review and respond to the Second RLIR within two months of receipt of the Second RLIR, and in any event not later than 12 months before the end of OMR Period. Disputes regarding the Second RLIR shall be resolved pursuant to Section 7.10 below.

## 7.8 Final Residual Life Inspection

The final Residual Life Inspections shall be conducted between six and four months before the end of the OMR Period ("**Final Residual Life Inspections**"). The Handback Independent Certifier shall perform the Final Residual Life Inspections of all identified Elements as set out in Table 14-2, *Handback Life Requirements*.

The Final Residual Life Inspections shall be performed for all Elements within the OMR Limits whether or not Handback Work for a particular Element has been undertaken in the period between the Initial Residual Life Inspections and the Final Residual Life Inspections.

## 7.9 Final Residual Life Inspection Report

Within one month following performance of the Final Residual Life Inspections and in any event not later than three months before the end of the OMR Period, the Handback Independent Certifier shall submit to WDBA and Project Co the findings of the Final Residual Life Inspection (the "**Final RLIR**"), including the Final Residual Life Inspection results and calculation of Residual Life and Handback Useful Life for all Elements as at the Expiry Date.

The Final RLIR shall also include the following minimum information:

- (a) Final Residual Life Inspection and test results of all Elements of the Project Infrastructure as set out in Table 14-2, *Handback Life Requirements*;
- (b) a comprehensive summary of all Handback Work or other corrective action undertaken subsequent to the Initial and Second Residual Life Inspection;
- (c) an updated Residual Life Assessment Report for each Project Infrastructure Element;
- (d) identification, scope, schedule and cost estimate of all required remaining work to repair Elements that are shown not to meet their respective Residual Life Requirements following the Final Residual Life Inspections, and calculated post-corrective action Handback Useful Life value;
- (e) provide for every Element that underwent Handback Work or other corrective action, a cost estimate of the next required rehabilitation work (after the Expiry Date) that will create a Useful Life of the same duration as specified under the column Handback Useful Life in Table 14-2, *Handback Life Requirements*; and

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- (f) provide an operation, maintenance and rehabilitation estimate for the Project Infrastructure for the five year period commencing the day immediately following the Expiry Date.

WDBA and Project Co shall review and respond to the Final RLIR within one month following receipt of the Final RLIR and in any event not later than two months before the end of OMR Period. Disputes regarding the Final RLIR shall be resolved pursuant to Section 7.10 below.

#### **7.10 Dispute**

WDBA or Project Co may dispute an RLIR, including the Handback Work and the Handback Work Costs, in accordance with Schedule 23 [*Dispute Resolution Procedure*]. In the event that a final determination in accordance with Schedule 23 [*Dispute Resolution Procedure*] specifies the Handback Work and the Handback Work Costs are different than those set out in the applicable RLIR, then such RLIR shall be deemed to be amended accordingly and the Handback Work schedule, the Asset Information Management System and the Maintenance Management System shall forthwith be amended or otherwise updated by Project Co, and all deductions and payments permitted or required by this Schedule, shall be adjusted accordingly.

There shall be no extension to Project Co's obligation to meet the Handback Requirements on the Expiry Date as a result of any dispute.

#### **7.11 Handback Work Obligation**

Project Co shall perform the Handback Work in accordance with the Handback Work Schedule developed from the approved Initial RLIR and such Handback Work Schedule shall be updated on an annual basis in accordance with this Schedule; including as a result of the Second RLIR and the Final RLIR. Handback Work identified as required in the Initial RLIR for Elements to meet or exceed Residual Life Requirement values set out in Table 14-2, *Handback Life Requirements* shall be completed no later than 8 months before the end of OMR Period. All other OMR Work shall be completed before the end of OMR Period in accordance with Schedule 11 [*Operations Maintenance and Rehabilitation*].

Project Co shall carry out the Handback Work at its own cost notwithstanding that the actual cost of such Handback Work may be higher than Rehabilitation Payments to be made.

#### **7.12 Handback Work Schedule Leading up to Handback**

Project Co shall prepare a schedule for the Handback Work in accordance with the requirements set out in this Schedule and in Schedule 11 [*Operations, Maintenance and Rehabilitation*] (the "**Handback Work Schedule**").

In addition to any other requirements specified in the Project Agreement, the Handback Work Schedule for each year in the 5-year period leading up to the Expiry Date shall include the following:

- (a) scope of work, schedule, and cost estimate for all Elements not meeting the Residual Life or Handback Useful Life values set out in Table 14-2, *Handback Life Requirements*;
- (b) for all other subsequent Handback Work Schedules other than the initial Handback Work Schedule, an update of all Handback Work performed to date;
- (c) progress status with respect to schedule and completion of scheduled Handback Work;

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- (d) Project Co's calculation of current Residual Life or Useful Life values for each and every Element calculated in accordance with the Residual Life Methodology and taking into account the results of the various Residual Life Inspections in accordance with this Schedule;
- (e) Project Co's calculation of Handback Useful Life taking into account all post-corrective action as at the Expiry Date in accordance with Section 6;
- (f) consideration of winter operations in developing timelines for the Handback Work to be completed, such that schedule extensions shall not be required as a result of weather constraints. Project Co acknowledges that any limitation due to weather constraints shall not be justification for a schedule extension; and
- (g) a cost estimate of the next required Handback Work for each and every Element (after the end of the OMR Period) that will create a Handback Useful Life of the same duration as specified in Table 14-2, *Handback Life Requirements* on the assumption that the labour and other costs for the completion of such Handback Work are equivalent to Project Co's costs to complete such Handback Work.
- (h) Project Co shall review the Initial RLIR and submit the initial Handback Work Schedule to WDBA within one month of receipt of the Initial RLIR, and in any event not later than 58 months before the end of OMR Period. Subsequent Handback Work Schedules shall be updated and submitted to WDBA on an annual basis in accordance with the Handback Schedule.

Project Co shall also update the Asset Information Management System and the Maintenance Management System to include all Handback Work identified in a RLIR not already included in the then-current Asset Information Management System or the Maintenance Management System, as applicable.

Project Co shall, at the request of WDBA or the Handback Independent Certifier provide an update on the progress of the Handback Work (including the scheduled Handback Work) and compliance with the Handback Work Schedule. Project Co shall facilitate any additional inspections by the Handback Independent Certifier from time to time, in addition to the scheduled Second RLIR and Final RLIR to monitor the progress of the Handback Work and in all cases, shall do so upon the request of WDBA.

Following any additional inspection pursuant to this Section 7.12, the Handback Independent Certifier may amend the relevant RLIR and shall deliver such amended RLIR to WDBA and Project Co within 10 Business Days of the additional inspection. Project Co shall make all necessary adjustments to the Handback Work Schedule, the Asset Information Management System and the Maintenance Management System. Any dispute in respect of the amended RLIR shall be resolved pursuant to Section 7.10 above.

### **7.13 Residual Life and Handback Useful Life Requirements**

- (a) Where a value for Residual Life at Handback is specified in Table 14-2, *Handback Life Requirements*, the Residual Life at Handback shall be equal to or greater than the period set out for each Element, as applicable.
- (b) Where a value for Handback Useful Life is specified in Table 14-2, *Handback Life Requirements*, the Handback Useful Life at the end of the OMR Period for the applicable Element based on its last reconstruction, rehabilitation, restoration, renewal, or

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replacement shall be equal to or greater than the period set out in the column entitled "Handback Useful Life" at Handback.

- (c) Where no value for the Handback Useful Life is specified in Table 14-2, *Handback Life Requirements* for an Element but where such Element prematurely reaches its Residual Life and requires reconstruction, rehabilitation, restoration, renewal, or replacement before the end of the OMR Period, the value for the Handback Useful Life of such Element shall be deemed to be equal to or greater than the value set out originally in the column entitled "Residual Life" at Handback.

#### 7.14 Payments to and from Handback Escrow Account

- (a) Following receipt of a RLIR, for the purposes of Section 7.14(b) below, WDBA and Project Co shall review the amount of the Handback Work Costs and the Expiry Handback Costs. Where the Handback Work Costs are greater than the Expiry Handback Costs, the difference between the Handback Work Costs and the Expiry Handback Costs shall be apportioned equally over the remaining Contract Months, from the date of the relevant RLIR to the Expiry Date (each such monthly instalment being the ("**Handback Amount**"). If the applicable RLIR is delivered after the date for delivery hereunder, then the first instalment to be paid shall also include the amounts to be paid under the instalments that would have been payable prior to the date the RLIR is delivered. Where the Handback Work Costs are amended pursuant to the Second RLIR, the Final RLIR or Section 7.10, the Parties agree that the Handback Amount shall be adjusted accordingly.
- (b) Subject to Sections 7.14(c) and 7.14(d) of this Schedule, WDBA may deduct the Handback Amount from each Monthly Payment, and pay into the Handback Escrow Account, the Handback Amount. If in any Contract Month, the Handback Amount is greater than the relevant Monthly Payment, WDBA may deduct the difference between the Handback Amount and the Monthly Payment from the next Monthly Payment or from such other Contract Month as may be agreed between WDBA and Project Co.
- (c) WDBA shall not deduct any amount from a Monthly Payment as contemplated in Section 7.14(b) of this Schedule if, at such time, the funds in the Handback Escrow 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.
- (d) Project Co may from time to time, but not more often than once in any month, make written request for release of funds from the Handback Escrow Account. WDBA shall consider such request within 10 Business Days and if the funds in the Handback Escrow 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 WDBA shall pay the excess to Project Co from the Handback Escrow Account within 10 Business Days thereafter, together with any interest that has accrued on such amount. Project Co shall include with its request all information reasonably required by WDBA to evaluate such request.
- (e) Following the date of any revised RLIR, the Handback Amount shall be recalculated and if the amount in the Handback Escrow Account (being the deductions of the Handback Amount made since the Initial RLIR) together with the deductions scheduled to be made from the remaining Monthly Payments in accordance with Section 7.14(b) (and in accordance with any previous application of this Section 7.14(e)) is less than the revised Handback Amount, then WDBA may deduct such shortfall, in equal instalments, from each remaining Monthly Payment until the Expiry Date, and pay each instalment into the

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Handback Escrow Account and Section 7.14(d) of this Schedule shall continue to apply until the Expiry Date.

- (f) As an alternative to the deductions permitted by this Section 7.14 of this Schedule or the retention of any amount in the Handback Escrow Account pursuant to the foregoing provisions of this Section 7.14 of this Schedule, Project Co may (and if, at any time, the amounts which WDBA is permitted to deduct pursuant to this Schedule is greater than the remaining Rehabilitation Payments to be paid, Project Co shall, within 5 Business Days of a written request from WDBA, provide the Handback Security in favour of WDBA in an amount equal to the amounts which WDBA is permitted to deduct pursuant to this Schedule, in a form and from a surety or bank, as applicable, acceptable to WDBA. If the Handback Security is provided in the form of a letter of credit, such letter of credit shall be in a form acceptable to WDBA, acting reasonably.
- (g) If the Final RLIR identifies any Handback Work remaining to be completed, WDBA may withdraw from the Handback Escrow Account or draw upon the Handback Security an amount equal to such Handback Work Costs, and WDBA shall pay any remaining funds in the Handback Escrow Account (including any interest accrued) to Project Co and return any remaining Handback Security to Project Co.
- (h) Provided that the funds in the Handback Escrow Account and/or the Handback Security is adequate to meet Project Co's obligations in respect of the Handback Work identified in the Final RLIR, following any withdrawal from the Handback Escrow Account or draw upon the Handback Security in accordance with Section 7.14(g) of this Schedule, Project Co shall have no further liability with respect to such Handback Work.
- (i) If no Handback Work is identified in the Final RLIR, WDBA shall, within 20 Business Days of receipt by WDBA of the Final RLIR, pay the funds in the Handback Escrow Account (including any interest accrued) to Project Co and return the Handback Security to Project Co, unless WDBA disputes the Final RLIR, in which case the Handback Escrow Account and Handback Security shall be dealt with as determined in accordance with Schedule 23 [*Dispute Resolution Procedure*].

## **8. PROJECT CO NOT RELIEVED OF OBLIGATIONS**

### **8.1 Notwithstanding:**

- (a) any agreement of WDBA to the Handback Work or Handback Security;
- (b) any participation of WDBA in any inspection under this Schedule; and
- (c) the complete or partial carrying out of the Handback Work.
- (d) Project Co shall not be relieved or absolved from any obligation to conduct any other inspection or to perform any other works to the extent otherwise required by this Project Agreement.

### **TABLE 14-2 Handback Life Requirements**

**[REDACTED]**

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**SCHEDULE 15**

**MICHIGAN INTERCHANGE DESIGN AND CONSTRUCTION SPECIFICATIONS**

**[REDACTED]**

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Schedule 15 [Michigan Interchange Design and Construction Specifications]

**SCHEDULE 16**

**ENVIRONMENTAL**

**[REDACTED]**

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**SCHEDULE 17**

**UTILITIES REQUIREMENTS**

**[REDACTED]**

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**SCHEDULE 18****COMMUNICATIONS PROTOCOL****1. DEFINITIONS**

Unless defined specifically in this Schedule or unless the context otherwise requires, capitalized but otherwise undefined terms in this Schedule shall have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of this Project Agreement.

In this Schedule, the following terms have the meanings set out in this Section 1.

**Additional Communications Plans** has the meaning set out in Section 3.2(h).

**Annual Community Outreach Plan** has the meaning set out in Section 3.2(f)(i).

**Annual Consultation Plan** has the meaning set out in Section 3.2(a)(i).

**Annual Media Relations Plan** has (i) during the DB Period, the meaning set out in Section 3.2(d)(i), and (ii) during the OMR Period, the meaning set out in Section 4.1(d).

**Annual Public Inquiries/Complaints Management Protocol** has (i) during the DB Period, the meaning set out in Section 3.2(g), and (ii) during the OMR Period, the meaning set out in Section 4.1(e).

**Annual Social Media Plan** has (i) during the DB Period, the meaning set out in Section 3.2(b)(i), and (ii) during the OMR Period, the meaning set out in Section 4.1(b).

**Annual Stakeholder Relations Plan** has the meaning set out in Section 3.2(e)(i).

**Annual Traffic Management Communications Plan** has (i) during the DB Period, the meaning set out in Section 3.2(c)(i), and (ii) during the OMR Period, the meaning set out in Section 4.1(c).

**Communications Committee** means a committee, which meets on a weekly basis, composed of each of WDBA's and Project Co's Primary Contact Person, and other communications staff from WDBA and Project Co as required.

**Communications Plans** means (i) during the DB Period the Annual Consultation Plan, Consultation Event-specific Communications Plans, Annual Social Media Plan, Social Media Event-Specific Communications Plans, Annual Traffic Management Communications Plan, Individual Traffic Event-specific Communications Plans, Annual Media Relations Plan, Media Event-Specific Communications Plans, Annual Stakeholder Relations Plan, Stakeholder Relations Event-Specific Communications Plans, Annual Community Outreach Plan, Community Outreach Event-specific Communications Plans and Annual Public Inquiries/Complaints Management Protocol; and (ii) during the OMR Period the Marketing Communications Plan, Annual Social Media Plan, Social Media Event-specific Communications Plans, Annual Traffic Management Communications Plan, Individual Traffic Event-specific Communications Plans, Annual Media Relations Plan, and Annual Public Inquiries/Complaints Management Protocol.

**Community Outreach Event-specific Communications Plans** has the meaning set out in Section 3.2(f)(ii).

**Consultation Event-specific Communications Plans** has the meaning set out in Section 3.2(a)(ii).

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**Customer Service Protocol** is a protocol developed by WDBA in conjunction with Project Co as part of the Annual Public Inquiries/Complaints Management Protocol, that establishes practices and procedures for handling consumer inquiries, issues and concerns.

**Crisis Communications Plan** has (i) during the DB Period, the meaning set out in Section 3.12, and (ii) during the OMR Period, the meaning set out in Section 4.5(a).

**Identifying Signage** has the meaning set out in Section 3.11(a).

**Individual Traffic Event-specific Communications Plans** has (i) during the DB Period, the meaning set out in Section 3.2(c)(ii), and (ii) during the OMR Period, the meaning set out in Section 4.1(c).

**Infrastructure Component Consultation Period** has the meaning set out in Section 3.8(b).

**Lead Communications, Community Liaison and Consultation Manager** means the specific individual filling the role of “Lead Communications, Community Liaison and Consultation Manager” as identified in Schedule 3 [*Key Individuals*].

**Marketing Communications Plan** is a plan developed by WDBA that identifies strategies for attracting and retaining users during the OMR Period, and includes the requirements outlined in Section 4.1(a).

**Media Event-specific Communications Plans** has the meaning set out in Section 3.2(d)(ii).

**Media Relations Protocol** is a protocol developed by WDBA that sets out steps and timelines for responding to media inquiries.

**Primary Contact Person** has (i) during the DB Period, the meaning set out in Section 3.4(a)(i), and refers to the individuals identified in Section 3.4(a)(v), and (ii) during the OMR Period, the meaning set out in Section 4.2(a) and refers to the individuals identified in Section 4.2(c).

**Project Social Media** means social media created by WDBA and used solely for the purpose of communicating information related to the Project.

**Project Website** has the meaning set out in Section 2.3.

**Public Announcement** means public events, television appearances, media interviews, and media releases, which includes website content or content for marketing purposes.

**Public Information Office** means office space occupied by WDBA for the purpose of providing the public with access to information about the Project.

**Schedule** means Schedule 18 [*Communications Protocol*] of the Project Agreement, unless such term clearly refers to another schedule of this Project Agreement.

**Social Media Event-specific Communications Plans** has (i) during the DB Period, the meaning set out in Section 3.2(b)(ii), and (ii) during the OMR Period, the meaning set out in Section 4.1(b).

**Social Media Usage Protocol** is a protocol developed by WDBA with respect to social media usage.

**Stakeholder Groups** has the meaning set out in Section 3.6.

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**Stakeholder Relations Event-specific Communications Plans** has the meaning set out in Section 3.2(e)(ii).

**Strategic Communications Plan** has (i) during the DB Period, the meaning set out in Section 3.1(b), and (ii) during the OMR Period, the meaning set out in Section 4.1.

All references to a Section number in this Schedule means a Section number of this Schedule unless such Section number clearly refers to a Section of the body of this Project Agreement or of another schedule or part of a schedule of this Project Agreement.

## 2. GENERAL

### 2.1 Conflicts

Unless otherwise directed by WDBA, any time period for which the DB Period and OMR Period overlap, the requirements for the DB Period, as set out in this Schedule, shall govern.

### 2.2 Principles

The following principles shall be reflected in all communications and consultation activities undertaken pursuant to this Schedule.

- (a) WDBA shall be responsible for all communications on the Project, strategically planning and directing communications deliverables, leading the production of communications deliverables and overseeing and approving communications activities undertaken by Project Co.
- (b) WDBA and Project Co shall include and comply with all the requirements outlined in the Project Agreement and its schedules, including but not limited to Schedule 6 [*Project Management*], Schedule 10 [*Design and Construction Specifications*], Schedule 12 [*Operational Traffic Management*], Schedule 16 [*Environmental*], and Schedule 36 [*Community Benefits*] when undertaking communications and consultation activities.
- (c) Project Co shall collaborate with WDBA to meet communications and consultation requirements set out in this Schedule throughout the Term. WDBA will coordinate communications with the Michigan Parties as set out in the Crossing Agreement.
- (d) WDBA shall develop a Strategic Communications Plan that clearly outlines the roles and responsibilities of WDBA and Project Co during the DB Period and OMR Period.
- (e) Project Co and WDBA shall develop a Crisis Communications Plan that positions WDBA and Project Co to manage communications relating to crises as quickly and as seamlessly as possible, and which coordinates with the Emergency Response Plan, as referred to in Part 6 [*Traffic Analysis*] of Schedule 10 [*Design and Construction Specifications*].
- (f) The *Bridge to Strengthen Trade Act* includes requirements to set out a process for consulting the public with respect to the construction and that this process be filed with the Minister along with the plan that includes all measures to be taken to mitigate any adverse environmental effects caused by the construction. Project Co shall ensure that this process is delivered in a manner consistent with Schedule 16 [*Environmental*].
- (g) WDBA and Project Co shall consult and cooperate to the extent reasonably possible and in a manner consistent with this Schedule.

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- (h) Unless otherwise indicated, the requirements with respect to communications and consultations set out in this Schedule shall apply throughout the Term.
- (i) Project Co shall make required information available to WDBA within the desired timeframe.
- (j) All communications with the public in Canada shall be in accordance with the *Official Languages Act* and issued in both official languages (English and French) and the *Ontarians with Disabilities Act*. All communications with the public in the US shall be in accordance with the requirements of Limited English Proficiency under Title VI of the *Civil Rights Act*, and the requirements in the *Americans with Disabilities Act*.
- (k) All communications activities are to be cognizant of the bi-national nature of the Project and address the needs of stakeholders in both Canada and the US.
- (l) Except as may be required or permitted in this Schedule, Project Co shall not make any Public Announcement in relation to the Project without the prior written approval (such approval not to be unreasonably withheld) of WDBA's Primary Contact Person.

### 2.3 Project Website

WDBA shall establish and maintain a website dedicated to the Project ("**Project Website**"). The Project Website shall be the sole website for the Project. Project Co shall provide to WDBA content, information and materials for the Project Website. Such content, information and materials shall be provided within a timeframe mutually agreed upon by WDBA and Project Co.

### 2.4 Disputes

- (a) Without limiting the extent of any provisions governing public disclosure set out in Schedule 23 [*Dispute Resolution Procedure*], no Public Announcement regarding the existence or subject matter of a Dispute shall be made by WDBA or Project Co without the other's prior written consent.
- (b) Any Dispute related to the provision of this Schedule shall be resolved through the Dispute Resolution Procedure. Each of WDBA and Project Co shall be given reasonable opportunity to consider matters, and where information is supplied it shall include or be accompanied by sufficient explanatory and/or other material to enable the information to be properly considered.

## 3. DB PERIOD

### 3.1 Strategic Communications

- (a) Project Co will support WDBA in the delivery of the Strategic Communications Plan and the Communications Plans. Refer to Table 18-3 OMR Period Strategic Communications Plan and Communications Plans Schedule for submission and reporting schedule requirements.
- (b) Within 30 Business Days following Financial Close, WDBA will provide to Project Co a strategic communications plan that sets out how Project Co and WDBA will comply with the communications requirements, as set out in this Schedule, throughout the DB Period ("**Strategic Communications Plan**"). The Strategic Communications Plan will be informed by the communications and stakeholder relations plan submitted with Project Co's response to the RFP, and will serve as an overarching guide for the implementation

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of all communications in relations to the Project. The Strategic Communications Plan will be updated by WDBA on an annual basis.

- (c) WDBA and Project Co shall document the efforts and results of the Strategic Communications Plan in measurable terms to clearly indicate compliance.
- (d) WDBA shall work with Project Co to ensure that the Strategic Communications Plan is configured to meet the following objectives:
  - (i) recognize the national and local importance of the Project;
  - (ii) foster dialogue and the pursuit of shared goals with WDBA and stakeholders;
  - (iii) generate positive awareness of the Project;
  - (iv) proactively inform and engage the public, early and often;
  - (v) provide prompt, accurate, timely and meaningful interactions/responses to the public;
  - (vi) position WDBA and Project Co as an effective and coordinated team that provides a unified voice to the public and media;
  - (vii) consult and/or communicate with the communities about activities related to the Project that will have a direct impact on their daily lives and provide opportunities for input;
  - (viii) address Project-specific concerns among the various stakeholders;
  - (ix) position the Project, WDBA and Project Co as a beneficial partner to the communities; and
  - (x) build on the communications and consultation program carried out during the DRIC Study and reinforce relationships with key stakeholders.
- (e) WDBA, with the support of Project Co, shall ensure that the Strategic Communications Plan addresses the following strategies:
  - (i) utilize a range of communications and outreach tools to provide transparent, consistent and reliable information to stakeholders;
  - (ii) partner with the media to maximize exposure of Project related activities and results;
  - (iii) effectively respond to issues that emerge during the Project;
  - (iv) prepare and distribute Project-related materials in a user friendly format to inform the public and stakeholders through appropriate means;
  - (v) organize and manage meetings and communications with key elected officials, the general public, and representatives from business and special interest groups for the purposes of relationship building and two-way communications;

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- (vi) respond to invitations and seek out opportunities to attend meetings, conferences and other events at which information relating to the Project can be exchanged with the public and Stakeholder Groups;
- (vii) develop, disseminate and display timely, high-quality, innovative, user-friendly, accurate and appropriate community information concerning the Project, including exhibits showing bridge structures, retaining walls, noise walls, fencing, pedestrian bridges, landscaping, aesthetic characteristics and other key features of the Project;
- (viii) consider public and stakeholder input throughout the term and report to the public and stakeholders regarding the manner in which their input shall be used; and
- (ix) coordinate events and tours, when appropriate, of the Site.

### 3.2 Communications Plans

WDBA, with support from Project Co, will develop Communications Plans and, as needed, Additional Communications Plans throughout the DB Period that are guided by and are consistent with the Strategic Communications Plan. All Communications Plans will be updated on an annual basis by WDBA with the support of Project Co, except for the Annual Consultation Plan and the Annual Traffic Management Communications Plan which will be updated by Project Co.

#### (a) Consultation Plans

- (i) Project Co shall prepare an annual plan identifying public and agency consultation/engagement activities that it will conduct during the DB Period ("**Annual Consultation Plan**") to fulfill commitments identified in the environmental approval documents identified in Schedule 16 [*Environmental*], the consultation commitments set out in Schedule 36 [*Community Benefits*], and any other required consultation with third-party stakeholders set out in the Project Agreement, and noting those commitments for which MDOT and/or FHWA will act as lead. The Annual Consultation Plan will identify the type and number of consultation events planned and the strategies to be used. Project Co will be responsible for all promotional (public notices, mail drops) and informational materials (presentations, displays, discussion guides, workbooks, speaking notes, interactive opportunities) for meetings and for posting on the Project Website, meeting venues and layout plans, providing contact information for RSVPs, providing all equipment and supplies necessary to conduct the consultation events, and providing personnel experienced and sufficiently skilled to make professional presentations and answer questions and to staff the event. The Annual Consultation Plan shall be submitted to and approved by WDBA.
- (ii) Project Co shall prepare individual plans for each consultation event ("**Consultation Event-specific Communications Plans**"). All Consultation Event-specific Communications Plans must be submitted and approved by WDBA no less than 30 Business Days before any notice of such a consultation event is sent to the public. WDBA reserves the right to cancel, delay, or modify any public consultation planned by Project Co. All material and messaging prepared by Project Co for a consultation event is subject to approval by WDBA.

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(b) *Social Media Plans*

- (i) WDBA will manage Project Social Media and WDBA shall prepare an annual plan to demonstrate how Project Social Media will be utilized to quickly convey information to stakeholders, media and the public; provide real time information; and engage in two-way dialogue (“**Annual Social Media Plan**”). Social media strategies will be included, as appropriate, in Communications Plans and any Additional Communications Plans. The Annual Social Media Plan will also include a Social Media Usage Protocol.
- (ii) WDBA shall develop and deliver individual written plans for specific social media-based campaigns and communications opportunities (“**Social Media Event-Specific Communications Plans**”).

(c) *Traffic Management Communications Plans*

- (i) Project Co shall prepare an annual plan that identifies approaches to provide proactive, timely, accurate information to third parties, the public and media regarding current and expected traffic conditions within the Site, particularly regarding the location and duration of delays and lane closures associated with the Project Work (“**Annual Traffic Management Communications Plan**”). The Annual Traffic Management Communications Plan shall contemplate information relating to road conditions, applications for any required authorizations, road safety and policing, traffic management measures and incidents. The Annual Traffic Management Communications Plan shall include the traffic management communications requirements in Part 15 [*Traffic Management Construction*] of Schedule 10 [*Design and Construction Specifications*]. Furthermore, the Annual Traffic Management Communications Plan shall include a system of communication with users to ensure they have full and immediate access to information about traveling conditions at all times regarding traffic events. The Annual Traffic Management Communications Plan shall identify communications tools to be employed to notify the public. The Annual Traffic Management Communications Plan shall be submitted to and approved by WDBA.
- (ii) Project Co shall develop and deliver individual written plans for each traffic event that sets out clear timelines for notification, engagement and communications activities (“**Individual Traffic-Event-specific Communications Plans**”). Where practical, Individual Traffic-Event-specific Communications Plans must be submitted to and approved by WDBA no less than 30 Business Days before each traffic event.

(d) *Media Relations Plans*

- (i) WDBA shall prepare an annual plan that identifies approaches to promote ongoing local, national and international media relations and coverage of the Project (“**Annual Media Relations Plan**”). The Annual Media Relations Plan will include a Media Relations Protocol which clearly sets out the approaches to interact with the media and steps and timelines for responding to media inquiries. The Media Relations Protocol will also identify project spokespersons and associated roles.
- (ii) WDBA shall develop and deliver individual written plans for specific media-focused events and opportunities (“**Media Event-Specific Communications Plans**”).

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- (e) *Stakeholder Relations Plans*
- (i) WDBA shall prepare an annual plan that identifies approaches for interaction with Stakeholders Groups ("**Annual Stakeholder Relations Plan**").
- (ii) WDBA shall develop and deliver individual written plans for specific stakeholder-focused events and opportunities ("**Stakeholder Relations Event-Specific Communications Plans**").
- (f) *Community Outreach Plan*
- (i) WDBA shall prepare an annual plan that identifies approaches to encourage two-way communication between WDBA/Project Co and the general public and adjacent communities ("**Annual Community Outreach Plan**"). The Annual Community Outreach Plan will also identify approaches to build partnerships to positively position the Project among the public, provide opportunities where people can easily access project information and where WDBA and Project Co can easily provide the public with information, such as Monthly "Good Neighbour" Meetings. The focus of the Annual Community Outreach Plan is distinct from stakeholder relations and consultation activities.
- (ii) WDBA shall develop and deliver individual written plans for specific community outreach-focused events and opportunities ("**Community Outreach Event-specific Communications Plans**").
- (g) *Public Inquiries/Complaints Management Protocol*
- WDBA in conjunction with Project Co shall prepare an annual protocol that sets out the process for receiving, investigating, addressing and responding to public inquiries as well as key performance indicators, a Customer Service Protocol and an approach to tracking and resolving inquiries and complaints ("**Annual Public Inquiries/Complaints Management Protocol**").
- (h) *Additional Communications Plans*
- WDBA may develop, with the support of Project Co, any additional plans, as needed, throughout the DB Period ("**Additional Communications Plans**").

**Table 18-1**  
**DB Period Strategic Communications Plan and Communications Plans Schedule**

<b>Deliverable</b>	<b>Preparation Timeline/Frequency</b>	<b>Lead Responsibility (Plan Development)</b>
Strategic Communications Plan	Within 30 Business Days of the Commencement Date, reviewed every six months, updated annually	WDBA
Annual Consultation Plan	Within 30 Business Days of the Commencement Date, reviewed every six months, updated annually	Project Co with support from WDBA
Annual Social Media Plan	Within 30 Business Days of the Commencement Date, updated annually	WDBA

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<b>Deliverable</b>	<b>Preparation Timeline/Frequency</b>	<b>Lead Responsibility (Plan Development)</b>
Annual Traffic Management Communications Plan	Within 30 Business Days of the Commencement Date, updated annually	Project Co with support from WDBA
Annual Media Relations Plan	Within 30 Business Days of the Commencement Date, updated annually	WDBA
Annual Stakeholder Relations Plan	Within 30 Business Days of the Commencement Date, updated annually	WDBA
Annual Community Outreach Plan	Within 30 Business Days of the Commencement Date, updated annually	WDBA
Annual Public Inquiries/Complaints Management Protocol	Within 30 Business Days of the Commencement Date, updated annually	WDBA and Project Co
Final Consultation Report	Within 30 Business Days of Substantial Completion	Project Co with support from WDBA
Additional Communications Plans	As needed	To be determined
Crisis Communications Plan	Within 60 Business Days of the Commencement Date, updated annually	Project Co with support from WDBA

### 3.3 Reporting

As required under Schedule 8 [*Records and Mandatory Reports*], Project Co is responsible for reporting information to WDBA in relation to communications, including communications activities of the past month, planned communications activities over the next three months, a summary of corrective actions taken in response to public inquiries and a summary of meetings held during the reporting period.

### 3.4 Communications Personnel and Responsibilities

#### (a) *Primary Contact Person*

- (i) Each of Project Co and WDBA shall identify a person who will be the primary contact for all communications and consultation matters during the DB Period ("**Primary Contact Person**").
- (ii) Project Co's Primary Contact Person shall be the Lead Communications, Community Liaison and Consultation Manager, and shall be the lead for all communications delivered by Project Co as directed by, and developed in collaboration with, WDBA.
- (iii) The Primary Contact Persons shall review the Strategic Communications Plan, the Communications Plans and any Additional Communications Plans to accomplish stated goals and objectives and to meet the changing nature of the Project.

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- (iv) The Primary Contact Persons shall have a direct link to the Construction Manager. The Primary Contact Persons, or their named delegate(s), shall be available 24 hours a day, 7 days a week.
- (v) The Primary Contact Persons shall be as set out below until such time as either WDBA or Project Co notifies the other as to a change in its Primary Contact Person.

**[REDACTED]**

**[REDACTED]**

(b) *Responsibilities*

Project Co shall provide sufficient qualified staffing to effectively implement their responsibilities as set out in this Schedule. These responsibilities include:

- (i) supporting WDBA in the delivery of the Strategic Communications Plan, Communications Plans and any Additional Communications Plans;
- (ii) meeting with WDBA's Primary Contact Person on a weekly basis through the Communications Committee to discuss all aspects of public and stakeholder communications relating to the Project; both Primary Contact Persons will be available as needed to respond to questions and inquiries;
- (iii) responding and reporting to WDBA on communication matters in accordance with agreed timeframes;
- (iv) facilitating communications and information gathering among Project Co for the purpose of contributing to internal and external communications activities;
- (v) reviewing and/or providing information and/or technical materials, as reasonably requested by WDBA, to support communications activities;
- (vi) contributing to public exhibits, audiovisual presentations, websites (including the Project Website), social media and regular updated materials (fact sheets, maps, etc.) as required by WDBA for the purpose of internal and external communications activities;
- (vii) coordinating Project Co spokespeople and subject matter experts for videos, speeches, presentations, events and other external communications activities;
- (viii) supporting WDBA when it undertakes public consultations, and providing the necessary information for such consultations, in addition to assisting in the planning, organizing and carrying out of consultation activities;
- (ix) serving as the primary point of contact between Project Co and the public and stakeholders;
- (x) updating, in collaboration with WDBA, internal and external stakeholders at meetings and through identified communications activities;
- (xi) supporting WDBA in the response to all written and verbal comments or complaints regarding the Project, including liaising with the Construction Manager to implement corrective actions where appropriate;

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- (xii) providing a support function to WDBA, as necessary, by assisting in the organization of, attendance at and participation in communications activities such as public events, stakeholder meetings and community events;
- (xiii) understanding stakeholder perspectives regarding the Project and communicating that information to WDBA for the improvement of the Strategic Communications Plan;
- (xiv) working with WDBA, liaising with key community members in both Canada and the United States who have well-established relationships with the broader communities;
- (xv) representing Project Co and representing the interests of the Project at associated meetings and other formal and informal events and meetings;
- (xvi) collaborating and assisting WDBA with any communications and consultations they may engage in with Indigenous Peoples on matters relating to the Project;
- (xvii) regularly engaging with community working groups in both Canada and the United States;
- (xviii) coordinating with WDBA on all media inquiries as identified in the Media Relations Protocol;
- (xix) providing identified, dedicated media-trained communications contacts and lead media spokesperson with back-up media-trained personnel as required;
- (xx) receiving approval from WDBA prior to any media engagement;
- (xxi) providing the public and media with reasonable access to the Site for events and tours;
- (xxii) providing notification to adjacent residents and businesses in advance of potentially disruptive works;
- (xxiii) holding context sensitive solutions workshops and focus groups, as part of the Annual Consultation Plan; and
- (xxiv) preparing the Final Consultation Report.

Project Co shall be responsible for any costs associated with its role in delivering the communications function for the Project including the costs of providing these services.

### 3.5 Public Information Offices and Hotline

- (a) WDBA will provide a Public Information Office as part of their facilities in Windsor, Ontario and in Delray, Michigan. The Public Information Offices will be open to the public on a part-time basis and their combined hours of operation shall be in accordance with normal business hours Monday to Friday with extended hours of operation until 7:00 pm at least one day of week and from 9:00 am to noon at least one Saturday every month. WDBA may re-evaluate the requirements for office hours depending on use by the public over the DB period.
- (b) WDBA will procure a 1-800 dedicated phone line for the purpose of receiving and answering public inquiries related to the Project. The phone will be answered during

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regular business hours and the option to record a message will be provided during off-business hours.

- (c) WDBA shall prepare the Annual Public Inquiries/Complaints Management Protocol.
- (d) Communication between the public and WDBA/Project Co will be conducted through various means. All interactions will be treated equally and will be handled in accordance with the Annual Public Inquiries/Complaints Management Protocol. All inquiries will be asked to join a contact list that will be maintained by WDBA for purpose of ongoing communications.
- (e) In addition to the requirements set out in Section 3.4, Project Co will perform the following duties:
  - (i) make available a member of Project Co's communications team to support the operation of each Public Information Office at least one day per week;
  - (ii) work within timelines established in the Annual Public Inquiries/Complaints Management Protocol to respond to WDBA requests for responses to inquiries of a technical, operational, or traffic-related nature received through any media;
  - (iii) establish a corrective actions protocol for response to legitimate construction impact related complaints with the goal of gaining positive feedback from the community;
  - (iv) provide project-related materials, such as Project maps, plans and construction updates, for display and distribution at the Public Information Offices as reasonably requested by WDBA;
  - (v) be available to attend face-to-face, community and group meetings during and after hours as required; and
  - (vi) have space accessible, on a regular basis, to host meetings of up to 50 people.
- (f) WDBA, in collaboration with Project Co, shall actively engage, solicit information and feedback and maintain records of all public comments for evaluation, clarification, issues management and documentation purposes throughout the DB Period.

### **3.6 Stakeholder Groups**

The following, together with those listed in Table 18-2, are considered "Stakeholder Groups" of the Project:

- (a) residents adjacent to or in the vicinity of the Project;
- (b) businesses adjacent to, or in the vicinity of the Project in Canada and the US, representative business groups (such as Chambers of Commerce) and businesses impacted by the Project (such as utility companies and railroads), general public travelling within or across the Site;
- (c) general public travelling within or across the Site;
- (d) neighbourhood associations, community groups and other organizations with special interest in the Project;

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Canadian Stakeholders

	Agency	Responsibility
	Canadian Coast Guard	Coastal Waterways

PROVINCIAL	Agency	Responsibility
	Ministry of Transportation Ontario	Ontario Roads/highways including the Rt. Hon. Herb Gray Parkway
	Essex Region Conservation Authority	Environmental
	Ministry of Natural Resources	Environmental
	Ministry of the Environment and Climate Change	Environment

American Stakeholders

	Agency	Responsibility
	Federal Aviation Administration	Obstruction standards/warning light

STATE	Agency	Responsibility
	Michigan Department of Transportation	Transportation Facilities
	Michigan Department of Environmental Quality	Environmental
	Michigan Department of Natural Resources	Environmental
	Michigan State Housing Development Authority	Environmental
State Historic Preservation Office	Environmental	

LOCAL	Agency	Responsibility
	City of Windsor	Local Ordinances
	Associations of Municipalities of Ontario (AOM)	Municipal Issues
	OPG Brighton Beach Power	Power Plant
	West Windsor (Suez) Power Plant	Power Plant
	Hydro One, Keith Transformer Station	Transformer Station
	Windsor Police Services	Enforcement and First Responder
	Utilities and Services Agencies	Utilities and Services
	Walpole Island First Nations	Indigenous Peoples
	Ojibway Nature Centre	Environmental

LOCAL	Agency	Responsibility
	City of Detroit	Local Ordinances
	Detroit Water and Sewerage Department	Utilities and Services
	Southeast Michigan Council of Governments (SEMCOG)	Varies
	Wayne County	Varies
	Southwest Safety Centre, Fire Station #29	Emergency Services
Michigan State Police	Enforcement and First Responder	

PRIVATE	Agency	Responsibility
	Southwest Detroit Community Benefits Coalition	Local Advocacy
	Southwest Detroit Business Association	Local Advocacy
	Community Groups and Members of the Public	Varies
Utilities and Services	Utilities and	

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Canadian Stakeholders

	Agency	Responsibility
PRIVATE	Sandwich BIA	Local Advocacy
	Adjacent Businesses	Affected Business
	Community Groups and Members of the Public	Varies

American Stakeholders

	Agency	Responsibility
		Services
	Trucking Companies	Affected Business

**3.7 Communications Tools**

The Strategic Communications Plan, Communications Plans and any Additional Communications Plans will include a variety of tools to ensure a broad reach to stakeholder groups. Such tools include:

(a) *Events, Outreach, Community Relations*

Small group community meetings, information sessions, or focus groups to explore and clarify specific issues; large group community meetings or information sessions; public participation event or open public meetings; relationship-building visits to key public stakeholders; business, citizen, environmental and municipal working groups; speaking engagements by experts to associations, schools, and other community groups; individual meetings; portable display booths; letters to elected officials.

(b) *Social Media Usage*

Posts videos, photos, apps, direct messaging, advertisements. WDBA will oversee all Project Social Media usage and Project Co shall be responsible for providing content and project spokespersons as requested.

(c) *Print and Electronic Media*

Targeted media releases; meeting with members of media and editorial boards; announcements; on- and off-site media events; briefings and information packages; radio and television interviews; proactive information sharing; the placement of Project-related messages in appropriate media; the development and distribution of public service announcements; paid advertising and news reports; text alerts; real-time media alerts; and preparation of key messages.

(d) *Electronic, Print, Audio/Visual*

Community newsletters; email blasts; door-dropped letters; mailed letters; registered letters; display materials; fact sheets; videos; visual aids such as maps, roll plans, renderings and imaging; 3-D Models; storyboards; and the use of MDOT Portable Changeable Message Sign.

(e) *Websites*

(i) The Project Website shall be a key component of the Strategic Communications Plan and shall be fully updated for the DB Period no later than 60 Business Days following Financial Close.

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- (ii) Community Benefits will be posted on the Project Website.
- (iii) Project Co shall contribute information allowing for the Project Website to be updated on a weekly basis or more frequently, as needed by WDBA, throughout the DB Period, taking due account of developments in relevant technology and software in general use by the public. As part of the update of the Project Website for the DB Period, the Project Website shall include standard features for a significant construction project of this magnitude, as well as:
  - (A) video animation and/or graphical representation of the Project, which is to be developed by Project Co in a manner suitable for and compatible with the Project Website;
  - (B) a multi-media gallery, which shall, at a minimum, include construction photographs showing the evolution of the Site and a time lapse video diary documenting construction of the various Works. Project Co shall allow WDBA photographers access to the Site through an established protocol for this purpose;
  - (C) real-time web-cam footage of construction in various locations within the Site. WDBA reserves the right to install cameras on the Site for the purpose of recording and displaying progress of the Project's construction; and
  - (D) an extensive library of still images and video, captured by Project Co, of each step of the Project's implementation and evolution which shall be made available to WDBA for use in communications materials. WDBA shall own the intellectual property rights of the media products produced by Project Co and will reserve the right to allow a third party to capture images and videos of ongoing activities on the Site.
- (iv) The Project Website shall have the following functionality:
  - (A) notification to affected persons when any potentially disrupting construction activities are expected to occur;
  - (B) provision of publicly available information regarding the results of the Environmental Management and Monitoring Plan;
  - (C) the timely publication of any information to be made available to the public pursuant to this Project Agreement; and
  - (D) posting of public and stakeholder meeting minutes and questions and answers as appropriate.
- (v) Project Co shall be responsible for maintaining webpages related to the Project. Such webpages shall be used to integrate certain information and applications with the Project Website. The content for such webpages shall be of similar look and feel to that of the Project Website and all material developed for such webpages shall be submitted to and approved by WDBA.

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(f) *Announcements and Events*

- (i) It is anticipated that the governments of Canada, the United States and Michigan will issue media statements concerning the Project which will be consistent with the protocols set out in the Project Agreement, but do not involve Project Co.
- (ii) WDBA shall be the lead for Public Announcements, press conferences and other events involving governmental representatives such as milestone achievements or ground-breaking events. Project Co shall play a supporting role for such events and assist in their planning. Project Co shall attend, participate, and provide information and access to the public and media, as needed. These announcements and events include:

*Ground-breaking Ceremony*

Project Co shall participate in a ground-breaking ceremony to mark the beginning of construction of the Project. At a minimum and in accordance with a developed event plan, Project Co shall supply the following elements for the ground-breaking ceremony: site preparation, tents, chairs, stage, podium, sound system, ceremonial shovels, mementos, refreshments, invitations and programs. WDBA will determine the attendees, arrange speakers and will handle execution of the ceremony with support from Project Co. Project Co will work with WDBA to identify the location of the ceremony, assist with parking, logistics and traffic control.

*Grand Opening Ceremony*

Project Co shall participate in a grand opening ceremony to mark the completion of construction and the start of service for the Project. WDBA will determine the timing for the grand opening ceremony. At a minimum and in accordance with a developed event plan, Project Co shall supply the following elements for the grand opening ceremony: site preparation, tents, chairs, stage, podium, sound system, mementos, refreshments, invitations and programs. WDBA will determine the attendees, arrange speakers and will handle execution of the ceremony with support from Project Co. Project Co will work with WDBA to identify the location of the ceremony, assist with parking, logistics and traffic control.

- (iii) Project Co shall host or support a minimum of 40 community events (such as kids' days or neighbourhood barbecues), divided evenly in Canada and the US, throughout the Term aimed at providing communities with opportunities to learn firsthand about the Project and to thank nearby residents for their patience during the DB Period. Events targeting the local community shall include elements such as: construction safety presentations; information on the Project; hands on equipment demonstrations; giveaways; food and refreshments. These events will be identified as part of the Strategic Communications Plan and Project Co will be responsible for planning, advertising and executing the events in coordination with WDBA. Depending on the specifics of the event, Project Co shall be responsible for providing construction equipment, personnel, giveaways, food and refreshments.

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(g) *Notification*

- (i) To maximize public participation, Project Co shall advertise public meetings with the general public with sufficient advance notice using electronic notices, flyers, web postings, and in appropriate media outlets, such as local newspapers and television and radio stations. Project Co shall be solely responsible for costs associated with advertisement related to any consultation Project Co is leading.
- (ii) Project Co shall provide written notification in advance of all construction to residents and businesses adjacent to the Site. Construction includes any activities that may result in noise, dust, impacts to traffic or any other activity that impacts to daily life of residents or business operations. All notification letters shall be posted on the Project Website. Information will also be posted on the Project Website and Project Social Media.

(h) *Changes to Communications Tools*

Changes to Communications tools and approaches may be needed throughout the DB Period to address evolving circumstances, including public reaction to real or perceived impacts of the Project, and the frequency of and detail of information required by Stakeholder Groups.

### 3.8 Public Consultation

In addition to consultation activities to be identified by Project Co through the Annual Consultation Plan, Project Co shall:

- (a) produce three US POE perimeter wall and I-75 pedestrian bridge concepts which are acceptable to WDBA as described in Part 18 [*Landscape Architecture and Urban Design*] of Schedule 10 [*Design and Construction Specifications*] and Appendix 10-17-1 [*Aesthetic Design Guidelines*] and in Project Co's Visual Quality Management Plan, as set out in Schedule 34 [*Proposal*]. Project Co shall then arrange and hold consultation meetings with all applicable local and private Stakeholder Groups in order to provide input into the concepts preferred by the stakeholders. Project Co shall provide meeting materials to adequately convey the concepts being considered. Project Co shall present information on the location, design, material, treatment and dimensions of sound walls that are part of the US project components including a sample panel of the sound wall as part of the consultation process. WDBA will then, in consultation with appropriate agencies, select one perimeter wall and one pedestrian bridge concept for design and construction by Project Co; and
- (b) undertake consultation in accordance with the requirements of Schedule 36 [*Community Benefits*] with the community and relevant authorities, including municipalities, in the six month period commencing on Financial Close and ending on the date that is six months after Financial Close (the "**Infrastructure Component Consultation Period**"). Project Co shall present a final consultation plan to WDBA within 14 days of Financial Close, that will include, at a minimum, the requirements set out in Schedule 36 [*Community Benefits*], and begin consultation within one month of Financial Close.

### 3.9 Consultation Reporting

- (a) Project Co shall record and categorize all comments from consultation activities that it leads or attends with respect to the Project. Project Co shall prepare a summary report,

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which is to be submitted to WDBA within 24 hours of the conclusion of each consultation activity lead or attended by Project Co.

- (b) Project Co shall also prepare a more comprehensive report, which will be submitted to WDBA within two weeks of the conclusion of each consultation activity (for example, a set of workshops) lead or attended by Project Co. At a minimum, the comprehensive report shall include:
  - (i) a complete list of attendees (including their affiliations, telephone numbers, address and email address where collected);
  - (ii) documentation of exhibits, presentations and/or handouts available at the meeting;
  - (iii) documentation of issues discussed and any associated solutions; and
  - (iv) a description of any remaining open issues and action items.
- (c) Where Project Co leads a consultation activity, and where it intends to distribute meeting summaries to the participants of such consultation activities, Project Co shall submit draft versions, for approval by WDBA, prior to distributing final versions of such summaries.
- (d) Project Co shall collaborate with WDBA to prioritize the significance of comments raised through consultation activities and shall establish an internal tracking system to record the responses to such comments.
- (e) The outcomes of any consultation activity, including summaries of discussions, questions and commitments will be recorded and tracked in a database maintained by WDBA. Project Co will have access to such database and shall assist with the recording of information gathered with respect to the outcomes of such consultation activities.

### 3.10 Branding

WDBA will provide approved branding, including a logo, to Project Co as well as accompanying guidelines on all branding elements. Project Co will obtain WDBA approval prior to any use of branding on materials. Any use of the provided logo in concert with Project Co logos must first be approved by WDBA, the terms of which will be set out in a licensing agreement.

### 3.11 Signage

- (a) Project Co, at its expense, shall install, maintain and remove signs identifying Project Co as the Contractor on the Project ("**Identifying Signage**"). This signage shall be placed within the Site. Such signs shall be removed within 10 Business Days following the Completion Date.
- (b) All Identifying Signage installed in Canada must be in compliance with the *Official Languages Act* and is consistent with Part 14 [*Signing and Pavement Marking*] of Schedule 10 [*Design and Construction Specifications*] and Part 7 [*Signing, Pavement Marking, Signalization and Lighting*] of Schedule 15 [*Michigan Interchange Design and Construction Specifications*], which provides additional procedures relating to signage. Identifying Signage must adhere to local by-laws, including those regarding placement and size.

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- (c) Where appropriate, Identifying Signage is to include a look and feel consistent with the overall branding of the Project and include WDBA logo and the Government of Canada wordmark.
- (d) A mock-up of any Identifying Signage must be provided to WDBA Primary Contact Person for approval prior to printing.

### 3.12 Crisis Communications

- (a) Within 60 Business Days of Financial Close, Project Co is responsible for preparing, in collaboration with WDBA, a crisis communications plan that, which will be a strategy to position WDBA and Project Co to manage communications relating to any crises as quickly and as seamlessly as possible ("**Crisis Communications Plan**"). The Crisis Communications Plan shall document how Project Co shall coordinate all actions with WDBA and other stakeholders, including the police, fire, emergency medical services, hospitals, other emergency service providers, and government authorities to provide required information, signs, detour routes, and assist users in distress. The Crisis Communications Plan is to be developed in accordance with the requirements set out in the Project Agreement, including Schedule 6 [*Project Management*] and Schedule 11 [*Operations, Maintenance and Rehabilitation*].
- (b) During a crisis, Project Co will ensure and make available sufficient resources to work effectively with WDBA and proactively manage and perform its communications responsibilities.
- (c) The Crisis Communications Plan shall specify the processes that shall be implemented to ensure timely and appropriate production, collection, distribution, storage, retrieval, and final treatment of information related to the Project. The Crisis Communications Plan will include templated messages and news releases along with detailed timelines for responses and activities.
- (d) A table top exercise to test the functionality of the Crisis Communications Plan shall be undertaken by Project Co within 30 Business Days of completion of the Crisis Communications Plan. Any required adjustments to the Crisis Communications Plan as result of such a test shall be completed by Project Co in the timeframe prescribed by WDBA. A table top exercise must be undertaken on an annual basis as part of the annual review of the Crisis Communications Plan.

## 4. OMR PERIOD

### 4.1 Strategic Communications

The OMR Period shall require distinct strategic approaches to communications. Refer to Table 18-2 for submission and reporting schedule requirements.

#### *Strategic Communications Plan*

WDBA, with the support of Project Co, shall deliver a strategic communications plan for the OMR Period, ("**Strategic Communications Plan**"), which shall meet the following objectives:

- (i) markets the project to users;

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- (ii) provides for various means and methods to communicate toll rates, wait times and other information critical to current and potential users;
- (iii) communicates any activities that may delay users or impact adjacent communities; and
- (iv) positions Project Co and WDBA as good corporate citizens.

#### *Communications Plans*

##### (a) *Marketing Communications Plan*

One year prior to Substantial Completion, WDBA will prepare a marketing communications plan focused on attracting and retaining users ("**Marketing Communications Plan**"). The implementation of the Marketing Communications Plan will commence no less than one year prior to the beginning of the OMR Period. Project Co will take a supporting role in the implementation of the Marketing Communications Plan with WDBA acting as the lead. The Marketing Communications Plan will include:

- (i) the role of customer service standards and key performance indicators in the marketing of the project;
- (ii) the integration of and marketing of toll rates, tiers and toll discounts and loyalty programs;
- (iii) opportunities for community-based partnerships and community outreach to enhance the reputation of the Project and add value to the community;
- (iv) opportunities for partnerships to increase the profitability of the Project (third party revenue opportunities);
- (v) the integration of the approved brand; and
- (vi) the incorporation of the Project Website as a marketing tool and the use of a technology interface for users.

##### (b) *Social Media Plans*

WDBA shall prepare an annual plan that demonstrates how Project Social Media will be utilized to quickly convey information to stakeholders, media and the public and provide real time information ("**Annual Social Media Plan**"). Social media strategies will be included, as appropriate, in Communications Plans. The Annual Social Media Plan will also include a Social Media Usage Protocol.

WDBA shall develop and deliver individual written plans for specific social media-based campaigns and communications opportunities ("**Social Media Event-specific Communications Plans**").

##### (c) *Traffic Management Communications Plans*

Project Co shall prepare an annual plan that identifies approaches to providing proactive, timely, accurate information to third parties, the public and media regarding current and expected traffic conditions within the Site until the end of the OMR Period, particularly regarding the location and duration of delays and lane closures ("**Annual Traffic Management Communications Plan**"). The Annual Traffic Management

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Communications Plan shall contemplate information relating to road conditions, applications for any required authorizations, road safety and policing, traffic management measures and incidents. The Annual Traffic Management Communications Plan shall include the traffic management communications requirements in Schedule 12 [*Operational Traffic Management*]. Furthermore, the Annual Traffic Management Communications Plan shall include a system of communication with users to ensure they have full and immediate access to information about traveling conditions at all times. The Annual Traffic Management Communications Plan shall identify communications tools to be employed to notify the public. The Annual Traffic Management Communications Plan shall be submitted to and approved by WDBA.

Project Co shall develop and deliver individual written plans for each traffic event that is consistent with the Annual Traffic Management Communications Plan and sets out clear timelines for notification, engagement and communications activities (“**Individual Traffic Event-specific Communications Plans**”). Where practical, Individual Traffic-Event-specific Communications Plans must be submitted to and approved by WDBA no less than 30 Business Days before each traffic event.

(d) *Media Relations Plan*

WDBA will deliver an annual media relations plan, which shall include a Media Relations Protocol (“**Annual Media Relations Plan**”).

(e) *Public Inquiries/Complaints Management Protocol*

WDBA in conjunction with Project Co shall prepare an annual protocol that sets out the process for receiving, investigating, addressing and responding to public inquiries, including problem solving (“**Annual Public Inquiries/Complaints Management Protocol**”). The Annual Public Inquiries/Complaints Management Protocol also sets out key performance indicators, a Customer Service Protocol and an approach to tracking and resolving inquiries and complaints.

**Table 18-3**  
**OMR Period Strategic Communications Plan and Communications Plans Schedule**

<b>Section Reference</b>	<b>Deliverable</b>	<b>Preparation Timeline/Frequency</b>	<b>Lead Responsibility (Plan Development)</b>
0	Strategic Communications Plan	Six months prior to Completion Date, updated annually	WDBA
(a)	Marketing Communications Plan	One year prior to the start of OMR Period, updated annually	WDBA with support from Project Co
4.1(b)	Annual Social Media Plan	Six months prior to Completion Date, updated as needed	WDBA
4.1(c)	Annual Traffic Management Communications Plan	Six months prior to Completion Date, updated annually	Project Co with support from WDBA
4.1(d)	Annual Media Relations Plan	Six months prior to Completion Date, updated as needed	WDBA
4.1(e)	Annual Public	Six months prior to	WDBA and Project Co

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Section Reference	Deliverable	Preparation Timeline/Frequency	Lead Responsibility (Plan Development)
	Inquiries/Complaints Management Protocol	Completion Date, updated annually	
4.5(a)	Crisis Communications Plan	Six months prior to Completion Date, updated annually	Project Co with support from WDBA

#### 4.2 Communications Personnel

- (a) Each of Project Co and WDBA shall identify a person who will be the primary contact for all communications and marketing activities during the OMR Period (“**Primary Contact Person**”).
- (b) The Primary Contact Persons shall review the Strategic Communications Plan, the Communications Plans and the Crisis Communications Plan to accomplish stated goals and objectives and to meet the changing nature of the Project.
- (c) The Primary Contact Persons shall be as set out below until such time as either WDBA or Project Co notifies the other as to a change in its Primary Contact Person.

[REDACTED]

[REDACTED]

- (d) Project Co shall provide a sufficient number of qualified communications staff to effectively implement the responsibilities as set out in this Schedule.
- (e) Project Co’s Primary Contact Person and communications staff shall liaise and coordinate efforts with the customer service staff at the customer service centre, as described in Section 4.6 of Schedule 13 [*Tolling Operations*].
- (f) The Primary Contact Persons shall consult and obtain any approvals, as necessary, prior to undertaking any communications or marketing activities that impact the operations or facilities of CBSA or CBP.

#### 4.3 Public Information Office

- (a) WDBA will continue to provide a Public Information Office as part of their facilities during the OMR Period.
- (b) WDBA shall prepare an Annual Public Inquiries/Complaints Management Protocol which will set out performance specifications and identify an approach to recording and tracking inquiries.
- (c) In a manner consistent with Schedule 13 [*Tolling Operations*], Project Co shall maintain a customer service centre to assist customers with any information and toll account operations, such as establishing, updating and cancelling accounts, ordering transponders and toll account cards, reviewing disputed transactions, canceling transponders and making payments to toll accounts. The customer service centre shall be located in Canada, including all call centre equipment and staff. Customers shall be

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able to contact customer service through various channels – phone, e-mail, regular mail, fax, SMS/text, and through the Customer Webpages. In-person services may be provided on an interim basis, via the mobile customer service subsystem.

#### 4.4 Communications Tools

- (a) The Project Website will be updated immediately prior to the OMR Period by WDBA, with the support of Project Co.
- (b) Project Co shall be responsible for maintaining webpages related to the Project. Such webpages shall be used to integrate certain information and applications with the Project Website, including with respect to Customer Webpages. The content for such webpages shall be of similar look and feel to that of the Project Website and all material developed for such webpages shall be submitted to and approved by WDBA.

#### 4.5 Crisis Communications Plan

- (a) Project Co shall prepare, in consultation with WDBA, a crisis communications plan which will position WDBA and Project Co to manage communications relating to crises as quickly and as seamlessly as possible (“**Crisis Communications Plan**”). The Crisis Communications Plan shall be developed in coordination with requirements set out in the Project Agreement, and in particular Schedule 6 [*Project Management*] and Schedule 11 [*Operations, Maintenance and Rehabilitation*].
- (b) The Crisis Communications Plan will document how Project Co will coordinate all actions with WDBA and other stakeholders, such as the police, fire, emergency medical services, hospitals, other emergency service providers, and government authorities to provide required information, signs, detour routes, and assist users in distress.
- (c) The Crisis Communications Plan shall include a list of potential crisis issues that could arise, estimated response times and the established processes of both Project Co and WDBA during a crisis situation. Appropriate agencies will be engaged in the development of the Crisis Communications Plan, including but not limited to: Homeland Security, the CBSA, Transport Canada, Ontario Ministry of Transportation, CBP, USG and MDOT.
- (d) During a crisis situation, Project Co will ensure and make available sufficient resources to work effectively with WDBA and proactively manage and perform its communications responsibilities.
- (e) The Crisis Communications Plan shall also specify the processes that shall be implemented to ensure timely and appropriate generation, collection, distribution, storage, retrieval, and final treatment of information related to the Project. The Crisis Communications Plan will include templated messages and news releases along with detailed timelines for responses and activities.
- (f) A table top exercise to test the functionality of the Crisis Communications Plan must be undertaken by Project Co within 30 Business Days of completion of the Crisis Communications Plan and shall be coordinated with the security exercises specified in Section 4.12(a)(i) of Part 5 [*Security*] of Schedule 10 [*Design and Construction Specifications*]. Any required adjustments to the Crisis Communications Plan as a result of such a test shall be completed by Project Co in the timeframe prescribed by WDBA. A table top exercise must be undertaken on an annual basis as part of the annual review of the Crisis Communications Plan.

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**SCHEDULE 19**

**MATERIAL AGREEMENTS**

**[REDACTED]**

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**SCHEDULE 20****WDBA EARLY WORKS****1. DEFINITIONS**

Unless defined specifically in this Schedule or unless the context otherwise requires, capitalized but otherwise undefined terms in this Schedule shall have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of this Project Agreement.

In this Schedule, the following terms have the meanings set out in this Section 1.

**Amico** means Amico Infrastructures Inc.

**Bridge B1** means the overpass structure of Highway 401 crossing over Ojibway Parkway, the Canadian Perimeter Access Road and the Essex Terminal Railway which connects the end of the Parkway to the Canadian POE.

**WDBA Early Works** has the meaning set out in Section 2.

**WDBA Early Works Contract** has the meaning set out in Section 2.

**Schedule** means this Schedule 20 [*WDBA Early Works*] unless such term clearly refers to another schedule of this Project Agreement.

All references to a Section number in this Schedule means a Section number of this Schedule unless such Section number clearly refers to a Section of the body of this Project Agreement or another Schedule or part of a Schedule of this Project Agreement.

**2. CANADIAN POE SITE EARLY WORKS**

This Schedule sets out the details of the work to be completed to prepare and develop the Site for the construction of the Bridge and the Canadian POE as more fully described herein (the "**WDBA Early Works**").

WDBA Early Works includes:

- (a) work being done to relocate Hydro One (Province of Ontario Hydro Utility) distribution facilities impacted by the Project as well as work being done to relocate Hydro One transmission existing high voltage aerial transmission lines on towers, which cross the Canadian POE at the north side;
- (b) work being done to relocate a West Windsor GDF SUEZ Power Plant aerial lines and a tower to a hydro easement and to the re-aligned Sandwich Street;
- (c) construction of the Canadian Perimeter Access Road, Utility Work and placement of the advanced fill within the Canadian POE pursuant to a request for tender issued in June of 2015, and subsequent contract dated August 28, 2015 between WDBA and Amico for the provision of such WDBA Early Works (the "**WDBA Early Works Contract**");
- (d) work being done to relocate Union Gas distribution mains and transmission mains to the exteriors of the Site, generally relocated onto the Canadian Parameter Access Road;
- (e) work being done by MTO to construct Bridge B1; and
- (f) work being done on TC 15 Lands and TC 16 Lands to remediate soils.

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2.1 The following is a general description of the WDBA Early Works included in the WDBA Early Works Contract.

The construction of 4.3 km of concrete paved road for the Canadian Perimeter Access Road. Construction includes:

- (a) the relocation of Utilities is comprised of the removal and/or abandonment of existing underground and overhead Utilities and works related to new Utility construction;
- (b) the relocation of an existing pump station; and
- (c) advanced fill for the Canadian POE including installation of wick drains and construction of surcharge fill.

2.2 The following is a general description of the WDBA Early Works included in the work being done to relocate Hydro One (Province of Ontario Hydro Utility) distribution facilities impacted by the Project and work being done to relocate Hydro One transmission existing high voltage aerial transmission lines.

- (a) Hydro One Distribution:
  - (i) Relocation of existing distribution underground/overhead to underground duct banks and relocation of towers.
- (b) Hydro One Transmission:
  - (i) Construction of underground duct banks, transmission lines, installation of outdoor terminals, relocation and removal of existing overhead transmission line towers.

2.3 The following is a general description of the WDBA Early Works included in the work being done to relocate Union Gas distribution and transmission mains.

- (a) Construction of new 100mm diameter and 150mm diameter distribution mains; and
- (b) Construction of new 300mm diameter and 500mm diameter transmission mains.

2.4 The following is a general description of the WDBA Early Works included in the work being done by MTO to construct Bridge B1:

- (a) construction of twin structures (three-span structures, four lanes in each direction); and
- (b) construction of the east approach including: retaining walls, illumination, advanced traffic management system and overhead signage.

2.5 The following is a general description of the WDBA Early Works being done to remediate the TC 15 Lands, TC 16 Lands, FKTS Lands, FKTS Easement, and the future pier locations within the Bridge Corridor on TC 16 Lands:

- (a) excavation of contaminated soils and backfill and compaction of imported clean material;
- (b) placement and compaction of contaminated soils along with other organic material in two permanent stockpiles as shown on the design drawings;
- (c) Site grading;

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- (d) construction of a soil cap; and
- (e) decommissioning of monitoring wells.

### 3. PROJECT CO GENERAL RESPONSIBILITY

The design relocation plans for Hydro One transmission and distribution, and/or other WDBA Early Works are subject to change and could affect and cause changes to be made to the WDBA Early Works Contract's issued for construction drawings and other WDBA Early Works drawings. Changes to the WDBA Early Works Contract's issued for construction drawings and other WDBA Early Works drawings will be placed in the Background Information as they become available.

Project Co shall be responsible to coordinate with other constructors for the construction of environmental protection devices as defined in Schedule 16 [*Environmental*]. In order to install effective environmental protection devices, Project Co may be required to modify or replace existing environmental protection devices owned by WDBA or other constructors, with the permission of WDBA.

Project Co shall be responsible to coordinate and schedule Project Work so as not to interfere with any constructor performing WDBA Early Works, and to accommodate such separations of time and space as may be required by Applicable Law. Project Co will have access to the Canadian Lands or portions of the Canadian Lands as described in Schedule 4 [*Lands and Site*].

### 4. WDBA EARLY WORKS BACKGROUND INFORMATION

4.1 WDBA will provide the following information in regards to the WDBA Early Works Contract in the Background Information;

- (a) Engineering Data:
  - (i) issued for Construction drawings;
  - (ii) approvals from the:
    - (A) Ministry of the Environment and Climate Change - Environmental Compliance Approval;
    - (B) Ministry of the Environment and Climate Change - Permit To Take Water;
    - (C) Essex Region Conservation Authority – Development and Alteration to shorelines and Watercourses;
  - (iii) Stormwater Management Design Report; and
  - (iv) Additional geotechnical investigation done for the WDBA Early Works Contract.
- (b) Construction Data:
  - (i) Changes to Issue for Construction Drawings;
  - (ii) Change orders affecting work within the POE footprint - description of changes;
  - (iii) As-built locations and elevations of the Canadian POE services for; sanitary sewer, water, hydro, natural gas and communications;

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- (iv) Subgrade inspection reports;
  - (v) Fill material geotechnical test reports;
  - (vi) Fill settlement reports;
  - (vii) Groundwater quality test reports;
  - (viii) Soil chemistry reports; and
  - (ix) Topographic survey data collected during construction.
- 4.2 WDBA will provide the following information in regards to Hydro One distribution, Hydro One transmission and West Windsor Power Early Work in the Background Information;
- (a) Design drawings; and
  - (b) Geotechnical Investigation Reports.
- 4.3 WDBA will provide the following information in regards to Union Gas Early Work in the Background Information;
- (a) issued for Construction Drawings.
- 4.4 WDBA will provide the following information in regards to Bridge B1 work in the Background Information:
- (a) MTO *Design and Construction Report*; and
  - (b) plan and profile drawings.
- 4.5 WDBA will provide the following information in regards to the remediation to the FKTS Lands;
- (a) Design drawings and tender specifications; and
  - (b) *Future Keith Land and Easement Site End Use Detailed Design Brief*.

## 5. WDBA EARLY WORKS STAKEHOLDERS

**[REDACTED]**

### 5.1 **[REDACTED]:**

- (a) **[REDACTED];**
- (b) **[REDACTED];**
- (c) **[REDACTED];**
- (d) **[REDACTED];**
- (e) **[REDACTED];**
- (f) **[REDACTED];**
- (g) **[REDACTED];**

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- (h) [REDACTED];
- (i) [REDACTED];
- (j) [REDACTED];
- (k) [REDACTED];
- (l) [REDACTED];
- (m) [REDACTED];
- (n) [REDACTED];
- (o) [REDACTED].

5.2 [REDACTED]:

- (a) [REDACTED];
- (b) [REDACTED].

5.3 [REDACTED]:

- (a) [REDACTED];
- (b) [REDACTED];
- (c) [REDACTED];
- (d) [REDACTED];
- (e) [REDACTED];
- (f) [REDACTED];
- (g) [REDACTED];
- (h) [REDACTED];
- (i) [REDACTED];
- (j) [REDACTED];
- (k) [REDACTED].

5.4 [REDACTED]:

- (a) [REDACTED];
- (b) [REDACTED];
- (c) [REDACTED];
- (d) [REDACTED];

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- (e) [REDACTED];
- (f) [REDACTED];
- (g) [REDACTED];
- (h) [REDACTED];
- (i) [REDACTED];
- (j) [REDACTED];
- (k) [REDACTED].

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**SCHEDULE 21**

**CERTIFICATION PROCEDURE**

**[REDACTED]**

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**SCHEDULE 22****CHANGE PROCEDURE****1. DEFINITIONS**

Unless defined specifically in this Schedule or unless the context otherwise requires, capitalized but otherwise undefined terms in this Schedule shall have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of this Project Agreement. Appendix 22-1 APPLICABLE MARGINS forms an integral part of this Schedule.

In this Schedule, the following terms have the meanings set out in this Section 1.

**Cancellation Notice** has the meaning set out in Section 2.7(a)(iii).

**Change Appraisal** has the meaning set out in Section 2.3(a).

**Change Directive** has the meaning set out in Section 2.12(a).

**Change Notice** has the meaning set out in Section 2.2.

**Direct Costs** means the cumulative total, without duplication, of only the following amounts, as paid or incurred by Project Co or each Subcontractor, as applicable, to the extent that they specifically relate to, and are attributable to, a Change for which Project Co is expressly entitled to be paid its Direct Costs and such costs would not otherwise have been incurred:

- (a) the cost of materials, products, supplies and equipment, including those obtained from Subcontractors or from Project Co's general stocks, which must be charged in accordance with the method as used consistently by Project Co in pricing material inventories, and including the rental costs of all tools, machinery and equipment and transportation, installation, dismantling and maintenance costs, which can be specifically identified and measured as having been used or to be used in the performance of the Change and which are so identified and measured consistently by Project Co's cost accounting practices as accepted by WDBA acting reasonably;
- (b) the cost of any re-design, re-work, dismantling existing Project Work or otherwise changing or modifying any Project Work that has already been completed in respect of the Project;
- (c) the costs of the portion of gross wages or salaries (including benefits) incurred for the Project Work (including allowances for small tooling, clothing, protective equipment and other premiums as set by collective bargaining agreements or Applicable Laws (including employment insurance, public health program insurance or workers' compensation)), which can be specifically identified and measured as having been incurred or to be incurred in the performance of the Change and which are so identified and measured consistently by Project Co's cost accounting practices, as accepted by WDBA acting reasonably;
- (d) other costs, not falling within the categories described in clauses (a) and (c) of this definition, but which can be specifically identified and measured as having been incurred or to be incurred in the performance of a Change and which are so identified and measured consistently by Project Co's cost practices as accepted by WDBA acting reasonably, including:

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- (i) deposits lost;
- (ii) amount of all Subcontracts with Subcontractors;
- (iii) charges levied by a Governmental Authority, but excluding fines or penalties not related to the implementation of the Change;
- (iv) the amount paid for design services;
- (v) the costs of quality assurance such as independent inspection and testing services;
- (vi) termination payments which are required under Applicable Law to be paid to employees of Project Co, reasonably and properly incurred by Project Co, arising as a direct result of any Change which reduces the scope of the Project Work, except to the extent that such termination payments are provided for in contracts of employment, agreements or arrangements that were not entered into in the ordinary course of business and on arm's length commercial terms;
- (vii) the cost of financing, including additional financing costs related to any delay caused by the implementation of the Change and any breakage or increased costs incurred on account of any currency hedges which result from the implementation of the Change;
- (viii) the cost of any additional insurance, bonds or other performance security required or approved by WDBA, acting reasonably;
- (ix) the cost of obtaining all Permits, other than WDBA Permits (which shall be the responsibility of WDBA);
- (x) the cost of removal and disposal of contaminants, hazardous substances, waste products and debris for which Project Co is not responsible under the Project Agreement, except to the extent compensation therefor has been paid to Project Co in accordance with Section 16 of the Project Agreement;
- (xi) the reasonable out-of-pocket cost of competitively tendering any contract in relation to the proposed Change that is required by WDBA, including as a result of any Applicable Law or any policy applicable to WDBA;
- (xii) Taxes, but excluding (A) HST, (B) taxes imposed on Project Co or a Subcontractor based on or measured by income or profit or otherwise imposed under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction, (C) capital taxes based on or measured by the capital of Project Co or a Subcontractor, (D) taxes relating to withholdings on any payments by Project Co or a Subcontractor, and (E) taxes relating to any business or activity other than the business or activities related to, and conducted for, the purposes of the Project;
- (xiii) reasonable fees and disbursements of the external legal advisors of Project Co and its Subcontractors; and

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- (xiv) except as otherwise set out in this Schedule 22, a reasonable amount of profit consistent with prevailing market rates that is charged by any Subcontractor other than a Prime Contractor and any entity not at arms-length from Project Co, any Equity Member, or any Prime Contractor,

but excluding Indirect Costs.

**Disputed Change** has the meaning given to it in Section 2.7(a)(i).

**Indirect Costs** means costs incurred by Project Co or a Subcontractor in the performance of the Change, but which cannot be identified and measured as directly applicable to the performance of the Change including:

- (a) the cost of indirect materials and supplies of similar low-value, high-usage items described in clause (a) of the definition of Direct Costs, but for which it is economically expensive to account for in the manner prescribed for Direct Costs;
- (b) indirect labour which is not readily identifiable with respect to the Change;
- (c) fringe benefits (Project Co's or Subcontractor's contribution only);
- (d) public services expenses including expenses of a general nature such as power, heat, light, operation and maintenance of general assets and facilities;
- (e) fixed and/or periodic charges including recurring charges such as property taxes, rentals and reasonable depreciation costs;
- (f) general and administrative expenses including remuneration of executive and corporate officers, office wages and salaries and expenses such as stationery, office supplies, postage and other necessary administration and management expenses;
- (g) selling and marketing expenses associated with the goods, services or both being acquired under this Project Agreement; and
- (h) general research or development expenses, as considered applicable by WDBA, acting reasonably.

**Minor Work** has the meaning set out in Section 4.1(a).

**Project Co Change** means, when initiated by Project Co, a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change (including innovations) in the design, functionality, quality or scope of the Project Work carried out by Project Co or a variation of any Project Requirement, or any other event which, pursuant to the terms of this Agreement, is deemed to constitute a Project Co Change.

**Project Co Change Appraisal** has the meaning set out in Section 3.2(b).

**Refusal Notice** has the meaning given to it in Section 2.5(a).

**Schedule** means this Schedule 22 [*Change Procedure*] unless such term clearly refers to another schedule of this Project Agreement.

**WDBA Change** means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change initiated by WDBA with respect to the design, functionality,

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quality or scope of the Project Work or with respect to any other Project Requirement (including the entering into of a new Material Agreement or any modification to any existing Material Agreement after the Reference Date or any other event which, pursuant to the terms of this Agreement, is deemed to constitute an WDBA Change.

**WDBA Change Confirmation** has the meaning given to it in Section 2.7(a)(ii)

All references in this Schedule to a Section number means a Section number of this Schedule, unless such Section number clearly refers to a Section of the body of this Project Agreement, another schedule or another part of a schedule to this Project Agreement.

## 2. WDBA CHANGES

### 2.1 General

- (a) Subject to the provisions of this Schedule and this Project Agreement, WDBA has the right from time to time, throughout the Term, to ask Project Co to carry out and implement a WDBA Change.
- (b) Project Co shall not be entitled to any payment, compensation or extension of time for a WDBA Change except to the extent provided in a WDBA Change Confirmation issued pursuant to this Schedule or as determined pursuant to the Dispute Resolution Procedure.
- (c) The parties hereby agree that, when a WDBA Change is requested pursuant to Sections 43.4(e) (*Project Co's Entitlements for a Compensation Event*), 43.6(b) (*Project Co's Entitlements for a Relief Event*) or 43.8(b) (*Parties' Entitlements for a Force Majeure Event*) of the body of this Project Agreement, all time periods provided under this Change Procedure shall be abbreviated to the greatest extent reasonably practicable.
- (d) The only payment or compensation payable by WDBA to Project Co in connection with any Change shall be the sum of (i) the Direct Cost of such Change; plus (ii) any applicable margin for overhead calculated in accordance with Appendix 22-1.
- (e) Project Co shall attend and shall cause any relevant Subcontractor to attend any meetings requested by WDBA, acting reasonably, from time to time to discuss the implementation of any Change or Changes generally, including with respect to the administration and pricing of Changes.

### 2.2 Procedure for Requesting a WDBA Change

If WDBA wishes to make or is obligated pursuant to the terms of this Agreement to initiate a WDBA Change or if Project Co gives notice to WDBA of the need for a WDBA Change, WDBA shall send a notice (a "**Change Notice**") to Project Co specifying:

- (a) the nature, extent and full details of the WDBA Change in sufficient detail to reasonably allow Project Co to provide the Change Appraisal referred to in Sections 2.3 and 2.4;
- (b) the desired date of completion of the WDBA Change (which shall be a reasonable date having regard to the nature of the WDBA Change) or, as applicable, the date on which the WDBA Change shall come into effect; and

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- (c) whether WDBA intends to pay Project Co by way of (i) a lump sum payment or (ii) progress payments or (iii) adjustment to the applicable Construction Period Payment or Monthly Payment, or a combination thereof.

### 2.3 Preliminary Estimate and Change Appraisal

- (a) As soon as possible and in any event within 15 Business Days after receipt of a Change Notice, or such other time as the parties agree acting responsibly, Project Co shall deliver to WDBA a detailed breakdown and estimate of labour, equipment, materials, design input and revisions and all other Direct Costs arising as a result of the WDBA Change, schedule impacts (including time impact analysis) and any other information required by WDBA (the “**Change Appraisal**”) prepared in accordance with and meeting the requirements of this Section 2.3 and Section 2.4.
- (b) Unless WDBA requires only specified limited information in the Change Notice (given the circumstances of such WDBA Change), in addition to the information to be provided pursuant to Section 2.3(a), each Change Appraisal shall include a detailed summary of the following items:
  - (i) a detailed description of Project Co’s understanding of the nature and scope of the WDBA Change and changes to the risk profile, including with respect to the cost of the Project and the DB Schedule resulting from the WDBA Change;
  - (ii) the increase or decrease in Capital Expenditures for each relevant Contract Year;
  - (iii) the increase or decrease in Operating Costs for each relevant Contract Year;
  - (iv) if and when applicable, a proposed schedule of payment for the WDBA Change;
  - (v) if and when applicable, a confirmation that the WDBA Change will not affect Project Co’s existing financing and/or currency hedging or that Project Co’s existing financing and currency hedging is adequate to implement the WDBA Change;
  - (vi) if and when applicable, if new or additional financing or changes to Project Co’s currency hedges are required to implement the WDBA Change, an indication as to the availability of such new or additional financing and/or currency hedges and the cost and terms of such new or additional financing and/or currency hedges;
  - (vii) the projected internal rate of return on any additional equity capital required to finance the WDBA Change;
  - (viii) a list of Permits or amendments to existing Permits which must be obtained (including, if any, Permits which could only be obtained by WDBA) before the WDBA Change can be effected or implemented. Project Co shall also include the costs of Permits, provided these costs are not covered by Sections (ii) and 2.3(b)(iii)), and shall present a schedule for obtaining such Permits;
  - (ix) any impact on the Scheduled Substantial Completion Date and any other impact on the DB Schedule, the completion of the DB Work and the completion of any other Project Work;

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- (x) if implementation of such WDBA Change will, in Project Co's opinion, result in a POE Handover not occurring on or before the Scheduled POE Handover Date or Substantial Completion not occurring on or before the Scheduled Substantial Completion Date, a statement by Project Co as to whether it would be practicable to accelerate the DB Work so as to eliminate or mitigate the delay and (if it is so practicable) Project Co's estimate of the costs of such acceleration, provided such costs are not covered by Sections (ii) and 2.3(b)(iii);
- (xi) where Project Co is of the reasonable opinion that implementation of such WDBA Change may result in Project Co being unable to meet the Technical Requirements or any other provision of this Agreement, details of how such an effect can be mitigated and the estimated cost (if any) of doing so, provided such cost is not covered under Sections (ii) and 2.3(b)(iii);
- (xii) where Project Co is of the reasonable opinion that implementation of such WDBA Change requires changes to the Technical Requirements or any other provision of this Project Agreement or any Project Document, a reasonably detailed description of such changes;
- (xiii) a reasonably detailed description of any anticipated adverse or beneficial effect on Project Co's ability to comply with the provisions of this Project Agreement, any Material Agreement or any Project Document to which it is a party or to perform the Project Work and proposals for mitigating such adverse effect;
- (xiv) a description of any further effects (including benefits and impairments) which Project Co foresees as being likely to result from such WDBA Change;
- (xv) reasonable details as to any real or personal rights in respect of lands, which would be required in order to implement such WDBA Change;
- (xvi) Project Co's proposed schedule for the implementation of such WDBA Change;
- (xvii) the impact of such WDBA Change on Project Co's financial structure and the Financial Model including, if applicable, the proposed revised Financial Model which shall include the information identified in Section 33.4(b) (*Update of Financial Model*) of this Project Agreement; and
- (xviii) any other information reasonably required by WDBA for purposes of properly evaluating the Change Appraisal.

## 2.4 Estimate of WDBA Change Costs

- (a) The Change Appraisal prepared by Project Co and submitted to WDBA in accordance with this Schedule shall include an estimate of the costs of implementing such WDBA Change (including the information described in Sections 2.3(b)(ii) and 2.3(b)(iii)), which estimate shall demonstrate to the reasonable satisfaction of WDBA, that:
  - (i) Project Co has used or has obliged each Subcontractor to use all reasonable efforts, including the use of competitive quotations or tenders, to minimize any increase in costs and to maximize any reduction in costs;
  - (ii) except as otherwise set out herein, all costs of Project Co and each Subcontractor are limited to Direct Costs;

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- (iii) Project Co, the Construction Contractor and the Operator shall charge only the margins for overhead as set out in Appendix 22-1 APPLICABLE MARGINS hereto (such margins each calculated on the basis of the applicable Direct Costs so that no margin of Project Co, the Construction Contractor or the Operator is calculated on any other margin of Project Co, the Construction Contractor or the Operator), and no other margins or mark-ups;
  - (iv) the margins for overhead as set out in Appendix 22-1 APPLICABLE MARGINS shall only be chargeable on Direct Costs of Project Co, such that Project Co shall not charge any margins on any amounts charged by the Construction Contractor or the Operator;
  - (v) all costs for implementing such WDBA Change reflect any and all changes in the Technical Requirements arising out of such proposed WDBA Change;
  - (vi) the full amount of any and all expenditures that have been reduced or avoided (including for any Capital Expenditures) and that all such expenditures, including all applicable margins for overhead anticipated to be incurred but for the WDBA Change, have been taken into account and applied into total to reduce the amount of all costs;
  - (vii) Project Co has mitigated or will mitigate the impact of the WDBA Change, including on the DB Schedule, the performance of the Project Work, the expected usage of utilities, and the Direct Costs to be incurred; and
  - (viii) Project Co has obtained or will obtain the best value for money when procuring any work, services, supplies, materials or equipment required in connection with the implementation of such WDBA Change and has complied or shall comply with Good Industry Practice in relation to any such procurement, to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to WDBA.
- (b) Project Co shall provide any information or documentation in support of the Change Appraisal or the estimate described in Section 2.4(a) requested by WDBA in order to assist WDBA in validating the Change Appraisal and estimate.

## 2.5 Project Co's Refusal to Proceed

- (a) Subject to providing WDBA with written notice thereof (a "**Refusal Notice**") containing the particulars of Project Co's grounds for refusal in reasonable detail, no later than 10 Business Days (or on any later date that WDBA and Project Co may agree is reasonable under the circumstances) after receipt by Project Co of a Change Notice, Project Co may refuse to provide a Change Appraisal or implement a WDBA Change if Project Co is of the reasonable opinion that any of the following applies:
- (i) the implementation of such WDBA Change would not be technically feasible;
  - (ii) such WDBA Change would, if implemented, have a material adverse effect (A) on Project Co's ability to perform its obligations under this Agreement (except those which have been specified as requiring amendment in the Change Notice) or (B) on the overall risk profile under this Agreement, in a manner not compensated pursuant to this Schedule;

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- (iii) the implementation of such WDBA Change would be contrary to Good Industry Practice;
  - (iv) implementation of such WDBA Change would be contrary to Applicable Law;
  - (v) implementation of such WDBA Change would materially and adversely affect the health or safety of any person;
  - (vi) Project Co would be unable (using all reasonable efforts in respect thereof) to obtain any new Permit concerning the Project Work or any amendment or revision to an existing Permit necessary to implement such WDBA Change or to allow it to comply with the provisions of this Agreement, due to such WDBA Change;
  - (vii) such WDBA Change would cause any existing Permit concerning the Project Work to be revoked or cancelled or would cause any additional conditions to be imposed in relation to any such Permit with which Project Co would be unable to comply;
  - (viii) Project Co would be unable (using all reasonable efforts in respect thereof) to obtain any real or personal rights in respect of lands necessary for the purpose of implementing such WDBA Change except to the extent that WDBA obtains such rights; or
  - (ix) such WDBA Change would render any insurance policy required under this Agreement void or voidable, unless WDBA agrees to provide replacement security (satisfactory to Project Co, acting reasonably).
- (b) Notwithstanding the provisions of Section 2.5(a) or any other provision of this Schedule, Project Co shall not be entitled to refuse to provide a Change Appraisal or to implement a WDBA Change if the WDBA Change is required by a Governmental Authority (other than WDBA). In such case, WDBA shall compensate Project Co in connection with such WDBA Change in accordance with the provisions of this Schedule.

## **2.6 WDBA's Response to Refusal Notice**

- (a) Within 10 Business Days of receipt of a Refusal Notice, WDBA shall deliver a notice to Project Co advising either that:
- (i) Subject to Section 2.7(c), WDBA is cancelling the proposed WDBA Change;
  - (ii) WDBA does not agree that the proposed WDBA Change properly falls within any of the grounds set out in Section 2.5(a) and is referring the matter for resolution pursuant to the Dispute Resolution Procedure; or
  - (iii) WDBA is amending the Change Notice.
- (b) If WDBA fails to deliver to Project Co the notice referred to in Section 2.6(a) within the time stipulated thereunder, subject to Section 2.7(c), the Change Notice shall be deemed to have been cancelled.
- (c) If WDBA refers a matter to the Dispute Resolution Procedure as contemplated in Section 2.6(a)(ii) and it is determined under the Dispute Resolution Procedure that Project Co was not entitled to refuse to implement the WDBA Change, Project Co shall deliver a

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Change Appraisal in accordance with Section 2.3(b) within 20 Business Days of such determination or such longer period as Project Co and WDBA (acting reasonably, given the nature and extent of the WDBA Change) may agree.

- (d) If WDBA amends the Change Notice, WDBA shall issue such amended notice as a Change Notice under Section 2.2 and all the provisions applicable to a Change Notice shall then apply to such amended notice as if it is a Change Notice, except that the time period for delivery of a Refusal Notice by Project Co pursuant to Section 2.5 shall be reduced from 10 Business Days to 5 Business Days. Notwithstanding the foregoing, if WDBA deems it appropriate given the complexity of the changes made to the Change Notice, the time period for the delivery of a Refusal Notice shall be extended. WDBA may amend a Change Notice pursuant to this Section 2.6(d) as many times as required.

## 2.7 Procedure Following Delivery of a Change Appraisal

- (a) WDBA shall, within 10 Business Days of receipt of the Change Appraisal (or such other period as Project Co and WDBA may agree), notify Project Co either that:
- (i) WDBA disputes any matter whatsoever contained in the Change Appraisal (a **"Disputed Change"**);
  - (ii) WDBA wishes to proceed with the proposed WDBA Change on the basis set out in the Change Appraisal (a **"WDBA Change Confirmation"**), which WDBA Change Confirmation may be subject to Project Co obtaining financing pursuant to Section 2.9;
  - (iii) subject to Section 2.7(e), WDBA wishes to cancel the proposed WDBA Change (a **"Cancellation Notice"**);
  - (iv) WDBA requires further information or clarifications before making a decision in respect of any of the information set out in the Change Appraisal, in which case Project Co shall provide such information or clarification within 10 Business Days of such notification (or such longer period as Project Co and WDBA may agree upon). Section 2.7(a) shall then apply with any necessary modifications as if receipt of such information or clarifications constituted receipt of a Change Appraisal;
  - (v) WDBA wishes the Change Notice to be amended, in which event Section 2.6(d) shall apply to such Change Notice; or
  - (vi) subject to Section 2.7(e), if WDBA withdraws the Change Notice, cancels the proposed WDBA Change and implements the WDBA Change using its own labour force (including day labour retained by WDBA) or any WDBA Person and Section 2.7(d) shall apply.

Should WDBA fail to send the notice provided for in this Section 2.7(a), subject to Section 2.7(e), then it shall be deemed to have issued a Cancellation Notice.

- (b) Within 10 Business Days of notification by WDBA of a Disputed Change, either party may refer the Disputed Change for determination or resolution pursuant to the Dispute Resolution Procedure.

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- (c) Within 10 Business Days of the final agreement or determination of a Disputed Change, WDBA shall provide to Project Co either a WDBA Change Confirmation or a Cancellation Notice. If WDBA fails to send such WDBA Change Confirmation, it shall be deemed to have issued a Cancellation Notice. In circumstances provided in Section 2.7(e), within 10 Business Days of the final agreement or determination of a Disputed Change, WDBA shall provide to Project Co a WDBA Change Confirmation in accordance with the final agreement or determination made pursuant to the Dispute Resolution Procedure.
- (d) Notwithstanding any other provision contained in this Schedule, where WDBA disagrees with the estimate of costs included in the Change Appraisal, WDBA shall meet with Project Co to discuss the matters set forth in the Change Appraisal. If, after such discussions, WDBA, acting reasonably, considers that the criteria described in Section 2.4 are not met or that the estimate of costs does not represent the best use of the funds available for the implementation of WDBA Change, WDBA shall have two options. It may, subject to Section 2.7(e), either:
  - (i) withdraw the Change Notice and cancel the proposed WDBA Change and if it does, WDBA may then determine to have any work included in such WDBA Change carried out by its own labour forces (including day labour retained by WDBA) or any WDBA Person, in which event WDBA shall take all reasonable measures to have such works carried out in such a manner as to minimize the impact thereof on the Project Work. Project Co shall assume no liability or risk in respect of the work performed pursuant to this Section, and, such event shall constitute a Compensation Event; or
  - (ii) it may submit the Disputed Change to the Dispute Resolution Procedure and Section 2.7(c) shall apply.
- (e) WDBA may not withdraw or cancel a Change Notice in circumstances where WDBA is obligated pursuant to the terms of this Project Agreement to proceed with a WDBA Change. In such circumstances, the Dispute Resolution Procedure shall be employed to finalize any aspects of WDBA Change which cannot be otherwise agreed to in accordance with the terms Section 2.7.

## **2.8 WDBA Change Confirmation and Payment**

- (a) A WDBA Change Confirmation shall specify, as applicable:
  - (i) if WDBA accepts the estimate of costs submitted by Project Co in respect of such WDBA Change or any part thereof in which case such estimate of costs shall be binding on the parties;
  - (ii) the adjustments, if any, to any applicable Construction Period Payment or to the Monthly Payment; and
  - (iii) whether (A), WDBA agrees to compensate Project Co for Capital Expenditures in lump sum payments or by way of progress payments based on the proposed schedule of payments provided by Project Co or as may otherwise be agreed between the parties, or (B), WDBA requests that Project Co seek to obtain financing in respect of such WDBA Change.

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- (b) In the event WDBA and Project Co fail to agree as to the terms of the payment schedule of Capital Expenditures, the payment schedule shall be determined in accordance with the Dispute Resolution Procedure.
- (c) Any amount payable by WDBA in respect of a WDBA Change as agreed to by the parties or as determined in accordance with the Dispute Resolution Procedure, shall be indicated in the Payment Report and shall be payable by WDBA in accordance with Section 37 (*Payments*) of the body of this Project Agreement.
- (d) If a WDBA Change Confirmation is subject to Project Co obtaining financing pursuant to Section 2.9, then the WDBA Change Confirmation shall not be effective until:
  - (i) Project Co obtains such financing in accordance with Section 2.9, in which case the applicable Construction Period Payment or the Monthly Payment shall be adjusted as agreed by the parties and WDBA Change Confirmation shall be deemed to be amended accordingly; or
  - (ii) if WDBA waives the requirement for financing pursuant to Sections 2.9(b), 2.9(c) or 2.9(d), WDBA shall compensate Project Co either by way of lump sum payments or progress payments based on the proposed schedule of payments provided by Project Co and agreed upon with WDBA, and the WDBA Change Confirmation shall be deemed to be amended accordingly;
  - (iii) if Project Co has no further obligation to obtain financing in accordance with the provisions of Section 2.9, WDBA shall either:
    - (A) compensate Project Co either by way of lump sum payments or progress payments based on the proposed schedule of payments provided by Project Co and agreed upon with WDBA, and the WDBA Change Confirmation shall be deemed to be amended accordingly; or
    - (B) subject to Section 2.7(e), send a Cancellation Notice.
- (e) If a WDBA Change Confirmation leads to a reduction in Capital Expenditures or Operating Costs any such reduction arising from the implementation of such WDBA Change shall be to the account of WDBA and reflected in the applicable Construction Period Payment or the Monthly Payment.
- (f) If WDBA fails to deliver a WDBA Change Confirmation within 10 Business Days of an agreement or a determination of a Disputed Change, subject to Section 2.7(e), it shall be deemed to have delivered a Cancellation Notice.
- (g) Where Permits are required to implement a WDBA Change, Project Co shall not take steps to implement such WDBA Change until such Permits have been obtained, except insofar as it is necessary to obtain such Permits. If Project Co, having made all reasonable efforts, fails to obtain the Permits within 90 days following the issuance of a WDBA Change Confirmation or within any longer period to which WDBA may agree, subject to Section 2.7(e), WDBA shall be deemed to have provided to Project Co a Cancellation Notice.

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## 2.9 Financing

- (a) If Project Co in its Change Appraisal confirms that existing financing and/or currency hedging is not available to pay for the proposed WDBA Change and if WDBA requests Project Co to obtain financing for such WDBA Change in accordance with Section 2.8(a)(iii), then a WDBA Change Confirmation may be issued subject to Project Co obtaining financing. In such event, Project Co shall use reasonable efforts to obtain the requested financing on terms satisfactory to Project Co, the Lenders and WDBA.
- (b) If Project Co has used all reasonable efforts to obtain the requested financing and/or currency hedging but has been unable to obtain an offer of financing and/or currency hedging on terms reasonably satisfactory to Project Co and WDBA within 60 days of the date that WDBA issues WDBA Change Confirmation, then Project Co shall have no further obligation to obtain financing and/or currency hedging for a WDBA Change and any WDBA Change Confirmation subject to financing shall no longer have any effect unless WDBA (i) waives the requirement for financing and/or currency hedging or (ii) such financing is subject to Section 2.7(e).
- (c) If Project Co obtains an offer of financing and/or currency hedging on terms reasonably satisfactory to Project Co, Project Co shall provide WDBA with details of such financing and/or currency hedging and WDBA shall determine whether Project Co should proceed with such financing and/or currency hedging. If WDBA determines that Project Co should not proceed with such financing and/or currency hedging, then Project Co shall have no further obligation to obtain financing and/or currency hedging for such WDBA Change and any WDBA Change Confirmation subject to financing shall no longer have any effect unless WDBA waives the requirement for financing and/or currency hedging or such financing and/or currency hedging is subject to Section 2.7(e).
- (d) WDBA may at any time withdraw the requirement for Project Co to use all reasonable efforts to obtain financing and/or currency hedging, after which Project Co shall have no further obligation to obtain financing and/or currency hedging for such WDBA Change and any WDBA Change Confirmation subject to financing shall no longer have any effect unless WDBA waives the requirement for financing and/or currency hedging or such financing and/or currency hedging is subject to Section 2.7(e).
- (e) If WDBA waives the requirement for financing and/or currency hedging or if Project Co has no further obligation to obtain financing and/or currency hedging for such WDBA Change pursuant to Sections 2.9(b), 2.9(c) or 2.9(d), then Project Co shall proceed with such WDBA Change as set out in the WDBA Change Confirmation and WDBA shall pay for WDBA Change as provided for in Section 2.8.

## 2.10 Effect of a WDBA Change

A WDBA Change Confirmation shall have the effect of varying the Technical Requirements to the extent provided in the Change Appraisal as read with the relevant Change Notice effective from the date of delivery of the WDBA Change Confirmation. As soon as practicable thereafter, Project Co shall implement such WDBA Change, unless it is subject to Project Co obtaining financing pursuant to Section 2.9 and, in so doing, Project Co shall be bound by this Agreement as if such WDBA Change formed part of the Technical Requirements.

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## 2.11 Reimbursement of Change Appraisal Costs

- (a) If WDBA cancels or is deemed to have cancelled a WDBA Change pursuant to Sections 2.6(a), 2.6(b), 2.7(a), 2.7(c), 2.7(d), 2.8(d)(iii) or 2.8(g), WDBA shall pay to Project Co, within 30 days of request therefor, an amount corresponding to the reasonable expenses directly incurred by Project Co to review such WDBA Change, any amendment thereto, if any, and (if applicable) to prepare the Change Appraisal and any amendment thereto, if any, and (if applicable) the Refusal Notice.
- (b) If WDBA is deemed to have cancelled a WDBA Change pursuant to Section 2.8(g) and where the failure to obtain the Permits is not attributable to Project Co, WDBA shall also pay to Project Co, within 30 days of request therefor, an amount corresponding to the reasonable expenses directly incurred by Project Co to prepare and apply for such Permits.
- (c) If a WDBA Change Confirmation is issued, WDBA shall reimburse Project Co, within 30 days of request therefor, the amount corresponding to the reasonable costs directly incurred by Project Co to review the Change Notice and, where applicable, the documentation submitted in connection with such WDBA Change.

## 2.12 Change Directive

- (a) Subject to Section 2.7(e) and Section 2.5(b), but notwithstanding any other provision, if WDBA requires that a WDBA Change be implemented prior to issuing a WDBA Change Confirmation, including in the case where a Change Appraisal is not promptly agreed upon between the parties or if there is a Dispute in relation thereto, but not where Project Co has issued a Refusal Notice, then WDBA may issue a written instruction directing Project Co to immediately proceed with such WDBA Change (a “**Change Directive**”) and following receipt of the Change Directive (provided WDBA shall fund such WDBA Change implemented by way of Change Directive):
  - (i) Project Co shall promptly proceed with the implementation of such WDBA Change;
  - (ii) the determination of any costs, time extensions and amendments to the Project Agreement required in connection with such WDBA Change, shall be made as soon as reasonably possible after commencement of the implementation of such WDBA Change; and
  - (iii) pending final determination of any costs, time extensions and amendments to the Project Agreement required in connection with such WDBA Change, the Independent Certifier (if such WDBA Change is requested prior to the expiration of the mandate of the Independent Certifier) or WDBA, as applicable and, in each case, acting reasonably, shall determine the Direct Costs of such WDBA Change together with applicable margins as set out in Section 2.4(a)(iii), with any Dispute relating thereto, to be determined in accordance with the Dispute Resolution Procedure.

WDBA may issue a Change Directive at any time, but not if there is a Dispute as to whether Project Co is entitled to refuse to implement a WDBA Change under Section 2.6(a)(ii).

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### 3. PROJECT CO CHANGES

#### 3.1 Procedure for Requesting a Project Co Change

#### 3.2 Project Co Change

- (a) At any time during the Term, Project Co may propose a Project Co Change to WDBA. No Project Co Change shall be implemented or become effective unless and until the Project Co Change is consented to by WDBA. WDBA may decide to consider or decline to consider any Project Co Change.
- (b) Should Project Co wish to propose a Project Co Change it shall deliver to WDBA a written notice indicating:
  - (i) the nature, extent and full details of such Project Co Change;
  - (ii) the desired date of completion of Project Co Change (which shall be a reasonable date as regards the nature of Project Co Change) or, if applicable, the date on which Project Co Change shall come into effect; and
  - (iii) a change appraisal ("**Project Co Change Appraisal**") with respect to such Project Co Change.
- (c) Unless WDBA requires a longer period in view of the complexity of the proposed Project Co Change, WDBA shall advise Project Co as to whether or not its consent to the proposed Project Co change will be given, within 10 Business Days of receipt of the notice.

#### 3.3 Project Co Change Appraisal

Sections 2.3(b) and 2.4 shall apply to the content of such Project Co Change Appraisal with the necessary alterations. All references in Sections 2.3(b) and 2.4 to "WDBA Change" shall be read as if it were a reference to a "Project Co Change". All other applicable provisions of this Schedule shall apply, with the necessary alterations. Project Co shall, promptly upon demand, reimburse WDBA for all out-of-pocket costs and expenses reasonably incurred by WDBA in connection with WDBA's consideration of any Change proposed by Project Co, including legal and consulting fees and disbursements, regardless of whether such Project Co Change is implemented.

#### 3.4 Payment

- (a) If WDBA consents to the Project Co Change in accordance with the provisions of Section 3.2, WDBA shall notify Project Co that it accepts to pay the estimate of costs, and provisions of this Schedule regarding payment relating to WDBA Changes and changes to the Project Agreement shall apply, with the necessary alterations.
- (b) If a Project Co Change results in a reduction of Capital Expenditures or Operating Costs, any such reduction that may arise from such Project Co Change shall be shared equally by WDBA and Project Co, after the deduction of costs paid or to be paid by Project Co to WDBA under Section 3.4(c).
- (c) If Project Co submits a proposal for a Project Co Change pursuant to Section 3.2, Project Co shall reimburse WDBA, within 30 days of a demand to this effect, regardless of whether such Project Co Change is implemented, an amount corresponding to the reasonable costs directly incurred by WDBA in order to examine the proposed Project Co

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Change and, where applicable, the documentation submitted in respect of such Project Co Change.

- (d) Where Permits are required for purposes of implementing a Project Co Change, Project Co shall not take any measures in connection with the implementation of the Project Co Change until such Permits are obtained, except where such measures are necessary in order to obtain such Permits.

#### **4. MINOR WORK**

##### **4.1 General**

- (a) During the Term, Project Co shall perform any work of a minor nature that is requested by WDBA, acting reasonably, to be performed which has an individual cost or aggregate cost with other linked work, of a minor nature, not exceeding \$[REDACTED] (index linked) (“**Minor Work**”). Minor Work does not include work which would increase the likelihood of Availability Failure Deductions and Service Failure Deductions, increase the cost of Project Co for performing the Project Work or have a material adverse effect on the performance of Project Work.
- (b) If Minor Work is requested by WDBA, Project Co shall, within 10 Business Days of each such request and prior to carrying out the Minor Work, provide WDBA with a price for carrying out the Minor Work payable by lump sum payment.
- (c) If WDBA accepts the price submitted by Project Co with respect to such Minor Work, Project Co shall perform such work and the price provided by Project Co pursuant to Section 4.1(b), shall be binding on the parties.
- (d) The price provided by Project Co shall include only its Direct Costs, together with applicable margins as set out in Section 2.4(a)(iii).

##### **4.2 Project Co’s Obligations in Performing Minor Work**

WDBA and Project Co shall agree upon a convenient time for performing the Minor Work, based on the duration of such Minor Work, as reasonably estimated by Project Co. Project Co shall use reasonable efforts to minimize the duration of any Minor Work and to minimize any inconvenience or disruption to WDBA.

##### **4.3 Change Notice and Change Directive**

WDBA may at any time, including if WDBA does not accept the price proposed by Project Co pursuant to Section 4.1(b), issue a Change Notice or Change Directive in respect of such Minor Work, in which event the provisions of this Schedule shall apply.

#### **5. DIRECT COSTS**

Direct Costs otherwise payable pursuant to this Schedule 22 [*Change Procedure*] shall be subject to and limited by the following.

- (a) The Direct Costs shall be net of all discounts, rebates and other price reductions and benefits, which relate to the Direct Costs incurred.

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Schedule 22 [*Change Procedure*]

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- (b) The amount paid for materials, products, supplies and equipment incorporated into the Project Work as a result of the Change shall not exceed commercially competitive rates available in the jurisdiction in which such work is performed for such materials, products, supplies and equipment from arms-length third party suppliers.
- (c) The amount paid for any design services included in the Direct Cost, whether provided by Project Co's personnel, consultants, manufacturers or manufacturers' consultants, for hourly paid personnel shall not exceed two times the actual salary received by those personnel (actual salary to be inclusive of all benefits, statutory remittances and holidays), and for salaried personnel, the actual salary per hour shall be calculated by dividing the annual salary (inclusive of all benefits, statutory remittances and holidays) by 2080 hours.
- (d) The amount paid for machinery and equipment rental costs shall not exceed the prevailing competitive commercial rate for which such equipment or machinery can be obtained in Windsor or Detroit, whichever is applicable, provided that this restriction shall not apply to machinery and equipment which is subject to rental agreements in place at the Commencement Date that were entered into on normal commercial terms.
- (e) Any amounts paid in accordance with this Schedule 22 for wages, salaries and benefits charged by Project Co or any Subcontractor shall be reasonable and shall not exceed commercially competitive rates available in Windsor or Detroit.
- (f) Direct Costs shall not include (i) any cost incurred due to the failure on the part of Project Co to exercise reasonable care and diligence in its attention to the prosecution of that part of the Project Work, (ii) except as permitted under limb (d)(xiii) of the definition of Direct Costs, the fees, costs or expenses, or any other form of compensation, paid or payable by Project Co or any Subcontractor to any person performing advisory, asset management, personnel services and/or similar, comparable or like services to or for the benefit of Project Co or any Subcontractor, (iii) the cost and expense of maintaining corporate offices, the cost and expense of office administration, estimation, accounting, payroll, printing, office supplies, phones and courier/postal service, the cost and expense of personnel not directly involved in the implementation of the Change and any other overhead cost or expense, (iv) the cost of travel and subsistence expenses, or (v) any costs or expenses associated with the participation of Project Co and any Subcontractor in the meetings described in Section 2.1(e) of this Schedule 22.
- (g) Direct Costs must be quantifiable and supported by evidence and proper documentation, such as invoices, proof of payments, and detailed hourly rate information as required by WDBA. Proper documentation shall include unit rates or prices and quantities for all items, including labour and materials that comprise the Direct Cost, including for all work completed by any Subcontractor. Any Direct Cost item claimed as a percentage of any other Direct Cost item, such as a "risk contingency", will not be permissible, unless approved by WDBA in writing.

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**APPENDIX 22-1  
APPLICABLE MARGINS**

Party	Total Overhead (as % of Direct Costs)		
	For projects under \$[REDACTED]	For projects between \$[REDACTED] and \$[REDACTED]	For projects over \$[REDACTED]
Project Co (Own Work)	[REDACTED]	[REDACTED]	[REDACTED]
Construction Contractor (Own work)	[REDACTED]	[REDACTED]	[REDACTED]
Construction Contractor (Subcontracted Work)	[REDACTED]	[REDACTED]	[REDACTED]
Maintenance and Rehabilitation Contractor (Own Work)	[REDACTED]	[REDACTED]	[REDACTED]
Maintenance and Rehabilitation Contractor (Subcontracted Work)	[REDACTED]	[REDACTED]	[REDACTED]

Project Co acknowledges and agrees that the applicable margin payable in accordance with this Appendix 22-1 is intended to compensate Project Co and the Prime Contractors for all costs and expenses incurred in connection with a Change other than the Direct Cost, including all overhead, profit, office administration and the amounts expressly excluded from the Direct Cost pursuant to Section 5 of this Schedule 22.

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**SCHEDULE 23****DISPUTE RESOLUTION PROCEDURE****1. DEFINITIONS**

Unless defined specifically in this Agreement or unless the context otherwise requires, capitalized but otherwise undefined terms in this Agreement will have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of this Project Agreement.

In this Schedule, the following terms have meanings set out in this Section 1.

**Arbitration Act** means the *Commercial Arbitration Act*, R.S.C.1985, c.17., including the Arbitration Code.

**Arbitration Code** means the code which is schedule 1 to the *Arbitration Act*.

**Arbitration Notice** has the meaning set out in Section 5.3(h).

**Arbitration Tribunal** has the meaning set out in Section 5.3(c). 5.3(b)

**Dispute Notice** has the meaning set out in Section 5.1(d).

**IC Notice** has the meaning set out in Section 3.2.

**Negotiation Procedure** has the meaning set out in Section 5.1(a).

**Non-Compliance Dispute** has the meaning set out in Section 6.1.

**Notice of Non-Compliance Dispute** has the meaning set out in Section 6.2.

**Standing Committee** has the meaning set out in Section 4.

**Summary Dispute** has the meaning set out in Section 4.

**Summary Dispute Notice** has the meaning set out in Section 4.6.

**Technical Dispute** means a Dispute arising during the DB Period which (i) is minor in nature, (ii) relates to a course of action or decision not yet taken or to an estimate of an amount of money to be paid by one party to another including the verification of costs relating to such amount (iii) relates to the Technical Requirements (iv) requires quick action or cannot wait to be resolved and (v) is not a Non-Compliance Dispute or a Summary Dispute.

**Technical Dispute Notice** has the meaning set out in Section 3.1.

All references to a Section number in this Schedule means a Section number of this Schedule unless such Section number clearly refers to a Section of the body of this Project Agreement or of another schedule or part of a schedule of this Project Agreement.

**2. DECISIONS OF INDEPENDENT CERTIFIER**

- (a) The Independent Certifier's decision to issue or not to issue the Canadian POE Handover Certificate, the US POE Handover Certificate, the Bridge Handover Certificate, the Michigan Interchange Handover or a Substantial Completion Certificate shall be final and

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binding on the parties solely in respect of determining the date upon which the Substantial Completion Payment becomes payable or the applicable Capital Payments shall commence and any dispute in relation to such decision shall not be subject to the dispute resolution procedures set out in this Schedule.

- (b) The decision of the Independent Certifier as to the calculation of Progress with respect to any Progress Payment Application shall be final and binding on the parties and shall not be subject to the dispute resolution procedures set out in this Schedule.
- (c) All other decisions of the Independent Certifier, including as to Minor Deficiencies, shall be the subject to the dispute resolution procedures set forth in this Schedule.

### **3. TECHNICAL DISPUTES**

#### **3.1 Technical Dispute Notice**

This Section 3 applies only to the initial resolution of Technical Disputes. If a Technical Dispute arises which is not quickly resolved by negotiation by the parties or their Representatives, the Dispute Resolution Procedure for a Technical Dispute may be commenced by either party giving notice ("**Technical Dispute Notice**") to the other party briefly setting out the pertinent facts, the remedy or relief sought and the grounds on which such remedy or relief is sought. A copy of the Technical Dispute Notice shall be sent concurrently to the Independent Certifier. The other party shall provide to the first party and to the Independent Certifier a written response to facts and claims set out in the Technical Dispute Notice within 3 Business Days following the giving of the Technical Dispute Notice.

#### **3.2 Role of Independent Certifier**

If the Technical Dispute is not resolved to the mutual satisfaction of the parties within 5 Business Days (or such longer period as the parties may agree) following the giving of the Technical Dispute Notice, either party may by a further notice to the other and to the Independent Certifier ("**IC Notice**"), request that the Independent Certifier review the Technical Dispute and make a non-binding decision as to its resolution.

#### **3.3 Fast Track Resolution Process**

- (a) The Independent Certifier will then conduct an impartial review of the Technical Dispute in such manner as the Independent Certifier thinks fit, including carrying out onsite inspections and interviews with any persons. The parties will comply with all reasonable requests from the Independent Certifier for additional information, documents and access to personnel which the Independent Certifier considers necessary for the review. Any submission or documentation in respect of the Technical Dispute provided to the Independent Certifier by a party will also be provided to the other party.
- (b) The Independent Certifier may, with the written approval of both parties, retain other professional persons or experts to assist with the review and will pay due regard to any request by either party for the Independent Certifier to retain such other professional persons or experts.
- (c) The Independent Certifier will not be obliged to conduct the Independent Certifier's enquiries in the presence of the parties or receive submissions from the parties, except to the extent that the Independent Certifier thinks it necessary, and may render the

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Independent Certifier's decision notwithstanding the failure of a party to participate in the proceedings.

- (d) The Independent Certifier will render a brief, written, reasoned and impartial decision with respect to the Technical Dispute, with copies to both parties, within 5 Business Days of the execution and delivery of the IC Notice, or such longer or shorter period as agreed to in writing by both parties. The Independent Certifier's decision will be in the form of a proposed determination of the rights of the parties having regard to the Independent Certifier's understanding of the relevant contractual provisions, the Applicable Law and the facts as agreed by the parties or as best the Independent Certifier is able to determine them.
- (e) Each party acknowledges the value of having the Independent Certifier render a timely decision regarding the Technical Dispute. If the Independent Certifier is unable to render a decision within the time set or as extended by mutual agreement of the parties, then the Independent Certifier will within such time provide to the parties such analysis of the Technical Dispute as the Independent Certifier is able to make within that time and describe the further work the Independent Certifier recommends would be required in order to arrive at a reasoned decision.
- (f) A decision of the Independent Certifier with respect to a Technical Dispute shall be non-binding on the parties.
- (g) All information, data or documentation disclosed or delivered by either party to the Independent Certifier as a result or in connection with the duties of the Independent Certifier will be treated as confidential and neither the parties nor the Independent Certifier will, except as would be permitted under Section 10 (*Confidentiality*) of this Agreement, disclose to any person any such information, data or documentation unless the parties otherwise agree in writing. Nothing contained in this Section will prevent the submission in any subsequent proceedings of any evidence other than evidence that came into existence for the express purpose of submission to, or assistance of, the Independent Certifier.
- (h) The proceedings by or before the Independent Certifier will be without prejudice in any subsequent proceedings.
- (i) If a Technical Dispute is not resolved to the satisfaction of the parties within 5 Business Days after the decision of the Independent Certifier is given or should have been given, then either party may refer the Technical Dispute (except a Technical Dispute for an amount of less than \$[REDACTED], excluding interest and ancillary fees) directly to arbitration in accordance with the provisions of Section 5.3 of this Schedule.

#### 4. SUMMARY DISPUTES

Except for Technical Disputes and Non-Compliance Disputes, the parties agree to refer to a dispute resolution committee (the "**Standing Committee**") any Dispute which, by its very nature, requires quick action or cannot wait to be resolved or which, from a financial standpoint, should not be resolved by implementing the Dispute Resolution Procedure described in Section 5 (a "**Summary Dispute**"). Without limiting the generality of the foregoing, for purposes of this Schedule, Summary Disputes shall include the Disputes referred to in Sections 9.5 (*Replacement of Key Individuals and Project Co Representative by WDBA*), 24.11 (*Disputed Certificates*), 32.5(d) (*Increased Monitoring*) and 43.2(h) (*Supervening Events Procedure*) of this Agreement, Section 16 (*Disputes*) of Part 2 [*Review Procedure*] of Schedule 6 [*Project*

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*Management*], Sections 2.6(a)(ii), 2.7(a)(i), 2.7(d)(ii) and 2.12(a)(iii) of Schedule 22 [*Change Procedure*], any Disputes as to any amount of money to be paid by one party to another under this Agreement, including the verification of costs relating to such amount, and any other Disputes which the parties agree, acting reasonably, should be resolved as Summary Disputes. The parties may agree to submit a Summary Dispute to the Dispute Resolution Procedure described in the Section 5 and may also agree to have the Summary Dispute resolved by a single person who may or may not be a member of the Standing Committee, provided that any such person must be qualified to hear the Dispute by training and expertise. The provisions of this Section 4 with respect to the powers, obligations, decisions, fees and expenses of the Standing Committee shall apply with the necessary alterations to any Summary Dispute which the parties agree to have resolved by a single person.

#### **4.1 Powers of Standing Committee**

The Standing Committee shall, in respect of Summary Disputes, be vested with the power to:

- (a) decide whether or not a Dispute constitutes a Summary Dispute unless the parties agree to submit a given Dispute to the Standing Committee;
- (b) order any protection or restoration measure that is urgent;
- (c) order that a party take any action necessary to the proper performance of this Agreement;
- (d) order a party to make any payment that may be owing to a third party or the other party;
- (e) order a party to take any action that should be taken hereunder, including the execution or delivery of any document or intervention of a party for the purposes of causing a document to be executed or delivered; and
- (f) order that any necessary measure be taken to preserve or establish elements of evidence.

The power described in Section 4.1(a) falls under the exclusive jurisdiction of the Standing Committee.

#### **4.2 Composition of Standing Committee**

The Standing Committee shall be made up of three members, one member of a recognized professional corporation of chartered accountants of any Canadian province, one professional engineer (with a specialty in civil engineering) registered to practice in the province of Ontario, and one lawyer duly called to the bar in the Province of Ontario, who shall act as chair.

#### **4.3 Appointment of Members**

The members of the Standing Committee shall be appointed by mutual consent of the parties within 30 days following the Commencement Date. Should a member of the Standing Committee die, resign or vacate his or her office for any other reason, the parties shall work together to appoint a replacement as soon as reasonably possible and in no circumstances more than 15 Business Days after such death, resignation or vacancy from office. The parties acknowledge that it is not in their respective interests to entrust the appointment of this replacement to a third party. They therefore undertake to make all necessary efforts to appoint this replacement by mutual agreement. Should they fail to do so, on the application of either party, the new member of the Standing Committee shall be selected pursuant to the provisions of the Arbitration Code, taking into account the qualifications of the member who died, resigned or vacated his or her

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office as set out in Section 4.2. Any measure and decision taken by the Standing Committee prior to the replacement of a member shall remain valid. However, while awaiting this replacement, the two other members of the Standing Committee shall abstain from holding hearings and rendering decisions unless the parties agree otherwise in writing and any decision made in the absence of such agreement shall have no legal effect. Subject to Section 4.2, the parties may on mutual consent, replace a member of the Standing Committee at any time.

#### 4.4 Independence of Members

In all cases and under all circumstances, the members of the Standing Committee shall be and remain independent, and any person retained to become a member of the Standing Committee shall execute a certificate of independence and send the parties and other members of the Standing Committee a written instrument describing all of the facts and circumstances that might possibly cast some doubt as to his or her independence as a member of the Standing Committee. Moreover, a member of the Standing Committee shall immediately disclose in writing to the parties and other members of the Standing Committee all facts and circumstances of a similar nature that might occur throughout the term of the mandate of the Standing Committee. Should either party wish to challenge the appointment of a member of the Standing Committee due to lack of independence, it shall have 10 Business Days from the time it becomes aware of the facts providing grounds for the challenge to present a request to that effect to the Standing Committee, including a written statement describing these facts. The two other members of the Standing Committee shall decide on the request, after having given the other parties and the pertinent member of the Standing Committee an opportunity to comment on the challenge. The decision handed down by the two members of the Standing Committee shall be final and without appeal. In the event of a disagreement between the two members, either party may request that a court decide the matter in accordance with Section 13 of the Arbitration Code.

#### 4.5 Confidentiality

In addition to the provisions of Section 10, the parties and the Standing Committee members shall treat all meetings, deliberations and communications, the documents disclosed during the activities of the Standing Committee and the decisions of the Standing Committee, as confidential, except: (i) to the extent that disclosure may be required of a party to fulfil a legal duty, protect or pursue a legal right, or enforce or challenge a decision in bona fide legal proceedings before a court or arbitration tribunal; (ii) with the consent of all parties; (iii) where needed for the preparation or presentation of a Claim or defence between the parties pursuant to the Project Agreement; and (iv) where such information is already in the public domain other than as a result of a breach of this clause.

#### 4.6 Summary Dispute Notice

A party that wishes to refer a matter to the Standing Committee shall send a notice (the "**Summary Dispute Notice**") to the Standing Committee, with a copy to the other party, summarily describing the Summary Dispute and measures requested. This notice shall include:

- (a) a clear and concise description of the nature and circumstances of the Summary Dispute;
- (b) a list of the issues referred to the Standing Committee for resolution and a presentation of the referring party's position on the issues; and
- (c) all means substantiating the position of the referring party, such as documents, designs, programs and correspondence.

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**4.7 Response**

The other party must respond to the Summary Dispute Notice in writing within 5 Business Days following receipt thereof. The response must include:

- (a) a clear and concise presentation of the position of the party responding to the Summary Dispute Notice; and
- (b) all means substantiating its position, such as documents, designs, programs and correspondence.

**4.8 Additional Information**

At any time throughout the procedure, the Standing Committee may ask either party to submit additional information or documents. The Standing Committee may render its decision based only on the material submitted or convene the parties to a hearing that may be held by telephone, videoconference or personal appearance. Should a party refuse to take part in the procedure, the Standing Committee shall proceed nonetheless with its mandate. When necessary, the parties shall appear in person and may be assisted by counsel.

**4.9 Rules of Procedure**

The Standing Committee shall have full latitude to establish its rules of procedure while respecting the principle of adversarial procedure, and may specifically:

- (a) call meetings, order site visits and convene hearings;
- (b) examine the parties, their representatives and any witness, and this in any order it may choose;
- (c) require attendance of witnesses;
- (d) require the parties to produce any document that the Standing Committee may deem necessary in the context of its mandate;
- (e) render a decision, even if a party fails to comply with any of the Standing Committee's demands; and
- (f) issue orders to protect the trade secrets and confidential information of the parties.

**4.10 Decisions of Standing Committee**

- (a) The Standing Committee shall render its decision within 5 Business Days following the later of:
  - (i) the date of the response provided for in Section 4.7; and
  - (ii) the date of a hearing held pursuant to Section 4.8.
- (b) The parties agree that a delay in the rendering of a decision by the Standing Committee shall not invalidate nor render null and void any decision of the Standing Committee rendered subsequently. The parties shall consult with the Standing Committee and attempt to agree upon a mutually agreeable extension of the deadlines set out in the above sections after consulting with the Standing Committee and taking into account the

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nature and complexity of the Summary Dispute. Failing an agreement between the parties, the Standing Committee shall determine the extension period.

- (c) To the extent possible, the Standing Committee's decision shall be unanimous. If this is not possible, the decision shall be rendered by a majority. In all cases, the decisions of the Standing Committee shall be in writing, including any dissenting decision. If there is no majority decision of the Standing Committee, the Dispute shall be referred to arbitration pursuant to Section 5.3.
- (d) The Standing Committee shall give its decision, together with its reasons, in writing.
- (e) Any decision of the Standing Committee:
  - (i) as to whether a Dispute brought before it is or is not a Summary Dispute; or
  - (ii) in respect of which the amount awarded is less than:
    - (A) \$[REDACTED], excluding interest and ancillary fees; or
    - (B) \$[REDACTED], excluding interest and ancillary fees, should the Standing Committee's decision have a recurrent effect throughout the Term of the Project Agreement;

shall be enforceable, final and non-appealable. The parties expressly waive their right to contest any such decision.

- (f) Any other decision rendered by the Standing Committee may be referred by either party to binding arbitration pursuant to Section 5.3 and any final award made pursuant to such Section shall be final and binding on the parties. Until such time, the decision of the Standing Committee shall be binding and enforceable against the parties.

#### **4.11 Referral to Negotiation Procedure**

Should the Standing Committee believe that the Dispute presented as a Summary Dispute or the requested measures exceed the powers granted to it under this Section 4, it shall send written notice thereof to the parties. The parties shall then resort to the Negotiation Procedure provided for in Section 5.1.

#### **4.12 Immunity from Testifying**

No member of the Standing Committee may at any time and in any manner be called upon to testify in any judicial or arbitration proceedings or other proceedings described under Section 5.

#### **4.13 Fees and Expenses**

All fees and expenses of the members of the Standing Committee shall be borne equally by the parties, and the parties agree that the members of the Standing Committee may not be subject to any subsequent Claim for damages or otherwise.

#### **4.14 Termination of Mandate of Standing Committee**

The Standing Committee shall remain available and contactable on the request of the parties at any time during the period from the date of their appointment to the Final Completion Date. The parties agree that the mandate of the Standing Committee shall terminate on the Final

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Completion Date. The Standing Committee shall remain seized of and have jurisdiction over any Summary Dispute that was referred to it prior to the expiry of its mandate. Any Summary Dispute that occurs after the expiry of the Standing Committee's mandate shall be submitted to the Dispute Resolution Procedure provided for in Section 5. The mandate of the Standing Committee may at all times be extended or renewed upon mutual agreement between the parties.

## 5. DISPUTE RESOLUTION PROCEDURES

### 5.1 Negotiations

- (a) A Dispute which is not a Technical Dispute, a Non-Compliance Dispute or a Summary Dispute shall first be submitted to the negotiation procedure described in this Section 5.1 (the "**Negotiation Procedure**").
- (b) Within 30 days after the Commencement Date, WDBA shall appoint a representative (the "**WDBA Negotiation Representative**") who shall be a senior officer of WDBA to be its representative for all negotiations to take place pursuant to this Section 5.1. WDBA may replace such representative at any time and from time to time on 10 Business Days' notice to Project Co.
- (c) Within 30 days after the Commencement Date, Project Co shall appoint a representative (the "**Project Co Negotiation Representative**") who shall be a senior officer of Project Co or of an Equity Member to be its representative for all negotiations to take place pursuant to this Section 5.1. Project Co may replace such representative at any time and from time to time on 10 Business Days' notice to WDBA.
- (d) Any party that believes that a Dispute should be submitted to the Negotiation Procedure shall commence the Negotiation Procedure by sending the other party written notice describing the Dispute (the "**Dispute Notice**"). This Dispute Notice shall be delivered, for the purposes of settling the Dispute:
  - (i) to the WDBA Representative, if delivered by Project Co; or
  - (ii) to the Project Co Representative, if delivered by WDBA.
- (e) Should the Dispute not be resolved within a period of 10 Business Days following the date of receipt of the Dispute Notice, it shall then be referred for the purposes of settlement to the WDBA Negotiation Representative and the Project Co Negotiation Representative.
- (f) The parties shall meet as soon as possible following the commencement of the Negotiation Procedure, based on the urgency of the situation, and negotiations shall be conducted in good faith.
- (g) The parties agree that the Negotiation Procedure, its results and any agreement between the parties concerning the Dispute shall remain confidential unless the disclosure thereof is required for the purposes of implementing or executing any agreement entered into between the parties.
- (h) All information exchanged during the Negotiation Procedure shall be regarded as "without prejudice" communications for the purpose of settlement negotiations and shall be treated as confidential by the parties and their representatives, unless otherwise required by Applicable Law. However, evidence that is independently admissible or discoverable

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shall not be rendered inadmissible or non-discoverable by virtue of its use during the Negotiation Procedure.

## 5.2 Mediation

- (a) Should the WDBA Negotiation Representative and the Project Co Negotiation Representative be unable to resolve the Dispute within a period of 10 Business Days after the Dispute has been referred to them pursuant to Section 5.1(e), either party may send the other a notice of intent to mediate. This notice shall specify the issues in dispute. If the recipient of the notice agrees to refer the Dispute to mediation, the parties shall have 10 Business Days to appoint a mediator.
- (b) The parties agree to jointly select a mediator. If the parties cannot agree on the choice of mediator within 10 Business Days from the date of the notice of intent to mediate, then a mediator will be chosen, upon application by either party, by the ADR Institute.
- (c) The parties, with the concurrence of the mediator, will jointly select a date for the mediation that is no later than 10 Business Days from the date of the appointment of the mediator.
- (d) The parties agree to exchange all information on which they intend to rely in any oral or written representation during the mediation. This exchange must be completed no later than 5 Business Days prior to the date set for the mediation.
- (e) During the course of the mediation, the parties agree not to commence legal or arbitration proceedings between them which concern the same matter that is the subject of this mediation except where it is necessary to take action to preserve rights while the mediation process is ongoing.
- (f) The parties agree that the results of the mediation and any agreement between the parties resolving the Dispute shall remain confidential unless the disclosure thereof is required for the purposes of implementing or executing any agreement entered into between the parties.
- (g) All information exchanged during the mediation shall be regarded as “without prejudice” communications for the purpose of settlement negotiations and shall be treated as confidential by the parties and their representatives, unless otherwise required by Applicable Law. However, evidence that is independently admissible or discoverable shall not be rendered inadmissible or non-discoverable by virtue of its use during the mediation.
- (h) The mediator may not act, be concurrently acting or have previously acted as judge, arbitrator, expert, representative or counsel of either party.
- (i) Mediation shall terminate should any of the following events occur:
  - (i) the parties execute an agreement resolving the Dispute;
  - (ii) written notice is delivered to the mediator by either party informing the mediator of the party’s decision not to pursue mediation; or
  - (iii) any deadline set for the mediation expires, with the exception of any extension of such deadline agreed by the parties, provided that the mediator has given the parties written notice of such expiry.

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- (j) The mediator may not be called upon to testify nor represent on behalf of any of the parties in any subsequent judicial, arbitration or similar proceeding in respect of any aspect whatsoever of the mediation.
- (k) Should the parties fail to resolve the Dispute pursuant to this Section 5.2, the parties shall refer the Dispute to an Arbitration Tribunal pursuant to Section 5.3. The parties shall equally share the costs of the mediator's fees and expenses, and the parties agree that such costs may not be the subject of a Claim in damages or otherwise.

### 5.3 Arbitration

- (a) The provisions of the *Arbitration Act* shall apply to any arbitration of a Dispute, except to the extent that they are modified or superseded by the express provisions of this Section 5.3. The parties acknowledge and agree that this is an arbitration agreement within the meaning of the *Arbitration Act* whereby the parties agree to submit to arbitration any Dispute that may arise between them that is not resolved by negotiation or mediation and this agreement to arbitrate shall be specifically enforceable.
- (b) If within 45 days of the appointment of the mediator, the parties do not resolve some or all of the issues of the Dispute, or if the parties have not agreed to submit the matter to mediation, within 60 days after submission of the Dispute Notice referred to in Section 5.1(d), either party may submit the unresolved issues to binding arbitration pursuant this Section 5.3.
- (c) Any arbitration initiated pursuant to Section 5.3(a) shall be heard by a panel of three arbitrators unless the parties agree to appoint a sole arbitrator (the "**Arbitration Tribunal**"). Where the Arbitration Tribunal is to consist of three arbitrators, each party shall appoint one arbitrator who, then together, shall appoint the third arbitrator who shall chair the Arbitration Tribunal. Should the two arbitrators appointed by the parties fail to agree on the appointment of the third arbitrator within 30 days following the appointment of the second arbitrator, the third arbitrator shall be appointed pursuant to the provisions of the Arbitration Code.
- (d) The parties vest the Arbitration Tribunal with the powers and jurisdiction to determine its own jurisdiction. The parties agree that any issue putting the jurisdiction of the arbitrators in doubt shall first be referred to the Arbitration Tribunal. The Arbitration Tribunal's decision on this issue may, where applicable, be submitted to a court of competent jurisdiction.
- (e) The Arbitration Tribunal shall also have the power and jurisdiction to:
  - (i) render procedural orders, including the splitting of actions;
  - (ii) issue injunctions;
  - (iii) issue declaratory orders;
  - (iv) order the parties to pay or provide security for arbitration fees;
  - (v) order the losing party to pay costs; and
  - (vi) issue any protective order, including the preservation of evidence or interim measures of protection.

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- (f) The parties agree that the Arbitration Tribunal shall not have the power and jurisdiction to:
- (i) issue judgments for exemplary or punitive damages;
  - (ii) invoke, on its own motion, the insufficiency of the evidence adduced by either party;
  - (iii) appoint, on its own initiative, one or several experts; and
  - (iv) rule on a ground that has not been raised by either party. Should the Arbitration Tribunal rule that the solution to the Dispute comes, in whole or in part, under such ground, it shall reopen the case and summon the parties to a hearing so that they may present their observations and, where applicable, adduce further evidence in respect of such ground.
- (g) The place of arbitration is Windsor, Ontario. Arbitration shall be conducted in English.
- (h) Any party that wants to refer a Dispute to arbitration shall send an arbitration notice to the other party (an “**Arbitration Notice**”), which shall contain, among other things, the following:
- (i) a demand that the Dispute be referred to arbitration;
  - (ii) a brief description of the Claim and an indication of the amount involved, if any;
  - (iii) the relief or remedy sought; and
  - (iv) a proposal for the arbitrator designated by that party or a proposal for the appointment of a sole arbitrator.
- (i) Within a period of 30 days after the Arbitration Notice has been given, the respondent shall serve its response containing the following provisions:
- (i) its comments on the Claim and the amount involved;
  - (ii) its position as to the relief or remedy sought;
  - (iii) a proposal for the arbitrator to be designated by that party, or proposal for the appointment of a sole arbitrator; and
  - (iv) any counterclaim, which must comply with Section 5.3(h) as if it were an Arbitration Notice with respect to a Claim.
- (j) The applicant shall present its response to the counterclaim within a period of 30 days after the counterclaim has been served.
- (k) Unless otherwise agreed by the parties, either party may amend or supplement its Claim or defence during the course of the arbitral proceedings, unless the Arbitration Tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

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- (l) Within 30 days of its creation in accordance with Section 5.3(c), the Arbitration Tribunal shall summon the parties to a preliminary conference for the purposes of drafting and executing the terms of reference, which shall include:
- (i) the names, full corporate names and nature of the parties;
  - (ii) the addresses of the parties, for service of notices and documents;
  - (iii) a brief presentation of the parties' allegations and conclusions sought in the Claim and counter claim;
  - (iv) a list of the issues under dispute;
  - (v) the timetable, including deadlines for serving the declaration, the defence and, eventually, the counterclaim, the reply and defence to the counterclaim, and the preliminary arguments, the examinations before and after the defence, the objection proceedings, the disclosure of exhibits, the disclosure of expert reports, the submission of "prehearing" briefs, the prehearing conferences, the date of hearing, and the "posthearing" briefs, as applicable; and
  - (vi) the amounts to be paid by the parties in advance by the parties to cover the arbitration fees and expenses.
- (m) The terms of reference shall be executed by the parties and the members of the Arbitration Tribunal. Refusal by either party to participate in the prehearing conference or execute the terms of reference shall not hamper the conduct of the arbitration procedure. The terms of reference may be amended for the specific purpose of taking into account any new Claim or counterclaim instituted by the parties, or any change to the timetable of the arbitration procedure.
- (n) The Arbitration Tribunal may take any measure to protect the business or trade secrets and Confidential Information of the parties.
- (o) The Arbitration Tribunal shall establish rules of procedure, which shall under no circumstances be open to any person which is not party to the proceedings. The Arbitration Tribunal may specifically order the exclusion of witnesses. The parties shall appear in person or through a duly authorized representative, including their counsel.
- (p) Where the Arbitration Tribunal is composed of three arbitrators, questions of procedure may be decided by the presiding arbitrator.
- (q) Upon adjournment of the hearings or, where applicable, after receipt of the written arguments, the Arbitration Tribunal shall declare the proceedings closed and, after that date, no further proceeding, argument or evidence may be presented, unless so requested or authorized by the Arbitration Tribunal.
- (r) Any arbitration award shall be rendered by a majority in writing and reasons shall be given. The award shall be deemed to have been rendered in the location of the arbitration and on the date stipulated therein. Any dissenting member of the Arbitration Tribunal shall record his or her dissent and such member's reasons for dissent.
- (s) The parties undertake to pay the arbitration fees and expenses of the Arbitration Tribunal within the timeframe determined by the Arbitration Tribunal. In its final arbitration award, the Arbitration Tribunal shall determine the arbitration fees and expenses as well as costs

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including of experts and lawyers, and shall decide which parties shall assume the payment thereof or in what proportion they shall be shared by the parties. When the Arbitration Tribunal has rendered a decision on the Dispute, a party who has made a settlement offer that was not accepted may advise the Arbitration Tribunal of the time, nature and amount of the settlement offer. In awarding costs, the Arbitration Tribunal may take into account the making of such settlement offer.

- (t) The parties agree to any arbitration procedure instituted pursuant to this Schedule being consolidated or heard together with any other arbitration procedure instituted by a Prime Contractor arising from a Dispute that raises common, identical or similar issues of fact or law. Such arbitrations shall be submitted to a panel of three members to be named by mutual agreement of all parties. Failing such agreement, any arbitrator position not filled by mutual consent of the parties shall be appointed pursuant to the provisions of the Arbitration Code. The provisions of this Section 5.3 with respect to the powers, obligations, decisions, fees and expenses of an Arbitration Tribunal shall apply with the necessary alterations to any such panel and Dispute.

#### **5.4 Applicable Law**

The Law to be applied in connection with the arbitration shall be the Laws of Ontario and the Laws of Canada applicable therein, but excluding the choice of law rules that might direct the Laws of another jurisdiction.

#### **5.5 Decision of Arbitration Tribunal Not Subject to Appeal**

Any decision made or award granted by the Arbitration Tribunal is final, binding and not subject to appeal, except to the extent permitted by the *Arbitration Act*. The parties expressly waive all rights of appeal in connection with the award of the Arbitration Tribunal. Judgment may be entered upon the award in accordance with Applicable Law in any court having jurisdiction.

#### **5.6 Recourse to Courts**

Notwithstanding the provisions of this Schedule, any party may apply at any time to a court of competent jurisdiction for:

- (a) any emergency or interim remedy to enforce the terms of this Agreement or to prevent any breach of this Agreement, including specific performance and injunctive relief on an interim or interlocutory basis, restraining orders, receiving orders and orders regarding the detention, preservation and inspection of property;
- (b) the enforcement of an award made by an Arbitration Tribunal; or
- (c) the enforcement of the award made by an Arbitration Tribunal where such enforcement reasonably requires access to any remedy that the Arbitration Tribunal has no power to award or enforce.

To the extent possible, any such proceeding will be held in camera so as to preserve confidentiality of Confidential Information.

### **6. NON-COMPLIANCE DISPUTES**

- 6.1** Any Dispute respecting a Non-Compliance (a “**Non-Compliance Dispute**”), including any Dispute relating to (i) the existence or non-existence of such Non-Compliance (ii) the

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categorization of a Non-Compliance (iii) any aspect of any plan of action of Project Co in order to cure the Non-Compliance and (iv) the adequacy of any cure of the Non-Compliance, shall be subject to resolution pursuant to this Section 6, if it has not been resolved pursuant to Part 2 [Non-Compliance] of Schedule 7 [Quality Management].

- 6.2** Any party that believes that a Non-Compliance Dispute should be submitted for resolution pursuant to this Section 6, shall send the other party and the Independent Certifier written notice describing such Non-Compliance Dispute (a "**Notice of Non-Compliance Dispute**").
- 6.3** The Non-Compliance Dispute shall then be resolved by the Independent Certifier and the provisions of Sections 3.3(a) to 3.3(e) inclusive and Sections 3.3(g) and 3.3(h) shall apply with the necessary alterations, and the decision of the Independent Certifier shall be final and binding on both parties. Where a Non-Compliance Dispute is referred to the Independent Certifier for resolution, WDBA may not make any applicable NCR Deductions until the Non-Compliance Dispute is resolved. If the decision rendered by the Independent Certifier is in favour of Project Co, such decision shall constitute a Compensation Event and the provisions of Section 43 of the Project Agreement shall apply. If the decision rendered by the Independent Certifier is in favour of WDBA and NCR Deductions are applicable, they shall apply retroactively to the date they would normally have been deducted in accordance with this Project Agreement, were it not for such Non-Compliance Dispute. WDBA shall deduct that amount from the next Construction Period Payment or Monthly Payment, as applicable, made to Project Co.
- 6.4** If the Independent Certifier Agreement terminates in accordance with its terms prior to the Expiry Date, the parties shall appoint an individual who by training and expertise is qualified to hear Non-Compliance Disputes. Failing agreement by the parties on such individual within 30 days of such termination, such individual shall be appointed pursuant to the provisions of the Arbitration Code.

## **7. CONTINUING PERFORMANCE**

- 7.1** At all times, notwithstanding the existence of any Dispute, the parties shall diligently perform their respective obligations in accordance with the provisions of this Agreement without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of this Agreement, provided that this Section 7.1 shall not apply to a party where the other party has repudiated, terminated or abandoned performance of this Agreement. No party shall exercise any remedy with respect to an alleged default by the other party under this Agreement if a Dispute with respect to an alleged default has been submitted for resolution pursuant to this Schedule until (i) the parties have settled the Dispute (ii) the Standing Committee has made a final decision with respect to such Dispute or (iii) the Arbitration Tribunal has made an award with respect to the Dispute and any appeal periods with respect to such award (to the extent any are possible pursuant to this Schedule) have expired without an appeal having been taken.
- 7.2** Subject to the express provisions of this Agreement, where there is a Dispute as to the amount of monies owing hereunder by any party to any other party, the portion of the amount owing that is not contested, disputed or challenged, if any, shall be paid when due hereunder, but without prejudice to the rights of the parties hereto to contest, dispute or challenge the disposition of the remaining portion of the monies claimed.
- 7.3** Prior to resolution of the Dispute, WDBA may, by notice to Project Co, direct Project Co to proceed in respect of the matter in dispute or any related matter and Project Co will comply with and implement the direction. Such direction will be without prejudice to Project Co's rights to compensation or other rights under this Agreement. Nothing in this Schedule will limit WDBA's right to require a Change.

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## 8. TIME PERIODS

Subject to Section 7, if under this Agreement a Dispute arises in respect of a matter for which a time period or grace period is running and if such Dispute has been submitted for resolution pursuant to this Schedule, the failure to comply with the time period or grace period shall not constitute a breach of this Agreement unless the Arbitration Tribunal determines that the particular issue which is subject to the Dispute should have been performed within the time period or grace period in question. If the Arbitration Tribunal comes to the opposite conclusion, then the time period or grace period shall start to run from the date of its decision or award. In addition, Section 11 of the *Limitations Act, 2002* (Ontario) shall apply to any limitation periods which are relevant to any Dispute.

For the purposes of Section 4 of the *Limitations Act, 2002*, S.O. 2002, c.24, as amended, the limitation period for the commencement of a proceeding in respect of any Claim by a party under this Project Agreement for which a Notice of Dispute has been delivered by either party on or prior to the Final Completion Date shall not begin to run, and such Claim shall not and ought not to have been discovered, until such time as the Dispute Resolution Procedure in this Schedule 23 with respect to that Claim is completed or is expressly terminated by a party, in accordance with the provisions of this Schedule 23. This provision is intended to be an agreement to extend, suspend or vary the limitation period as contemplated by sections 22(3) and 22(5) of the *Limitations Act, 2002*, S.O. 2002, c.24, as amended.

## 9. SECURITY REQUIREMENTS

Each person who acts as a representative of WDBA or Project Co, the Independent Certifier, each member of the Standing Committee, each mediator, each member of an Arbitration Tribunal and any other individual appointed to hear a Dispute shall comply with the Security Requirements. The Security Requirements shall apply to any exchange of information or documents pursuant to this Schedule.

## 10. CONFIDENTIALITY

Without limiting the obligations of the parties under the Section 53 (*Confidentiality*) of this Agreement, all negotiations, the Technical Dispute resolution process, the Standing Committee process, the Non-Compliance Dispute resolution process, mediation and arbitration conducted pursuant to this Schedule and all information and documents, whether in tangible, electronic or digital form, exchanged by the parties in connection therewith are confidential. Such information and documents shall not be disclosed to any person other than:

- (a) the parties, their legal counsel and any of their representatives, consultants and advisors who need to know such information and documents for the purposes of such negotiations, mediation or arbitration; and
- (b) the Independent Certifier, the Standing Committee, the mediator, the Arbitration Tribunal or any other individual appointed to hear a Dispute,

except as may be required by Applicable Law or except in the course of any judicial proceeding referred to in Section 5.5 or Section 5.6. The parties shall use all practicable measures to minimize the exchange or disclosure of information which is subject to the Security Requirements. The provisions of this Agreement with respect to Confidential Information shall apply to such exchange of information and documents. If either party fails to comply with the provisions of this Section 10 before or after the completion of any arbitration, the Arbitration Tribunal may enjoin further breaches by such party of this provision and award damages or other relief against such party. On completion of any negotiations, the Technical Dispute process, the Summary Dispute process, the Non-Compliance Dispute process,

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mediation or arbitration conducted under this Schedule, each party shall return to the other all copies of such information or documents, whether in tangible, electronic or digital form.

## **11. SURVIVAL**

The provisions of this Schedule shall survive any termination of this Agreement. The provisions of this Schedule shall continue in full force and effect notwithstanding any determination by a court or the parties that one or more other provisions of this Agreement are invalid, contrary to law or unenforceable.

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**SCHEDULE 24**

**FINANCIAL MODEL**

**[REDACTED]**

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**SCHEDULE 25****PAYMENT MECHANISM (OMR)****1. DEFINITIONS**

Unless defined specifically in this Schedule or unless the context otherwise requires, capitalized but otherwise undefined terms in this Schedule will have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*], Part 22 [*Tolling Infrastructure*] of Schedule 10 [*Design and Construction Specifications*], Schedule 11 [*Operations, Maintenance and Rehabilitation*], and Schedule 13 [*Tolling Operations*] of this Project Agreement. Each Appendix to this Schedule forms an integral part of this Schedule.

In this Schedule, the following terms have the meanings set out in this Section 1.

**Accessibility Condition** means:

- (a) a state or condition of the relevant Crossing Section which allows all Users who are entitled to use the Crossing Section to safely and conveniently enter and leave the Crossing Section the Crossing Section using normal access routes; or
- (b) a state or condition of a Functional Unit or the means of access to it which allows all Users who are entitled to enter, occupy or use the relevant Functional Unit to safely and conveniently access the Functional Unit using normal access routes.

**Annual Energy Adjustment** means the Gainshare Adjustment and/or Painshare Adjustment calculated for a Contract Year, as a lump sum amount, in accordance with Schedule 38 [*Energy Management*].

**Annual Canadian Tolling Operations Adjustment** has the meaning given in Section 2.8 of this Schedule.

**Annual Review** has the meaning given in Section 7.2.

**Annual US Tolling Operations Adjustment** has the meaning given in Section 2.8 of this Schedule.

**Area** means a travel area measured in square metres, within a Crossing Section, as identified in Table 7 in Section 4.3(d).

**Availability Condition** means any of (i) the Accessibility Condition, (ii) the Safety Condition or (iii) the Use Condition.

**Availability Failure** means one of the following: (a) Crossing Availability Failure; or (b) POE Building Availability Failure.

**Availability Failure Deduction** or **AFD** means the Deduction that may be applied by WDBA pursuant to Section 4.

**Base Date** means May 8, 2018.

**Bedding-In Period** means the period from the commencement of the OMR Period to the end of the sixth full Contract Month of the OMR Period.

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**Bridge Capital Payment** means the fixed monthly amount to be paid by WDBA to Project Co, in each calendar month following the issuance of the Bridge Handover Certificate by the Independent Certifier as set out in Appendix 25-1 to this Schedule.

**Bridge Handover Month** means a calendar month commencing from issuance of the Bridge Handover Certificate by the Independent Certifier.

**Canadian Escalation Factor** or **CESC** means the Canadian escalation factor calculated in accordance with Section 2.3.

**Canadian OM Payment** means the Canadian dollar based monthly amounts as set out in Appendix 25-2 to this Schedule.

**Canadian POE Handover Month** means a calendar month commencing from issuance of the Canadian POE Handover Certificate as well as the Canadian POE Agency Building Handover Certificate by the Independent Certifier.

**Canadian Rehabilitation Payment** means the Canadian dollar based monthly amounts for Rehabilitation of all Elements, excluding roadways, as set out in Appendix 25-2 to this Schedule.

**Canadian Tolling Operations Payment** means the Canadian dollar based monthly amounts during the OMR Period as set out in Appendix 25-2 to this Schedule for Tolling Operations in accordance with the requirements in Schedule 13 [*Tolling Operations*].

**Canadian Tolling Operations Payment Adjustment** has the meaning in Section 2.8 of this Schedule.

**Capital Payment** means any one or more of the Canadian POE Capital Payment, the US POE Capital Payment, the Bridge Capital Payment and the Michigan Capital Payment.

**Class 4 Vehicle** has the meaning set out in Part 22 [*Tolling Infrastructure*] of Schedule 10 [*Design and Construction Specifications*].

**Class 4 Vehicle Threshold** means the cumulative number of Class 4 Vehicle traffic from commencement of the OMR Period calculated at the end of each Contract Year, as specified in Appendix 25-11 of this Schedule.

**Community Benefits Amount During OMR Period** or **CBAO** means the monthly amounts in Canadian dollars during the OMR Period as set out in Appendix 25-2 to this Schedule in respect of the Community Benefits related costs in accordance with Schedule 36 [*Community Benefits*], payable upon successful completion of initiatives identified in the Community Benefits Plan and provision of satisfactory evidence by Project Co to WDBA.

**Contract Month** means a calendar month during the OMR Period, except with respect to the first Contract Month, which runs from the Substantial Completion Date until the end of the calendar month in which the Substantial Completion Date falls, and the last Contract Month, which runs from the first day of the calendar month in which the Termination Date falls until the Termination Date.

**Crossing** means the roadways, lanes, travel areas and facilities within the OMR Limits, comprised of the various sections described in Section 4.3.

**Crossing Availability Failure** or **CAF** means Unavailability in respect of a Crossing Section (or a portion thereof).

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**Crossing Availability Failure Deduction** or **CAFD** means a Deduction made in respect of a Crossing Availability Failure.

**Crossing Section** means an identified section within the Crossing, as defined in Table 15 in Appendix 25-6.

**Deduction** means a deduction made from an Unadjusted Monthly Payment in any Contract Month in accordance with this Schedule.

**Deduction Amount** means the unit deduction amount associated with each of the following failure types:

- (a) Crossing Availability Failure, as provided in Table 1, Table 3, Table 5, and Table 8 in Section 4.3;
- (b) POE Building Availability Failure as per the applicable Functional Unit Rank Category in the case of a POE Building, as provided in Table 10, Table 11, and Table 12 of Appendix 25-3; and
- (c) Service Failure as provided in Table 13 of Appendix 25-4 and Table 14 of Appendix 25-5.

**Deduction Thresholds** means the level of Deductions specified as such in Section 32.4 of the Project Agreement in respect of Warning Notices, Section 32.5(b) of the Project Agreement in respect of Monitoring Notices, Section 32.6 of the Project Agreement in respect of WDBA's rights to take Remedial Action, Section 46.5 of the Project Agreement in respect of replacement of a non-performing OMR Contractor, and in Section 46.1(j) of the Project Agreement in respect of a Project Co Event of Default.

**Exempt Availability Failure** means an Availability Failure that results solely from the following activities and is recorded as such in the Monthly Progress Report:

- (a) Permitted Closures of any roadways, lanes or travel areas within the Crossing Sections carried out in accordance with the requirements specified in Schedule 11 [*Operations, Maintenance, and Rehabilitation*];
- (b) Planned Maintenance, as approved by WDBA, in respect of the Functional Units carried out in accordance with the requirements specified in Schedule 11 [*Operations, Maintenance, and Rehabilitation*];
- (c) an accident (including any vehicle collision or release of Hazardous Materials) or Emergency services instruction, provided such accident or instruction did not result directly from a breach, action or inaction by Project Co and that Project Co took all reasonable steps to mitigate the impact of such accident or instruction;
- (d) action or work by a Relevant Authority or an inspection, investigation or survey carried out by WDBA, or any other Relevant Authority, provided the same did not result directly from a breach, action or inaction by Project Co of this Agreement;
- (e) a Non-Excusable Event by WDBA in accordance with the provisions of the Agreement; or
- (f) any Lane Closures permitted under the Section 4.2(a) of Schedule 13 [*Tolling Operations*].

**Failure Event** means an incident or state of affairs within the OMR Limits during the OMR Period, which is capable of becoming:

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- (a) a Crossing Availability Failure, if it results in an Availability Condition not being met in a Crossing Section (Unavailability);
- (b) a POE Building Availability Failure, if it results in an Availability Condition not being met in a Functional Unit (Unavailability) and is not Rectified within the Rectification Time;
- (c) a Service Failure if it results in (i) a Category Defect where no Rectification Time is applicable or (ii) a Category Defect which has not been Rectified within the Rectification Time; or
- (d) a Service Failure if it results in a Category Defect or emergency for which the response actions set out in Schedule 11 [*Operations, Maintenance, and Rehabilitation*] have not been completed within the Category Defect Response Period.

**Functional Unit** means a room, space or relevant area within a POE Building which is specified as such in Appendix 25-3 to this Schedule.

**Functional Unit Rank Category** means the ranking category of each Functional Unit, as provided in Table 9 of Appendix 25-3 of this Schedule.

**Holiday Period** means the period covering the holiday, the pre-holiday travel day and the travel day following the holiday, in accordance with the holiday and events schedule as per requirements in the Operations and Maintenance Plan contemplated in Schedule 11 [*Operations, Maintenance, and Rehabilitation*].

**Inspection Lane Segment** has the meaning given in Section 4.3(c).

**Lane Kilometre** means a consecutive single lane section measured on a kilometre basis within a Crossing Section identified under a Deduction basis of "Lane Kilometre", as listed in

Table 2 in Section 4.3(b).

**Lane Segment** means a single lane segment within a Crossing Section identified under a Deduction basis of "Lane Segment", as listed in Table 4 in Section 4.3(c), inclusive of booths and other physical infrastructure related to the proper functioning of the lane.

**Metered Utilities** means metered water, wastewater, and sewage (including storm sewer and sanitary sewer) delivered or disposed of a quality compliant with Codes, Standards and Regulation at the Facilities.

**Michigan Capital Payment** means the fixed monthly amount to be paid by WDBA to Project Co, in calendar month following the issuance of the Michigan Handover Certificate by the Independent Certifier as set out in Appendix 25-1 to this Schedule.

**Michigan Handover Month** means a calendar month commencing from issuance of the Michigan Handover Certificate by the Independent Certifier.

**Minimum Agreed Availability Conditions** means for the purposes of a Temporary Rectification, all of the Accessibility Condition, Safety Condition and Use Condition, as relevant to a POE Building only, as temporarily modified and permitted in accordance with Section 6 for the purposes of a Temporary Rectification.

**Minimum Performance Criteria** has the meaning set out in Schedule 11, as reproduced in Appendix 25-4 of this Schedule.

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**Monthly Payment** has the meaning set out in Section 2.1.

**Multiple Lane Segment Factor** means a factor applied to the calculation of Crossing Availability Failure Deductions in respect of Lane Segments identified within the Crossing, as per Table 6 Section 4.3(c).

**OM Payment** means any one or more of the Canadian OM Payment and the US OM Payment.

**PAR Interim OM Payment** has the meaning given in Section 3.2 of this Schedule.

**Pass-Through Costs** means the costs, as evidenced by applicable third party invoices, associated with the following items, but in each case excluding overhead costs and profit on top of third party invoices:

- (a) All applicable municipal Taxes on real or personal property located in Canada, which are required to carry out the Project Work as contemplated in paragraph 38.2(a) of the Project Agreement;
- (b) Real property tax or a tax in lieu of a real or personal property tax assessed against Project Co on the US portion of the Project assessed by a Governmental Authority in the United States without being primarily obligated as contemplated in paragraph 38.2(b) of the Project Agreement;

For clarity, the Pass-Through Costs shall specifically exclude:

- (i) Municipal Taxes on any personal equipment owned by Project Co either located in Canada or the US;
  - (ii) Canadian federal and provincial income tax;
  - (iii) US federal and state income tax;
  - (iv) Applicable Canadian Taxes; and
  - (v) Applicable US Taxes.
- (c) cost of consumption, use, or disposal of Metered Utilities at the Facilities, as applicable;
  - (d) costs related to haulage and disposal of, in accordance with Schedule 11 [*Operations, Maintenance, and Rehabilitation*]:
    - (i) Waste and recyclable materials from within the OMR Limits, with the exception of any Waste generated by Project Co for performance of Planned Maintenance; and
    - (ii) Hazardous Material within the OMR Limits through approved, certified waste handlers, as evidenced by successful disposal of the Hazardous Material.

For clarity, costs related to services performed by Project Co Person(s) shall not be included within Pass-Through Costs.

- (e) costs related to Tolling Operations incurred in accordance with Schedule 13 [*Tolling Operations*], as follows:

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- (i) costs of purchase of Transponders and toll account cards for replenishment of inventory levels. For clarity, only costs of one replacement Transponder per customer each year shall be included within Pass-Through Costs, with costs of all additional Transponders to be covered through a user charge to customers.
  - (ii) costs of providing and distributing by mail, Transponders and toll account cards to customers.
- (f) The Detroit Water and Sewage Department fee during the OMR Period.

**Permanent Rectification** means Rectification where a Temporary Rectification has been permitted and carried out pursuant to Section 6.1.

**Permanent Rectification Deadline** has the meaning given in Section 6.1.

**POE Building Availability Failure** or **PBAF** means Unavailability in respect of a Functional Unit within the POE Buildings which has not been Rectified within the relevant Rectification Time (based on the relevant Functional Unit Rank Category), as provided in Table 9 or Table 10 of Appendix 25-3 of this Schedule, as applicable. For the avoidance of doubt, a POE Building Availability Failure may apply to one or more Functional Units.

**POE Building Availability Failure Deduction** or **PBAFD** means a Deduction made in respect of a POE Building Availability Failure and calculated pursuant to Section 4.4 of this Schedule.

**Prepaid Refund Amount** has the meaning given in Section 2.12 of this Schedule.

**Rectification** means, following the occurrence of a Failure Event, making good the Category Defect or Unavailability so that the subject matter of the Category Defect or Unavailability complies with the levels of service required pursuant to Schedule 11 [*Operations, Maintenance, and Rehabilitation*] or this Schedule, and “**Rectify**” and “**Rectified**” shall be construed accordingly. Without prejudice to the generality of the foregoing, this shall include:

- (a) ensuring that any Crossing Section and Functional Unit of a POE Building, which has been affected by the relevant Failure Event complies with the Availability Conditions;
- (b) ensuring that Project Co completes the required maintenance corrective action for Hazard Mitigation, Interim Remedy, and Permanent Repair, as applicable and in accordance with Schedule 11 [*Operations, Maintenance, and Rehabilitation*]; and
- (c) notifying the Call Centre that Rectification has been completed.

**Rectification Time** means:

- (a) the duration of time available to Project Co to Rectify a Category Defect prior to the occurrence of a Service Failure in accordance with Section 5.2 and Appendix 25-4 of this Schedule, as applicable; or
- (b) the duration of time specified in Table 9 and Table 10 of Appendix 25-3 of this Schedule, as applicable, available to Project Co to Rectify Unavailability in the relevant Functional Unit (based on the relevant Functional Unit Rank Category) within the POE Buildings prior to the occurrence of a POE Building Availability Failure in accordance with Section 4.4, calculated from the time that such Unavailability occurs.

Unless otherwise stated, Rectification Times shall be deemed to start upon the date and time that Project Co became aware or ought to have become aware of the Category

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Defect or Unavailability in the ordinary course of conducting the OMR Work, in compliance with its obligations under the Project Agreement, including the Operations and Maintenance Plan. Notwithstanding the above, the start of the relevant Rectification Time shall be adjusted, if applicable, for any period where Project Co is prevented access by first responders or a Relevant Authority to commence or continue with Rectification.

**Roadway Rehabilitation Payment** means the Canadian dollar based monthly amounts for rehabilitation of the roadways during the OMR Period as set out in Appendix 25-11 to this Schedule.

**Safety Condition** means:

- (a) a state or condition of a Crossing Section which allows users to enter, leave, and use the Crossing Section safely, including compliance with applicable Law and relevant policies and requirements of WDBA;
- (b) a state or condition of a Functional Unit within a POE Building which allows users to enter, leave, occupy and use such Functional Unit safely, including compliance with Applicable Law and relevant policies and requirements of WDBA.

**Schedule** means this Schedule 25 [*Payment Mechanism (OMR)*] of this Project Agreement unless such term clearly refers to another schedule of this Project Agreement.

**Service Failure** means any Category Defect by Project Co which has not been Rectified within the Rectification Times identified in Table 13 in Appendix 25-4 and Table 14 in Appendix 25-5 to this Schedule or if, in accordance with Table 13 in Appendix 25-4 and Table 14 in Appendix 25-5, no Rectification Time applies, the Category Defect shall also be a Service Failure.

**Service Failure Deduction** means a Deduction made in respect of a Service Failure in accordance with this Schedule.

**SF Permanent Repair Deadline** has the meaning given in Section 5.2(a).

**System Acceptance Deduction** or **SAD** has the meaning given in Section 2.5.

**Temporary Rectification** means, in respect of Unavailability in a Functional Unit, works of a temporary nature that do not constitute Rectification but satisfy the Minimum Agreed Availability Conditions and substantially makes good the Unavailability for the period until a Permanent Rectification can be undertaken.

**Toll Lane Segment** has the meaning given in Section 4.3(c).

**Tolling Operations Payment Adjustment Report** means the report prepared by Project Co in accordance with Section 2.8 of this Schedule.

**Unadjusted Monthly Payment** means the amount that would be calculated for the relevant Contract Month in accordance with the formula set out in Section 2.2 less the Community Benefits Amount during OMR Period, Revenue Shortfall and Pass-Through Costs relevant to that Contract Month and without adjustment for Deductions, Annual Energy Adjustment, Insurance Adjustment and the Tolling Payment Adjustments.

**Unavailable** means:

- (a) in relation to a Crossing Section, that such Crossing Section (or any part thereof) is in a state or condition which does not comply with any one or more of the Availability

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Conditions, as related to the Crossing Sections only, and “**Unavailability**” shall be construed accordingly; and

- (b) in relation to a Functional Unit, that such Functional Unit (or any part thereof) is in a state or condition which does not comply with any one or more of the Availability Conditions, and “**Unavailability**” shall be construed accordingly.

**US CPI Urban Index** means the US All Urban Consumers Index as published by the US Department of Labor.

**US Escalation Factor** or **UESC** means the US escalation factor calculated in accordance with Section 2.3.

**US OM Payment** means the US dollar based monthly amounts as set out in Appendix 25-2 to this Schedule.

**US POE Handover Month** means a calendar month commencing from issuance of the US POE Handover Certificate as well as the US POE Agency Building Handover Certificate by the Independent Certifier.

**US Rehabilitation Payment** means the US dollar based monthly amounts for Rehabilitation of all Elements, excluding roadways, as set out in Appendix 25-2 to this Schedule.

**US Tolling Operations Payment** means the US dollar based monthly amounts during the OMR Period as set out in Appendix 25-2 to this Schedule for Tolling Operations in accordance with the requirements in Schedule 13 [*Tolling Operations*].

**US Tolling Operations Payment Adjustment** has the meaning in Section 2.8 of this Schedule.

**Use Condition** means:

- (a) a Crossing Section is available for use and is not subject to a Lane Closure, other than a Permitted Closure; or
- (b) a state or condition of a Functional Unit within a POE Building, which substantially satisfies the Use Parameters of such Functional Unit within a POE Building.

**Use Parameters** means the range of Functional requirements for the proper use of a Functional Unit within a POE Building, as applicable, in accordance with Schedule 11 [*Operations, Maintenance, and Rehabilitation*].

**Warranty Adjustment** has the meaning in Section 2.11 of this Schedule.

All references to a Section number in this Schedule means a Section number of this Schedule unless such Section number clearly refers to a Section of the body of this Project Agreement or to another Schedule or part of a Schedule of this Project Agreement.

## 2. MONTHLY PAYMENT AND DEDUCTION BASIS

### 2.1 Introduction

The monthly payment (“**Monthly Payment**”) shall be payable by WDBA to Project Co and is calculated in accordance with Section 2.2.

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## 2.2 Monthly Payment

The Monthly Payment payable in respect of each Contract Month (“n”) shall be calculated in accordance with the following formula:

$$MP_n = (CP1_u + CP2_v + CP3_w + CP4_x) + \left( \left( COMP_n + CRP_n + \left( \frac{RRP_y}{12} \right) + CTOP_n + CBAO_n \right) * CESC_y \right) \\ + \left( (USOMP_n + URP_n + UTOP_n) * UESC_y \right) - AFD_{n-1} - SFD_{n-1} - SAD_n \\ \pm AEA_n - RS_n + CTOPA_n + UTOPA_n \pm \left( \frac{IA}{12} \right) + PHIC_n + HIC_n + PPRA_n$$

Where:

$MP_n$  is the Monthly Payment for the Contract Month  $n$  for which the formula is to be applied;

$CP1_u$  is the Canadian POE Capital Payment for the Canadian POE Handover Month  $u$ , as set out in Appendix 25-1 to this Schedule;

$CP2_v$  is the US POE Capital Payment for the US POE Handover Month  $v$ , as set out in Appendix 25-1 to this Schedule;

$CP3_w$  is the Bridge Capital Payment for the Bridge POE Handover Month  $w$ , as set out in Appendix 25-1 to this Schedule;

$CP4_x$  is the Michigan Capital Payment for the Michigan Handover Month  $x$  following the issuance of the Michigan Handover Certificate as set out in Appendix 25-1 to this Schedule;

$COMP_n$  is the Canadian OM Payment for the Contract Month  $n$  as set out in Appendix 25-2 to this Schedule;

$USOMP_n$  is the US OM Payment for the Contract Month  $n$  as set out in Appendix 25-2 to this Schedule;

$CTOP_n$  is the Canadian Tolling Operations Payment for the Contract Month  $n$  as set out in Appendix 25-2 to this Schedule;

$UTOP_n$  is the US Tolling Operations Payment for the Contract Month  $n$  as set out in Appendix 25-2 to this Schedule;

$CRP_n$  is the Canadian Rehabilitation Payment for the Contract Month  $n$  as set out in Appendix 25-2 to this Schedule;

$RRP_y$  is the Roadway Rehabilitation Payment for the Contract Year  $y$  as set out in Appendix 25-11 to this Schedule;

$URP_n$  is the US Rehabilitation Payment for the Contract Month  $n$  as set out in Appendix 25-2 to this Schedule;

$CBAO_n$  is the Community Benefits Amount During OMR Period for the Contract Month  $n$  as set out in Appendix 25-2 to this Schedule and in accordance with Schedule 36 [Community Benefits];

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$CESC_y$  is the Canadian Escalation Factor for the relevant Contract Year as calculated in accordance with Section 2.3;

$UESC_y$  is the US Escalation Factor for the relevant Contract Year as calculated in accordance with Section 2.3;

$AFD_{n-1}$  is the Availability Failure Deduction, which represents the sum of the Crossing Availability Failure Deductions and POE Building Availability Failure Deductions for the relevant prior Contract Month ( $n-1$ ), calculated in accordance with the provisions set out in this Schedule;

$SFD_{n-1}$  is the Service Failure Deduction for the relevant prior Contract Month ( $n-1$ ) in relation to the Service Failures calculated in accordance with the provisions set out in this Schedule;

$SAD_n$  is the System Acceptance Deduction for the relevant Contract Month  $n$ , calculated in accordance with Section 2.5;

$AEA_n$  is the Annual Energy Adjustment applicable in respect of the Contract Month in which the relevant Annual Energy Adjustment was determined in accordance with Schedule 38 [*Energy Management*];

$RS_n$  is the Revenue Shortfall for the relevant Contract Month  $n$  calculated in accordance Section 2.7 of this Schedule;

$CTOPA_n$  is the Canadian Tolling Operations Payment Adjustment applicable to the relevant Contract Month  $n$ , determined in accordance with Section 2.8 of this Schedule;

$UTOPA_n$  is the US Tolling Operations Payment Adjustment applicable to the relevant Contract Month  $n$ , determined in accordance with Section 2.8 of this Schedule

$IA$  is the annual Insurance Adjustment calculated in accordance with Schedule 29 [*Insurance Requirements*]; and

$PHIC_n$  is the Pre-Handback Independent Certifier costs applicable to the relevant Contract Month  $n$ , determined in accordance with Section 3.2 of Schedule 14 [*Handback*]; and

$HIC_n$  is the Handback Independent Certifier costs applicable to the relevant Contract Month  $n$ , determined in accordance with Section 7.1 of Schedule 14 [*Handback*] of this Schedule.

$PPRA_n$  is the Prepaid Refund Amount applicable for the relevant Contract Month  $n$ , determined in accordance with Section 2.12 of this Schedule.

For the Contract Month in which the Substantial Completion Date occurs a pro rata adjustment shall be calculated as the actual number of days in the relevant calendar month from and including the Substantial Completion Date divided by the number of days in the calendar month in which the Substantial Completion Date occurs. Additionally, for the Contract Month in which the Termination Date occurs a pro rata adjustment shall be calculated as the actual number of days in the calendar month up to and including the Termination Date divided by the number of days in the calendar month in which the Termination Date occurs. In all other Contract Months there shall be no pro rata adjustment.

WDBA shall pay to Project Co the Monthly Payment in accordance with the provisions of this Schedule and within 28 to 30 days, as applicable for the relevant Contract Month, measured from the date an invoice in acceptable form and content is received from Project Co in accordance with

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the Project Agreement. In the event that it is determined that Project Co owes any amounts to WDBA, WDBA shall adjust the relevant amount in the next Monthly Payment.

WDBA shall pay to Project Co the amounts corresponding to (i) invoices from Project Co, and (ii) claims approved by the Community Benefits Committee, and at such time when the corresponding work is completed.

### 2.3 Escalation Factor

The Canadian Escalation Factor shall be calculated in accordance with the following formula:

$$CESC_y = \left( \frac{CPI_y}{CPI_o} \right)$$

The US Escalation Factor shall be calculated in accordance with the following formula:

$$UESC_y = \frac{(UCPI_y)}{(UCPI_o)}$$

Where:

$CESC_y$  is the Canadian Escalation Factor applicable in the relevant Contract Year  $y$ ;

$CPI_y$  is the value of the Canadian CPI on April 1 of the relevant Contract Year  $y$ , to be determined by reference to the monthly CPI index published by Statistics Canada in the month of February most recently preceding the indexation date;

$CPI_o$  is the value of Canadian CPI on the Base Date "o", to be determined by reference to the monthly CPI index in the month of February most recently preceding the Base Date;

$UESC_y$  is the US Escalation Factor applicable in the relevant Contract Year  $y$ ;

$UCPI_y$  is the value of US CPI Urban Index on April 1 of the relevant Contract Year  $y$ , to be determined by reference to the relevant index in the month of February most recently preceding the indexation date; and

$UCPI_o$  is the value of US CPI Urban Index on the Base Date, to be determined by reference to the relevant index in the month of February most recently preceding the Base Date.

### 2.4 WDBA's Entitlement to Make Deductions

If at any time during the OMR Period, an Availability Failure or a Service Failure occurs, WDBA shall be entitled to make a Deduction from the relevant Unadjusted Monthly Payment in respect of that Availability Failure or Service Failure subject to Section 4 or Section 5.

Deductions shall first be applied against the Canadian dollar based portion of the Unadjusted Monthly Payment, followed by the U.S. dollar based portion of the Unadjusted Monthly Payment. If Deductions are applied against a portion or the entirety of the U.S. dollar based portion of the Unadjusted Monthly Payment, the relevant amount of the Deductions shall be converted to U.S. dollars based on the noon exchange rate for the Canadian dollar against the US dollar on the last day of the relevant Contract Month, as published by the Bank of Canada.

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The maximum aggregate of all Deductions that WDBA can make in respect of any Contract Month shall be the Unadjusted Monthly Payment.

(a) Failure Event Classification

In accordance with the requirements set out in Schedule 11 [*Operations Maintenance and Rehabilitation*] and this Schedule, Project Co shall be responsible for the identification, classification, reporting and monitoring of all Failure Events.

Failure Events that are identified as Category Defects in respect of any Performance Requirements may be classified as either Category 1 Defects or Category 2 Defects. Project Co shall be required to respond to all such Category 1 Defects and Category 2 Defects in accordance with the Category Defect Response Periods as set out in Section 5.2. Failure to do so shall be deemed a Service Failure and shall be subject to a Service Failure Deduction in accordance with Section 5.2.

Category 1 Defects require Project Co to take actions in respect of Hazard Mitigation as applicable, as set out in Schedule 11 [*Operations Maintenance and Rehabilitation*] and in accordance with the applicable Rectification Time periods set out in Table 13 in Appendix 25-4 (Column C) to this Schedule. Failure to do so shall be deemed a Service Failure and shall be subject to a Service Failure Deduction in accordance with Section 5.2.

Failure by Project Co to undertake actions to Rectify a Failure Event may result in Availability Failures and/or Service Failures.

(b) Interaction between Availability Failures and Service Failures

Availability Failure Deductions shall apply upon the occurrence of Availability Failures in accordance with Section 4 and Service Failure Deductions shall apply upon the occurrence of Service Failures in accordance with Section 5. Additional clarity is provided below in respect of the general interaction between Availability Failure Deductions and Service Failure Deductions, specifically in relation to the Crossing and POE Buildings.

(i) Crossing

In respect of Crossing Sections that comprise the Crossing, Deductions shall be applicable upon the occurrence of any Crossing Availability Failures in accordance with Section 4.3 and Service Failures in accordance with Section 5.2.

In general terms, if a Failure Event:

- (A) results in Unavailability in respect of a Crossing Section, an Availability Failure Deduction shall apply in accordance with Section 4.3; and
- (B) (a) results in a Category Defect that is not Rectified within the applicable Rectification Time based on the relevant Category Defect classification (as set out in Table 13 in Appendix 25-4 and Table 14 in Appendix 25-4 to this Schedule), and (b) does not result in Unavailability, then a Service Failure Deduction shall apply in accordance with Section 5.2; and

For the avoidance of doubt, both an Availability Failure and Service Failure shall be applicable in accordance with this Schedule in circumstances where (a) an

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Unavailability occurs in respect of a Crossing Section and (b) a Service Failure, associated with the same Failure Event causing the Unavailability, arises from a failure to respond in accordance with the relevant Category Defect Response Period or a failure to complete actions in respect of Hazard Mitigation within the relevant Rectification Times for applicable Category 1 Defects. For further clarity, both an Availability Failure and Service Failure shall also be applicable in accordance with this Schedule if (a) Unavailability occurs in respect of a Crossing Section and (b) a Category Defect is not Rectified within the applicable Rectification Time in respect of a separate or distinct Failure Event occurring in the same Crossing Section while the relevant Unavailability is prevailing.

(ii) POE Buildings

In respect of Functional Units, Deductions shall be applicable upon the occurrence of any POE Building Availability Failures in accordance with Section 4.4 and Service Failures in accordance with Section 5.2.

In general terms, if a Failure Event:

- (A) results in Unavailability in respect of a Functional Unit that is not rectified within the applicable Rectification Time, an Availability Failure Deduction shall apply in accordance with Section 4.4; and
- (B) (a) results in a Category Defect that is not Rectified within the applicable Rectification Time based on the relevant Category Defect classification (as set out in Table 13 in Appendix 25-4 to this Schedule) and (b) does not result in Unavailability, a Service Failure Deduction shall apply in accordance with Section 5.2;

For the avoidance of doubt, if a Failure Event results in an Availability Failure in respect of a specific Functional Unit and an Availability Failure Deduction is applied, an additional Service Failure Deduction shall not be applicable for a Category Defect that may prevail in the relevant Functional Unit during the duration of the Availability Failure, with the exception of any Service Failure associated with Hazard Mitigation.

In certain circumstances, where a Failure Event that results in (a) a Category Defect that is not Rectified within the applicable Rectification Time and (b) Unavailability across multiple Functional Units that is not Rectified within the applicable Rectification Times, both Service Failure Deductions and Availability Failure Deductions may be applicable, in accordance with this Schedule. The specific Performance Requirements where such circumstances may apply are set out in Table 13 in Appendix 25-4 to this Schedule (Performance Requirements D1.1 to D1.7). Two tiers of Service Failure Deduction Amounts ((a) and (b)) are identified for such Performance Requirements (D1.1 to D1.7 in Table 13 in Appendix 25-4 to this Schedule) to differentiate between Service Failures that may impact specific Functional Units relative to those that may impact the overall Functionality of a POE Building, as determined in WDBA's discretion considering the degree of impact on the overall Functionality of the POE Building.

## 2.5 Tolling System Acceptance Test

Failure by Project Co to achieve System Acceptance as per the requirements within Schedule 10 [Design and Construction Specifications], Part 22 [Tolling Infrastructure] shall result in a one-time deduction of \$[REDACTED] ("**System Acceptance Deduction**") for the relevant Contract Month.

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## 2.6 Bedding-In Period

During the Bedding-In Period:

- (a) For the first Contract Month:
  - (i) No Deductions shall be made in respect of Service Failures as related to the Performance Requirements in Table 13 in Appendix 25-4 to this Schedule; and
  - (ii) No Deductions shall be made in respect of Service Failures as related to the Performance Requirements in Table 14 in Appendix 25-5 to this Schedule, excluding Performance Requirements 1.3, 1.4, and 1.5 for which Deductions shall apply.
- (b) For the second Contract Month:
  - (i) Deductions made in respect of Services Failures as related to the Performance Requirements in Table 13 in Appendix 25-4 to this Schedule shall be reduced by **[REDACTED]**%; and
  - (ii) No Deductions shall be made in respect of Service Failures as related to the Performance Requirements in Table 14 in Appendix 25-5 to this Schedule, excluding Performance Requirements 1.3, 1.4, and 1.5 for which Deductions shall apply.
- (c) For the remainder of the Bedding-In Period:
  - (i) Deductions made in respect of Services Failures as related to the Performance Requirements in Table 13 in Appendix 25-4 to this Schedule shall be reduced by **[REDACTED]**%.

For the avoidance of doubt, there shall be no relief from Deductions relating to Availability Failures during the Bedding-In Period.

## 2.7 Revenue Shortfall

A Revenue Shortfall shall be determined and applied to the Monthly Payment to account for variations between proceeds from the tolling revenue actually deposited in WDBA's accounts and what should have been deposited as per the tolling system, as per the requirements in Schedule 13 [*Tolling Operations*].

The Revenue Shortfall shall be calculated beginning the first Contract Month of the OMR Period and shall be applicable for the duration of the OMR Period. For clarity, the Revenue Shortfall shall not be subject to the Bedding-In Period.

For avoidance of doubt, collection of all Tolling Revenues by Project Co shall commence from the first day of the OMR Period in accordance with Schedule 13 [*Tolling Operations*] and any discrepancies or shortfalls determined in accordance with Schedule 13 [*Tolling Operations*] shall be adjusted from the Monthly Payment in accordance with Section 2.2 of this Schedule.

## 2.8 Tolling Operations Payment Adjustments

A Canadian Tolling Operations Payment Adjustment and US Tolling Operations Payment Adjustment shall be determined and applied to the Monthly Payment to account for variations in traffic through the Facility between the Expected Annual Traffic and the Actual Annual Traffic.

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The Canadian Tolling Operations Payment Adjustment shall be calculated as follows:

$$CTOPA_n = ACTPA/12$$

The US Tolling Operations Payment Adjustment shall be calculated as follows:

$$UTOPA_n = AUTPA/12$$

At the end of each Contract Year during the OMR Period, a Canadian Tolling Operations Payment Adjustment and US Tolling Operations Payment Adjustment shall be calculated as follows:

- (a) If the Actual Annual Traffic exceeds the Upper Traffic Threshold (Column C of Table 16 in Appendix 25-10) for the applicable Contract Year  $y$ , the adjustments shall be calculated as follows:

$$ACTPA = ACTOP_y * [\text{REDACTED}]\% * \left( 1 + \left( \frac{\text{Actual Annual Traffic} - \text{Upper Traffic Threshold}}{\text{Upper Traffic Threshold}} \right) \right)$$

$$AUTPA = AUTOP_y * [\text{REDACTED}]\% * \left( 1 + \left( \frac{\text{Actual Annual Traffic} - \text{Upper Traffic Threshold}}{\text{Upper Traffic Threshold}} \right) \right)$$

- (b) If the Actual Annual Traffic is below the Lower Traffic Threshold (Column D of Table 16 in Appendix 25-10) for the applicable Contract Year  $y$ , the adjustments shall be calculated as follows:

$$ACTPA = ACTOP_y * [\text{REDACTED}]\% * \left( 1 + \left( \frac{\text{Actual Annual Traffic} - \text{Lower Traffic Threshold}}{\text{Lower Traffic Threshold}} \right) \right)$$

$$AUTPA = AUTOP_y * [\text{REDACTED}]\% * \left( 1 + \left( \frac{\text{Actual Annual Traffic} - \text{Lower Traffic Threshold}}{\text{Lower Traffic Threshold}} \right) \right)$$

Where:

*ACTPA* means the Annual Canadian Tolling Operations Payment Adjustment for the relevant Contract Year;

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*AUTPA* means the Annual US Tolling Operations Payment Adjustment for the relevant Contract Year;

*ACTOP<sub>y</sub>* means the Annual Canadian Tolling Operations Payment for the relevant Contract Year;

*AUTOP<sub>y</sub>* means the Annual US Tolling Operations Payment for the relevant Contract Year;

*Actual Annual Traffic* means the actual annual traffic through the Facility measured over the relevant Contract Year and submitted through the Tolling Operations Payment Adjustment Report; and

*Upper Traffic Threshold* means 20 percent over the Expected Annual Traffic as shown in Column C of Table 16 in Appendix 25-10 to this Schedule;

*Lower Traffic Threshold* means 20 percent less than the Expected Annual Traffic as shown in Column D of Table 16 in Appendix 25-10 to this Schedule; and

*Expected Annual Traffic* means the annual traffic volume as shown in Column B of Table 16 in Appendix 25-10 to this Schedule.

Project Co shall provide the Tolling Operations Payment Adjustment Report to WDBA within 10 Business Days following the end of the relevant Contract Year. WDBA shall promptly notify Project Co of the details of any disagreement of all or any aspect of the Tolling Operations Payment Adjustment Report, and Project Co and WDBA shall then seek to agree to any matters in dispute, but where matters cannot be resolved within a 10 Business Day period following submission of the Tolling Operations Payment Adjustment Report (or such other period as may be otherwise agreed between WDBA representatives and the Project Co representatives, acting reasonably) the dispute shall be dealt with in accordance with the Dispute Resolution Procedure.

Project Co shall assist the WDBA representatives and afford the WDBA representatives such information and access as may reasonably be required for the WDBA representatives to confirm the Tolling Operations Payment Adjustment Report.

Where it is established in accordance with this Section 2.8 that an Annual Tolling Operations Payment Adjustment arises, the adjustment shall be given effect by way of an increase or decrease to the next Monthly Payment(s), as calculated in Section 2.2 of this Schedule. In the event that a relevant adjustment arises in respect of the final Contract Year, the adjustment shall be made to the final Monthly Payment, pursuant to Section 37 of the Project Agreement.

For the first Contract Year and the Contract Year in which the Termination Date occurs a pro rata adjustment for the Expected Annual Traffic shall be calculated as the actual number of days in the Contract Year up to and including the Termination Date divided by the number of days in the Contract Year in which the Termination Date occurs. In all other Contract Years there shall be no pro rata adjustment.

## **2.9 Pass-Through Costs**

Pass-Through Costs shall be applied to the Monthly Payment as an adjustment to reimburse Project Co for Pass-Through Costs incurred during the relevant Contract Month.

Project Co shall undertake an open and fair procurement or tendering process for any third party contracts / agreements required as related to any of the Pass-Through Costs to provide the best

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value for money to WDBA. WDBA shall have the right to participate in Project Co negotiations of any such third-party agreements or contracts. Project Co shall ensure that any such agreements or contracts with third party contractors are submitted for WDBA approval (such approval not to be unreasonably withheld or delayed) prior to finalization of any such agreements or contracts. Project Co shall prepare and submit all necessary supporting information, including vendor quotes, to WDBA for approval (such approval not to be unreasonably withheld or delayed).

Project Co shall provide to WDBA all relevant invoices, in the applicable currency, and supporting information related to the Pass-Through Costs within 2 Business Days of the end of each Contract Month.

Project Co shall assist the WDBA representatives and afford the WDBA representatives such information as may reasonably be required to confirm the Pass-Through Costs incurred by Project Co.

Once confirmed by WDBA, the reimbursement of the Pass-Through Costs shall be made within 5 Business Days from the date of submission of the relevant invoices by Project Co to WDBA.

WDBA shall promptly notify Project Co of the details of any disagreement on any invoices related to the Pass-Through Costs, and Project Co and WDBA shall then seek to agree to any matters in dispute, but where matters cannot be resolved within a 10 Business Day period (or such other period as may be otherwise agreed between the WDBA representatives and the Project Co representatives, acting reasonably) it shall be dealt with in accordance with the Dispute Resolution Procedure.

For Pass-Through Costs related to costs incurred within the United States, WDBA shall reimburse in Canadian dollars and convert US dollars based on the noon exchange rate for the Canadian dollar against the US dollar on the day of the relevant invoice, as published by the Bank of Canada.

## **2.10 Roadway Rehabilitation Payments**

If the actual cumulative traffic of Class 4 Vehicles from the commencement of the OMR Period until the end of the relevant Contract Year exceeds the Class 4 Vehicle Threshold, as provided in Table 18 in Appendix 25-11, for any two consecutive Contract Years, Project Co may request a WDBA Change for the Roadway Rehabilitation Payments. Such WDBA Change would be subject to Project Co providing, to the reasonable satisfaction of WDBA representative, supporting information that actual roadway rehabilitation costs incurred by Project Co exceeded the Roadway Rehabilitation Payments, as set out in Appendix 25-11, for the relevant Contract Years.

WDBA shall notify Project Co of the details of any disagreement on the supporting information provided, and Project Co and WDBA shall then seek to agree to any matters in dispute, but where matters cannot be resolved within a 10 Business Day period following notification of the disagreement (or such other period as may be otherwise agreed between WDBA representatives and the Project Co representatives, acting reasonably) the dispute shall be dealt with in accordance with the Dispute Resolution Procedure.

## **2.11 Adjustments for Failure to Complete Warranty Works**

If Project Co fails to carry out any of the Michigan Interchange Warranty Work and Canadian Roads Warranty Work, as applicable, in accordance with Section 27 of the Project Agreement, WDBA shall have the right to deduct from the Monthly Payments payable to Project Co for the relevant Contract Months the costs and expense for WDBA to correct the relevant defect, deficiency, or failure ("**Warranty Adjustment**").

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Where it is established in accordance with this Section 2.11 of this Schedule, that a Warranty Adjustment arises, the adjustment shall be given effect by way of a decrease to the next Monthly Payment(s), as calculated in Section 2.2 of this Schedule.

## 2.12 Prepaid Accounts Closure Refunds

The prepaid refund amount shall be applied to the Monthly Payment as an adjustment to reimburse Project Co for refunds issued to pre-paid account holders, in the same currency of which the account was opened, during the relevant Contract Month for closure of respective pre-paid accounts, as per the requirements in Schedule 13 [*Tolling Operations*] ("**Prepaid Refund Amount**").

At the end of each Contract Month, Project Co shall provide to WDBA a reconciliation of all pre-paid accounts cancelled during the relevant Contract Month and the refunds issued by Project Co to the relevant customers for the closed pre-paid accounts. Project Co shall assist the WDBA representatives and afford the WDBA representatives such information and access as may reasonably be required for the WDBA representatives to confirm the Pre-paid Refund Amount.

Where it is established in accordance with this Section 2.8 that Pre-paid Refund Amount arises, the adjustment shall be given effect by way of an increase to the relevant Monthly Payment, as calculated in Section 2.2 of this Schedule.

## 2.13 Unintended Consequences Fund

Project Co shall be reimbursed for the Unintended Consequences Fund Fees incurred during the relevant Contract Month as follows: (i) Project Co shall provide to WDBA all relevant invoices and supporting information related to the Unintended Consequences Fund Fees within 2 Business Days of the end of each Contract Month, including the calculation of the interest charges included in the Unintended Consequences Fund Fees; and (ii) once confirmed by WDBA or WDBA Representative, the reimbursement of the Unintended Consequences Funds Fees shall be made, all to be completed within 5 Business Days from the date of submission of the relevant invoices by Project Co to WDBA.

Project Co shall assist the WDBA Representatives and afford the WDBA Representatives such information as may reasonably be required to confirm the Unintended Consequences Fund Fees incurred by Project Co.

Any interest revenue earned on the unused funds in the UCF Account as defined in the Lenders' Direct Agreement shall accrue to WDBA and be used to offset Unintended Consequences Fund Fees payable to Project Co.

## 3. PAR INTERIM OM PAYMENTS

### 3.1 Introduction

The PAR Interim OM Payment, as described below, shall be payable by WDBA to Project Co, in accordance with Section 3.2 below.

### 3.2 PAR Interim OM Payment

WDBA shall pay to Project Co, an amount in Canadian dollars for the relevant Contract Month, for the provision of Limited Maintenance for the PAR Maintenance Area, in accordance with Part 1 [*Canadian Perimeter Access Road Maintenance and Handover*] of Schedule 43 [*Canadian Roads*] of the Project Agreement ("**PAR Interim OM Payment**").

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The PAR Interim OM Payments shall be applicable for the period following the Substantial Completion Date to the PAR Handover Date. For the Contract Month in which the Substantial Completion Date occurs, a pro rata adjustment shall be calculated as the actual number of days in the relevant calendar month from and including the Substantial Completion Date divided by the number of days in the calendar month in which the Substantial Completion Date occurs. In all other Contract Months there shall be no pro rata adjustment.

WDBA shall pay to Project Co the PAR Interim OM Payment in accordance with the provisions of this Schedule and within 28 to 30 days, as applicable for the relevant Contract Month, measured from the date an invoice in acceptable form and content is received from Project Co in accordance with the Project Agreement.

For clarity, the PAR Interim OM Payments shall not be subject to certification procedures set out in Schedule 21 [*Certification Procedures*] or any Deductions as set out in in this Schedule.

#### **4. AVAILABILITY FAILURE DEDUCTIONS**

##### **4.1 Introduction**

Availability Failure Deductions shall be applicable for each Crossing Availability Failure and POE Building Availability Failure during each Contract Month, other than any Exempt Availability Failures, and any Availability Failure Deductions that are cancelled pursuant to any other provision of the Project Agreement.

##### **4.2 Availability Failure Deductions**

The Availability Failure Deduction in respect of the relevant Contract Month shall be the sum of the Crossing Availability Failure Deductions and POE Building Availability Failure Deductions, as per the formula below:

$$AFD_{n-1} = CAFD_{n-1} + PBAFD_{n-1}$$

Where:

$CAFD_{n-1}$  is the Crossing Availability Failure Deduction for the relevant Contract Month, as calculated in Section 4.3 of Section 4; and

$PBAFD_{n-1}$  is the POE Building Availability Failure Deduction for the relevant Contract Month, as calculated in Section 4.4 of Section 4.

##### **4.3 Crossing Availability Failure Deductions**

Crossing Availability Failure Deductions shall be calculated on a specified basis (i.e., per Lane Kilometre, Lane Segment or Area) as per the relevant Crossing Section (or part thereof) that is Unavailable. The specified deduction basis for each Crossing Section is identified in Table 15 in Appendix 25-6.

The Crossing Availability Failure Deduction in respect of the relevant Contract Month shall be the sum of all Deductions calculated for all Crossing Availability Failures that occurred during the relevant Contract Month, as per the formula below:

$$CAFD_{n-1} = CAFDB_{n-1} + CAFDLK_{n-1} + CAFDL_{n-1} + CAFDA_{n-1}$$

Where:

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$CAFDB_{n-1}$  are the Crossing Availability Failure Deductions for Crossing Section A (Bridge), as per Table 15 in Appendix 25-6, for the relevant Contract Month;

$CAFDLK_{n-1}$  are the Crossing Availability Failure Deductions for all applicable Crossing Sections for which Crossing Availability Failures are assessed on a Lane Kilometre basis as per Table 15 in Appendix 25-6, for the relevant Contract Month;

$CAFDL_{n-1}$  are the Crossing Availability Failure Deductions for all applicable Crossing Sections for which Crossing Availability Failures are assessed on a Lane Segment basis as per Table 15 in Appendix 25-6, for the relevant Contract Month; and

$CAFDA_{n-1}$  are the Crossing Availability Failure Deductions for all applicable Crossing Sections for which Crossing Availability Failures are assessed on an Area basis as per Table 15 in Appendix 25-6 for the relevant Contract Month.

Table 15 in Appendix 25-6 identifies each Crossing Section and the applicable Deduction basis for the calculation of Deductions in respect of Crossing Availability Failures.

For Unavailability of 10 minutes or longer, measured from the time that the Failure Event occurred, within a Crossing Section, a Crossing Availability Failure shall occur and a Crossing Availability Failure Deduction will be applied in accordance with this Section 4.3. Following the occurrence of a Crossing Availability Failure, Deductions shall continue to be made as per Section 4.3 until such time as Project Co shall demonstrate, to the reasonable satisfaction of WDBA Representative, that it has Rectified the relevant Unavailability.

WDBA may amend the time period classifications in Column B in Table 1, Table 3, Table 5, and Table 8, respectively, provided that WDBA provides written notice to Project Co not less than 12 calendar months before such amendment and subject to the Annual Review process in Section 7.1 of this Schedule.

If Unavailability within any Crossing Section (or portion thereof) prevents the flow of vehicles travelling through that particular Crossing Section such that no vehicles are able to travel across the Crossing in one direction, Crossing Availability Failure Deductions shall apply on the basis that this Unavailability is equivalent to Unavailability of all lanes in one direction of Crossing Section A (Bridge) for the entire span of the Bridge and approach lanes and Deductions will be calculated in accordance with Column C in Table 1 in Section (a), based on the duration of such Unavailability and applied to a total Unavailable Lane Kilometre value of 7.5 km (2.5 km \* 3 lanes).

(a) Crossing Section A (Bridge)

Crossing Availability Failure Deductions for Crossing Section A (Bridge) shall be calculated in accordance with the following formula:

$$CAFDB_{n-1} = \sum_{i=1}^x \left( \frac{ULK}{0.5} \right) * UBL * T * DA * CESC_y$$

Where:

$CAFDB_{n-1}$  is the Crossing Availability Failure Deduction for Crossing Section A (Bridge) for the relevant Contract Month;

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$x$  is the number of Crossing Availability Failures for Crossing Section A (Bridge), in the relevant Contract Month;

$ULK$  is the Unavailable Lane Kilometres per lane which represents the total kilometres of each Crossing Section A (Bridge) lane that is Unavailable as a result of the Crossing Availability Failure. In measuring the number of Unavailable Lane Kilometres per lane, the length of each lane which is Unavailable shall be rounded up to the nearest half (0.5) kilometre;

$UBL$  is the Unavailable Bridge Lanes which represents the total number of lanes that are Unavailable within Section A of the Crossing as a result of the Crossing Availability Failure;

$T$  is the duration of the Unavailability, expressed in hours, as a result of the Crossing Availability Failure, measured from the commencement of Unavailability to the point in time when the Unavailability has been Rectified. An Unavailability duration of less than one (1) hour for any Crossing Availability Failure will be rounded up to one (1) hour. All other durations would be rounded up to next highest quarter-hour in each period that a Deduction occurs;

$DA$  is the Deduction Amount for Crossing Section A (Bridge) applied per hour of Unavailability for each Unavailable Lane Kilometre per lane based on the time classification, as per Table 1; and

$CESC_y$  is the Canadian Escalation Factor applicable in the relevant Contract Year  $y$ .

**Table 1: Deduction Amounts for Crossing Section A (Bridge)**

Column A	Column B	Column C – Deduction Amounts (\$ / Hour / 0.5 Lane Kilometre per lane)		
		1	2	3
Type of Day	Time Period	No. of Unavailable Lanes		
		1	2	3
<b>Canada Outbound</b>				
Weekdays	6:01 am – 10:00 am	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
	10:01 am - 3:00 pm	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
	3:01 pm - 7:00 pm	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
	7:01 pm - 10:00 pm	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
	10:01 pm - 6:00 am	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
Saturday & Sunday	6:01 am - 12:00 am	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
	12:01 am - 6:00 am	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
Holiday Periods	6:01 am - 12:00 am	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]

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Column A	Column B	Column C – Deduction Amounts (\$ / Hour / 0.5 Lane Kilometre per lane)		
Type of Day	Time Period	No. of Unavailable Lanes		
		1	2	3
	12:01 am - 6:00 am	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
<b>Canada Inbound</b>				
Weekdays	6:01 am – 10:00 am	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
	10:01 am - 3:00 pm	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
	3:01 pm - 7:00 pm	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
	7:01 pm - 10:00 pm	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
	10:01 pm - 6:00 am	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
Saturday & Sunday	6:01 am - 12:00 am	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
	12:01 am - 6:00 am	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
Holiday Periods	6:01 am - 12:00 am	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
	12:01 am - 6:00 am	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)

Example 1: Bridge Unavailability: Two (2) lanes on the Bridge in the Canada Outbound direction are closed for 750 metres (0.75 kilometres) segment between 11:00 am and 1:20 pm on a weekday.

Between 11:00 am and 1:20 pm, the Deduction Amount per hour for two (2) Bridge lanes is \$(REDACTED) for each 0.5 lane kilometre per lane, as per Table 1. Since the Unavailability lasts longer than 10 minutes, deduction calculations begin at 11:00 am and the duration of 2hr 20m is rounded up to the next highest quarter hour to 2hr 30m. The total Unavailable distance is rounded up to the next highest 0.5 kilometres (to 1.0 kilometre).

For the purposes of the example, assuming that the Canadian Escalation Factor is equal to 1, the relevant formula would be applied as follows:

$$CAFDB_{n-1} = \sum_{i=1}^x \left(\frac{ULK}{0.5}\right) * UBL * T * DA * CESC_y$$

$$CAFDB_1 = \left(\frac{1.0}{0.5}\right) * 2 * 2.5 * $(REDACTED) * 1 = $(REDACTED)$$

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The total Crossing Availability Failure Deduction for having two (2) Canada Outbound lanes on the Bridge closed for a 0.75 kilometre segment between 11 am and 1:20 pm on a weekday is \$[REDACTED].

(b) Lane Kilometre-Based Crossing Sections

Crossing Availability Failure Deductions for the Crossing Sections listed in

Table 2 for which applicable Crossing Availability Failures are assessed on a Lane Kilometre basis, shall be calculated in accordance with the following formula:

$$CAFDLK_{n-1} = \sum_{i=1}^x \left( \frac{ULK}{0.1} \right) * UCL * T * DA * CESC_y$$

Where:

$CAFDLK_{n-1}$  is the Crossing Availability Failure Deduction for the relevant Crossing Sections for which Crossing Availability Failures are assessed on a Lane Kilometre basis, for the relevant Contract Month;

$x$  is the number of Crossing Availability Failures for Crossing Sections assessed on a Lane Kilometre basis, in the relevant prior Contract Month;

$ULK$  is the Unavailable Lane Kilometres per lane of the relevant Crossing Section that are Unavailable as a result of the Crossing Availability Failure. In measuring the number of Unavailable Lane Kilometres per lane, the length of each lane which is Unavailable shall be rounded up to the nearest one hundred (100) metres or 0.1 kilometres;

$UCL$  is the Unavailable Crossing Lanes representing the total number of lanes on the relevant Crossing Sections that are Unavailable;

$T$  is the duration of the Unavailability, expressed in hours, as a result of the Crossing Availability Failure, measured from the commencement of Unavailability to the point in time when the Unavailability has been Rectified. An Unavailability duration of less than one (1) hour for any Crossing Availability Failure will be rounded up to one (1) hour. All other durations would be rounded up to next highest quarter-hour in each period that a Deduction occurs;

$DA$  is the Deduction Amount for the relevant Crossing Section applied per hour of Unavailability for each Unavailable Lane Kilometre per lane based on the time classification, as per Table 3;

$CESC_y$  is the Canadian Escalation Factor applicable in the relevant Contract Year  $y$ .

Table 2 and Appendix 25-7 identify each Crossing Section for which the applicable deduction basis for the calculation of Deductions in respect of Crossing Availability Failures is Lane Kilometre-based.

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**Table 2: Lane Kilometre-Based Crossing Sections**

<b>Crossing Section</b>	<b>Description</b>	<b>Deduction Basis</b>
<b>Canada Outbound</b>		
E	Roadway lanes from Canadian POE to the start of the Bridge lanes	Lane Kilometre
N	U.S inbound passenger/bus traffic connector roadway in the U.S POE to start of the I-75 Interchange ramp lanes	Lane Kilometre
O	U.S inbound commercial traffic connector roadway in the U.S POE to the start of the I-75 Interchange ramp lanes	Lane Kilometre
<b>Canada Inbound</b>		
P	U.S outbound connector roadway to the Bridge lanes, starting from the exit from the I-75 Interchange ramps into the U.S POE	Lane Kilometre
W	Start of the passenger/bus and traffic connector roadway to Section Z	Lane Kilometre
X	Start of the commercial traffic connector roadway to Section Z	Lane Kilometre
<b>Other Roadways</b>		
BB	All other roadways within Canadian POE and US POE which are not covered within sections A to AA	Lane Kilometre

**Table 3: Deduction Amounts for Lane Kilometre-Based Crossing Sections**

<b>Column A</b>	<b>Column B</b>	<b>Column C</b>
<b>Type of Day</b>	<b>Time Period</b>	<b>Deduction Amounts (\$ / Hour / 0.1 Lane Kilometre per lane)</b>
<b>Canada Outbound</b>		
<b>Weekdays</b>	6:01 am – 10:00 am	[\$REDACTED]
	10:01 am - 3:00 pm	[\$REDACTED]
	3:01 pm - 7:00 pm	[\$REDACTED]
	7:01 pm - 10:00 pm	[\$REDACTED]
	10:01 pm - 6:00 am	[\$REDACTED]

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Column A	Column B	Column C
Type of Day	Time Period	Deduction Amounts (\$ / Hour / 0.1 Lane Kilometre per lane)
<b>Saturday &amp; Sunday</b>	6:01 am - 12:00 am	[\$REDACTED]
	12:01 am - 6:00 am	[\$REDACTED]
<b>Holiday Periods</b>	6:01 am - 12:00 am	[\$REDACTED]
	12:01 am - 6:00 am	[\$REDACTED]
<b>Canada Inbound</b>		
<b>Weekdays</b>	6:01 am – 10:00 am	[\$REDACTED]
	10:01 am - 3:00 pm	[\$REDACTED]
	3:01 pm - 7:00 pm	[\$REDACTED]
	7:01 pm - 10:00 pm	[\$REDACTED]
	10:01 pm - 6:00 am	[\$REDACTED]
<b>Saturday &amp; Sunday</b>	6:01 am - 12:00 am	[\$REDACTED]
	12:01 am - 6:00 am	[\$REDACTED]
<b>Holiday Periods</b>	6:01 am - 12:00 am	[\$REDACTED]
	12:01 am - 6:00 am	[\$REDACTED]

Example 2: Crossing Section Unavailability – Lane Kilometre Basis: One (1) lane on the U.S outbound connector roadway to the Bridge (Section P) for a 0.25 kilometres (250 metres) segment is closed between 6 pm and 8 pm on a weekday.

Between 6 pm and 7 pm, the Deduction Amount per hour is \$[REDACTED] per lane per 0.1 kilometres. Since the Unavailability lasts longer than 10 minutes, deduction calculations begin at 6 pm for total Unavailability period of 1 hour within this time classification category. The total Unavailable distance is rounded up to the next highest whole 100 metres (0.1 kilometre) to 300 metres (0.3 kilometre).

Between 7:01 pm and 8 pm, the Deduction Amount per hour is \$500 per lane per 0.1 kilometre. The Unavailability period of 59 minutes is rounded up to the next highest quarter hour, to 1 hour. The total Unavailable distance is rounded up to the next highest whole 0.1 kilometres, to 0.3 kilometres.

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For the purposes of the example, assuming that the Canadian Escalation Factor is equal to 1, the relevant formula would be calculated as follows:

$$CAFDLK_{n-1} = \sum_{i=1}^x \left( \frac{ULK}{0.1} \right) * UCL * T * DA * CESC_y$$

$$CAFDLK_{n-1} = \left( \left( \frac{0.3}{0.1} \right) * 1 * 1 * \$[REDACTED] * 1 \right) + \left( \left( \frac{0.3}{0.1} \right) * 1 * 1 * \$[REDACTED] * 1 \right) = \$[REDACTED]$$

The total Crossing Availability Deduction for having one lane on Section P closed for a 250 metre segment (0.25 kilometres) between 6 pm and 8 pm on a weekday is **[/b>**

(c) Lane Segment Based Crossing Section

Crossing Availability Failure Deductions for the applicable Crossing Sections listed in Table 4 and Appendix 25-8 identify each Crossing Section for which the applicable deduction basis for the calculation of Deductions in respect of Crossing Availability Failures is Lane Segment based. The three types of Lane Segments are: “**Toll Lane Segment**”; “**Inspection Lane Segment**”; and “**Other Lane Segment**” as identified below.

Table 4, for which Crossing Availability Failures are assessed on a Lane Segment basis, shall be calculated in accordance with the following formula:

$$CAFDL_{n-1} = \sum_{i=1}^x ULS * T * DA * MLSF * CESC_y$$

Where:

$CAFDL_{n-1}$  is the Crossing Availability Failure Deduction for the relevant Crossing Sections assessed on a Lane Segment basis, for the relevant prior Contract Month ( $n-1$ );

$x$  is the number of Crossing Availability Failures for Crossing Sections assessed on a Lane Segment basis, in the relevant prior Contract Month ( $n-1$ );

$ULS$  is the Unavailable Lane Segments which represents the number of Lane Segments of the relevant Crossing Section that are Unavailable as a result of the Crossing Availability Failure;

$T$  is the duration of the Unavailability as a result of the Crossing Availability Failure, measured from the commencement of Unavailability to the point in time when the Unavailability has been Rectified. An Unavailability duration of less than one (1) hour for any Crossing Availability Failure will be rounded up to one (1) hour. All other durations would be rounded up to next highest quarter-hour in each period that a Deduction occurs;

$DA$  is the Deduction Amount for the relevant Crossing Section applied per hour of Unavailability for each Unavailable Lane Segment based on the time classification as per the Table 5;

$MLSF$  is the Multiple Lane Segment Factor for the relevant Toll Lane Segment or Inspection Lane Segment Crossing Sections, as per Table 6; and

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$CESC_y$  is the Canadian Escalation Factor applicable in the relevant Contract Year  $y$ .

Table 4 and Appendix 25-8 identify each Crossing Section for which the applicable deduction basis for the calculation of Deductions in respect of Crossing Availability Failures is Lane Segment based. The three types of Lane Segments are: “**Toll**”; “**Inspection**”; and “**Other**” as identified below.

**Table 4: Lane Segment Based Crossing Sections**

<b>Crossing Section</b>	<b>Description</b>	<b>Deduction Basis</b>
<b>Toll</b>		
C	Outbound-to-USA Toll Plaza (including toll collection lanes/booths)	Lane Segment
Z	Outbound-to-Canada Toll Plaza (including toll collection lanes/booths)	Lane Segment
<b>Inspection (Primary Inspection Only)</b>		
I	U.S inbound passenger/bus traffic inspection booths at the U.S POE	Lane Segment
J	U.S inbound commercial traffic inspection booths at the U.S POE	Lane Segment
S	Inbound-to-Canada passenger/bus traffic primary inspection lanes/booths	Lane Segment
T	Inbound-to-Canada commercial traffic primary inspection lanes/booths	Lane Segment
<b>Other</b>		
F	Outbound inspection lane to the outbound inspection/Nexus booths, within the Canadian POE (Connection from the roadway lanes in Section E) and including the outbound inspection/Nexus booths	Lane Segment
M	Start of exit roadway lanes from the commercial secondary inspection area to the start of the U.S inbound commercial traffic connector roadway, including the Commercial Secondary Exit Control Booths at the U.S POE	Lane Segment
Q	Start of the U.S outbound primary inspection lanes, including the primary inspection lanes, and connecting onto the U.S outbound connector roadway to the Bridge lanes	Lane Segment

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**Table 5: Deduction Amounts for Lane Segment Based Crossing Sections**

Column A	Column B	Column C		
Type of Day	Time Period	Deduction Amounts (\$ / Hour / Lane Segment)		
		Toll	Inspection	Other
<b>Canada Outbound</b>				
<b>Weekdays</b>	6:01 am – 10:00 am	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
	10:01 am - 3:00 pm	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
	3:01 pm - 7:00 pm	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
	7:01 pm - 10:00 pm	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
	10:01 pm - 6:00 am	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
<b>Saturday &amp; Sunday</b>	6:01 am - 12:00 am	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
	12:01 am - 6:00 am	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
<b>Holiday Periods</b>	6:01 am - 12:00 am	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
	12:01 am - 6:00 am	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
<b>Canada Inbound</b>				
<b>Weekdays</b>	6:01 am – 10:00 am	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
	10:01 am - 3:00 pm	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
	3:01 pm - 7:00 pm	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
	7:01 pm - 10:00 pm	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
	10:01 pm - 6:00 am	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
<b>Saturday &amp; Sunday</b>	6:01 am - 12:00 am	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
	12:01 am - 6:00 am	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
<b>Holiday Periods</b>	6:01 am - 12:00 am	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]
	12:01 am - 6:00 am	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]

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Each toll lane segment (“**Toll Lane Segment**”) comprises of the following: (a) tolling roadway lane; (b) all associated toll collection booth physical infrastructure; and (c) all relevant tolling system equipment and technology, related to the proper functioning of the Toll Lane Segment. Unavailability in the case of a Toll Lane Segment represents the failure of any one of the components (a), (b) or (c) noted herein such that users are unable to utilize the relevant Toll Lane Segment to travel across the Crossing. The Deduction Amount specified on a per Toll Lane Segment basis in Table 5 will apply accordingly.

Similarly, each inspection lane segment (“**Inspection Lane Segment**”) comprises of the following: (a) primary inspection roadway lane; and (b) all associated primary inspection booth physical infrastructure, related to the proper functioning of the Inspection Lane Segment (excluding any physical infrastructure or services that do not fall within Project Co’s obligations, in accordance with Schedule 11 [*Operations, Maintenance, and Rehabilitation*]). Unavailability in the case of an Inspection Lane Segment represents the failure of any one of the components noted herein such that users are unable to utilize the relevant Inspection Lane Segment to travel across the Crossing. The Deduction Amount specified on a per Inspection Lane Segment basis in Table 5 will apply accordingly.

In addition, each Other Lane Segment comprises of the following: (a) other inspection (excluding primary inspection) roadway lane, and (b) all associated inspection (excluding primary inspection) booth physical infrastructure, related to the proper functioning of the Other Lane Segment (excluding any physical infrastructure or services that do not fall within Project Co’s obligations, in accordance with Schedule 11 [*Operations, Maintenance, and Rehabilitation*]). Unavailability in the case of an Other Lane Segment represents the failure of any one of the components noted herein such that users are unable to utilize the relevant Other Lane Segment to travel across the Crossing. The Deduction Amount specified on per Other Lane Segment basis in Table 5 will apply accordingly.

Unavailability of a Toll Lane Segment or Inspection Lane Segment is only applicable for a particular Toll Lane Segment or Inspection Lane Segment that is in service, or may be required to be in service at any point in time, in accordance with Project Co’s obligations as per Schedule 13 [*Tolling Operations*] or as otherwise provided in this Agreement.

Unavailability of multiple Lane Segments in the same direction are subject to the application of the Multiple Lane Segment Factor as provided below. Crossing Availability Failures for Toll and Inspection Lane Segments shall have a Multiple Lane Segment Factor, as per Table 6 below, applied in the calculation of the Crossing Availability Failure Deductions in accordance with this Section (c).

**Table 6: Multiple Lane Segment Factors**

Percentage of Lane Segments Unavailable	Multiple Lane Segment Factor (Toll)	Multiple Lane Segment Factor (Inspection)
<= [REDACTED]% of Lane Segments Unavailable	1.0	1.0
> [REDACTED]% of Lane Segments Unavailable	2.2	3.8

Example 3: Crossing Section Unavailability – Lane Segment Basis: Six (6) Canada inbound commercial traffic primary inspection lanes (Section T) are closed from 2:00 pm to 2:45 pm on a weekday.

Between 2:00 pm and 2:45 pm, the Deduction Amount per hour for Section T, which is a primary inspection lane, is \$[REDACTED] per lane. Since the Unavailability lasts longer than 10 minutes, deduction calculations begin at 2:00 pm for total Unavailability period of 1 hour (45 minutes rounded up to 1 hour). Based on the assumption that there are 17 total Canada Inbound commercial traffic primary inspection lanes, Unavailability of six (6) lanes would lead to greater than [REDACTED]% of the inspection lanes to be Unavailable, leading to the application of a Multiple Lane Segment Factor (MLSF) of 3.8.

For the purposes of the example, assuming that the Canadian Escalation Factor is equal to 1, the relevant formula would be calculated as follows:

$$CAFDL_{n-1} = \sum_{i=1}^x UL * T * DA * MLSF * CESC_y$$

$$CAFDL_1 = 6 * 1 * \$[REDACTED] * 3.8 * 1 = \$[REDACTED]$$

The total Unavailability Deduction for having six (6) Canada inbound commercial traffic primary inspection lanes in Section T closed between 2 pm and 2:45 pm on a weekday is \$[REDACTED].

(d) Area Based Crossing Sections

Crossing Availability Failure Deductions for the applicable Crossing Sections listed in Table 7, for which Crossing Availability Failures are assessed on an Area basis, shall be calculated in accordance with the following formula:

$$CAFDA_{n-1} = \sum_{i=1}^x \left( \frac{UA}{100} \right) * T * DA * CESC_y$$

Where:

$CAFDA_{n-1}$  is the Crossing Availability Failure Deduction for the relevant Crossing Sections for which Crossing Availability Failures are assessed on an Area basis, for the relevant Contract Month;

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$x$  is the number of Crossing Availability Failures for Crossing Sections assessed on an Area basis, in the relevant Contract Month;

$UA$  is the Unavailable Area which represents the total Area of the Crossing Section that is Unavailable as a result of the Crossing Availability Failure, measured in square metres. In measuring the Unavailable Area, the square metres which are Unavailable shall be rounded up to the nearest one hundred (100) square metres;

$T$  is the duration of the Unavailability as a result of the Crossing Availability Failure, measured from the commencement of Unavailability to the point in time when the Unavailability has been Rectified. An Unavailability duration of less than one (1) hour for any Crossing Availability Failure will be rounded up to one (1) hour. All other durations would be rounded up to next highest quarter-hour in each period that a Deduction occurs;

$DA$  is the Deduction Amount for the relevant Crossing Section applied per hour of Unavailability for each Unavailable Area based on the time classification as per the Table 8; and

$CESC_y$  is the Canadian Escalation Factor applicable in the relevant Contract Year  $y$ .

Table 7 and Appendix 25-9 identify each Crossing Section for which the applicable deduction basis for the calculation of Deductions in respect of Crossing Availability Failures is Area-based.

**Table 7: Area-Based Crossing Sections**

<b>Crossing Section</b>	<b>Description</b>	<b>Deduction Basis</b>
<b>Canada Outbound</b>		
B	Area between the exit from the Rt. Hon. Herb Gray Parkway into the Canadian POE and to the Outbound-to-USA Toll Plaza	Area
D	Area between the exit from Outbound-to-USA Toll Plaza to the start of lanes for roadway within the Canadian POE towards the Bridge lanes	Area
G	Area between exit from the Bridge lanes to the start of U.S inbound passenger/bus inspection lanes/booths at the U.S POE	Area
H	Area between exit from the Bridge lanes to the start of U.S inbound commercial traffic inspection booths at the U.S POE	Area
K	Area between exit from U.S inbound passenger/bus traffic inspection booths to the start of passenger/bus traffic connector roadway at the U.S POE	Area
L	Area between exit from U.S inbound commercial traffic inspection lanes/booths to the start of the commercial traffic connector roadway at the U.S POE	Area

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Crossing Section	Description	Deduction Basis
<b>Canada Inbound</b>		
R	Area between exit from the Bridge lanes to the start of the Canada inbound passenger/bus traffic and commercial traffic inspection lanes/booths	Area
U	Area between the exit from Inbound-to-Canada passenger/bus traffic inspection lanes/booths to passenger/bus connector roadway towards the Outbound-to-Canada Toll Plaza	Area
V	Area between the exit from Inbound-to-Canada commercial traffic inspection lanes/booths to the commercial traffic connector roadway towards the Outbound-to-Canada Toll Plaza	Area
Y	Area between exit from passenger/bus and commercial traffic connector roadways to open area leading to the Outbound-to-Canada Toll Plaza	Area
AA	Area between exit from Canada inbound toll collection lanes/booths to start of the Rt. Hon. Herb Gray Parkway	Area

**Table 8: Deduction Amounts for Area-Based Crossing Sections**

Column A	Column B	Column C
Type of Day	Time Period	Deduction Amounts (\$ / Hour / 100 square metres)
<b>Canada Outbound</b>		
<b>Weekdays</b>	6:01 am – 10:00 am	[\$[REDACTED]]
	10:01 am - 3:00 pm	[\$[REDACTED]]
	3:01 pm - 7:00 pm	[\$[REDACTED]]
	7:01 pm - 10:00 pm	[\$[REDACTED]]
	10:01 pm - 6:00 am	[\$[REDACTED]]
<b>Saturday &amp; Sunday</b>	6:01 am - 12:00 am	[\$[REDACTED]]
	12:01 am - 6:00 am	[\$[REDACTED]]
<b>Holiday Periods</b>	6:01 am - 12:00 am	[\$[REDACTED]]
	12:01 am - 6:00 am	[\$[REDACTED]]
<b>Canada Inbound</b>		

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Column A	Column B	Column C
Type of Day	Time Period	Deduction Amounts (\$ / Hour / 100 square metres)
<b>Weekdays</b>	6:01 am – 10:00 am	[\$[REDACTED]]
	10:01 am - 3:00 pm	[\$[REDACTED]]
	3:01 pm - 7:00 pm	[\$[REDACTED]]
	7:01 pm - 10:00 pm	[\$[REDACTED]]
	10:01 pm - 6:00 am	[\$[REDACTED]]
<b>Saturday &amp; Sunday</b>	6:01 am - 12:00 am	[\$[REDACTED]]
	12:01 am - 6:00 am	[\$[REDACTED]]
<b>Holiday Periods</b>	6:01 am - 12:00 am	[\$[REDACTED]]
	12:01 am - 6:00 am	[\$[REDACTED]]

Example 4: Crossing Section Unavailability – Area Basis: An area of 680 square metres of Section B is closed off between 6:25 am and 8:55 am on a weekday.

Between 6:25 am and 8:55 am, the Deduction Amount per hour for Section B is \$[REDACTED] per 100 square metres. Since the Unavailability lasts longer than 10 minutes, deduction calculations begin at 6:25 am and the total Unavailability duration is 2.5 hours. The total Unavailable Area is rounded up to the next highest 100 square metres (to 700 square metres).

For the purposes of the example, assuming that the Escalation Factor is equal to 1, the relevant formula will be calculated as follows:

$$CAFDA_{n-1} = \sum_{i=1}^x \left( \frac{UA}{100} \right) * T * DA * CESC_y$$

$$CAFDA_1 = \left( \frac{700}{100} \right) * 2.5 * \$[REDACTED] * 1 = \$[REDACTED]$$

The total Unavailability Deduction for having 680 square metres of Section B Unavailable between 6:25 am and 8:55 am on a weekday is \$[REDACTED].

#### 4.4 POE Building Availability Failure Deductions

POE Building Availability Failure Deductions shall be assigned in respect of each POE Building Availability Failure that occurs in the Contract Month in accordance with this Schedule.

Subject to Section 2.4, the POE Building Availability Failure Deduction in respect of any Contract Month shall be calculated for all POE Building Availability Failures that occurred during the relevant prior Contract Month, as per the formula below:

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$$PBAFD_{n-1} = \sum_{i=1}^x DA * T * CESC_y$$

Where:

$PBAFD_{n-1}$  is the aggregate of the POE Building Availability Failure Deductions for all Functional Units made Unavailable as a result of the POE Building Availability Failures during the relevant prior Contract Month ( $n-1$ );

$x$  is the number of POE Building Availability Failures in respect of each Functional Unit in the relevant prior Contract Month ( $n-1$ );

$DA$  is the Deduction Amount per Rectification Time period as per Table 9, Table 10, Table 11 and Table 12 in Appendix 25-3, for each Functional Unit made Unavailable as a result of the POE Building Availability Failure;

$T$  is the duration of the Unavailability as a result of the POE Building Availability Failure within each relevant Functional Unit, measured as the number of Rectification Time periods in excess of the original Rectification Time period till the Unavailability has been Rectified; and

$CESC_y$  is the Canadian Escalation Factor applicable in the relevant Contract Year  $y$ , as per Section 2.3.

Subject to Section 6.1, no POE Building Availability Failure shall occur if Project Co successfully carries out the Rectification within the initial Rectification Time period and in such circumstances no Deduction shall be made.

Following the occurrence of a POE Building Availability Failure and its associated Deduction, Project Co shall be allowed an additional Rectification Time period equivalent to the original Rectification Time period for the applicable Functional Unit (as described in Table 9 or Table 10 in Appendix 25-3 of this Schedule, as applicable). If, before the expiry of this additional period, Project Co demonstrates, to the reasonable satisfaction of WDBA Representative, that it has Rectified the POE Building Availability Failure, no further Deduction shall be made in respect of the POE Building Availability Failure. Otherwise, a further Deduction shall be made of the appropriate amount (as described in Table 9, Table 10, Table 11 and Table 12 in Appendix 25-3 of this Schedule) and a further Rectification Time of equal duration shall apply (and, if appropriate, Deductions shall continue to be made) until such time as Project Co shall demonstrate, to the reasonable satisfaction of WDBA Representative, that it has Rectified the POE Building Availability Failure.

Example 5: POE Building Availability Failure: A localized power outage causes the following spaces in the Violator Processing and Enforcement Spaces in the U.S POE, as per Table 12, to be deemed Unavailable for 28 hours:

- (a) Functional Unit #4.8.8 – Holding Room – Male
- (b) Functional Unit #4.8.9 – Holding Room – Female
- (c) Functional Unit #4.8.9 – Holding Room – Family
- (d) Functional Unit #4.8.9 – Holding Room – Juvenile.

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The Functional Units have a ranking of “5” with Rectification Time period of 24 hours for this Functional Unit Rank Category, as per Table 9 in Appendix 25-3.

As Project Co does not successfully carry out Rectification of the Unavailability within the specified original Rectification Time period of 24 hours, a Deduction will be applied based on the Deduction Amount of \$[REDACTED] per Rectification Time period (24 hours) for each Functional Unit, as per Table 9 and Table 12 in Appendix 25-3.

However, since Project Co Rectifies the POE Building Availability Failure within the additional Rectification Time period of 24 hours, no further Deduction shall be made. The total number of Rectification Time periods ( $T$ ) is 1 for the purpose of the Deduction calculation, as only one period of additional Rectification Time applies. For the purposes of the example, assuming that the Canadian Escalation Factor is equal to 1. The Deduction for the POE Building Availability Failure will be calculated as follows:

$$PBAFD_{n-1} = \sum_{i=1}^x DA * T * CESC_y$$

$$PBAFD_1 = (\$[REDACTED] * 1 * 1) + (\$[REDACTED] * 1 * 1) + (\$[REDACTED] * 1 * 1) + (\$[REDACTED] * 1 * 1) = \$[REDACTED]$$

The total Deduction for having the four Functional Units within the U.S POE Unavailable for 28 hours is \$[REDACTED].

## 5. SERVICE FAILURE DEDUCTIONS

### 5.1 Introduction

The amount of the Service Failure Deduction for each Contract Month shall be calculated in accordance with this Section 5.

### 5.2 Service Failure Deductions

Service Failure Deductions shall be assigned in respect of each Service Failure that occurs during the OMR Period in accordance with this Schedule. Upon occurrence of a Service Failure in respect of a Category Defect as it relates to the Minimum Performance Criteria for the relevant Performance Requirement set out in Table 13 in Appendix 25-4 and Table 14 in Appendix 25-5 to this Schedule, a Service Failure Deduction shall apply as per the calculation basis in Section 5.2(a).

Subject to Section 2.4, the Service Failure Deduction in respect of any Contract Month shall be calculated as per the formula below:

$$SFD_{n-1} = \sum_{i=1}^x SFDA * CESC_y$$

Where:

$SFD_{n-1}$  is the Service Failure Deduction for the relevant Contract Month;

$x$  is the number of Service Failures in the relevant Contract Month;

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*SFDA* is the Service Failure Deduction Amount for each relevant Service Failure calculated as per Section 5.2(a); and

*CESC<sub>y</sub>* is the Canadian Escalation Factor applicable in the relevant Contract Year *y*.

(a) Service Failure Deduction Calculation

The Service Failure Deduction for each Service Failure, as applicable, shall be calculated based on the following:

Category Defect Response: As set out in Schedule 11 [*Operations, Maintenance, and Rehabilitation*], Project Co shall respond to all Category Defects and emergencies within the OMR Limits, including POE Facilities, within 30 minutes for a Category 1 Defect and an emergency and 24 hours for a Category 2 Defect, except that such 30 minutes and 24 hours response times shall not apply in relation to toll queuing, in respect of which no Category Defect Response Period applies and the Rectification Time shall be strictly governed by Appendix 25-4. A Service Failure shall occur if the response actions set out in Schedule 11 [*Operations, Maintenance, and Rehabilitation*] have not been completed within the Category Defect Response Period and a resulting Service Failure Deduction Amount shall apply as follows:

- (i) **[\$REDACTED]** in respect of a Category 1 Defect.
- (ii) **[\$REDACTED]** in respect of a Category 2 Defect.

Following the occurrence of the initial Service Failure for failure to complete the required response actions, Project Co shall be allowed an additional Category Defect Response Period equivalent to the initial Category Defect Response Period for the applicable Category Defect classification.

- (iii) If, before the expiry of this additional period, Project Co demonstrates, to the reasonable satisfaction of WDBA Representative, that it has responded to the Category Defect, no further Service Failure Deduction shall be made in respect of Project Co's response.
- (iv) Otherwise, a further Service Failure Deduction shall be made of the appropriate amount and a further Category Defect Response Period of equal duration shall apply, until such time as Project Co shall demonstrate, to the reasonable satisfaction of WDBA Representative that it has responded to the Category Defect.

Hazard Mitigation: If the Category Defect in respect of the Minimum Performance Criteria associated with a Performance Requirement is a Category 1 Defect and has a Rectification Time period provided in Table 13 in Appendix 25-4 (Column C) and Table 14 in Appendix 25-5 (Column C) to this Schedule, as applicable, a Service Failure shall only occur if the actions in question have not been completed within the Rectification Time period and a resulting Service Failure Deduction Amount shall apply in accordance with Column G of Table 13 and Table 14, as applicable.

Following the occurrence of the Service Failure, Project Co shall be allowed an additional rectification time period equivalent to the initial Rectification Time period (Column C of Table 13 and Table 14 as applicable).

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- (i) If, before the expiry of this additional period, Project Co demonstrates, to the reasonable satisfaction of WDBA Representative, that it has Rectified the Service Failure, no further Service Failure Deduction shall be made in respect of the Service Failure.
- (ii) Otherwise, a further Service Failure Deduction shall be made of the appropriate amount (Column G of Table 13 and Table 14, as applicable) and a further Rectification Time period of equal duration shall apply, until such time as Project Co shall demonstrate, to the reasonable satisfaction of WDBA Representative, that it has Rectified the Service Failure.

If the Category Defect is categorized as a Category 1 Defect and has no Rectification Time specified in Table 13 in Appendix 25-4 (Column C) and Table 14 in Appendix 25-5 (Column C) to this Schedule, as applicable, a Service Failure shall occur upon the occurrence of the Category Defect in question and the Service Failure Deduction Amount shall apply in accordance with Column G of Table 13 and Table 14, as applicable.

Interim Remedy: if the Category Defect in respect of a Minimum Performance Criteria associated with a Performance Requirement in Table 13 in Appendix 25-4 and Table 14 in Appendix 25-4 to this Schedule has a Rectification Time period provided in Column D of Table 13 and Table 14, a Service Failure shall only occur if the actions in question have not been completed within the initial Rectification Time period and a resulting Service Failure Deduction Amount shall apply in accordance with Column H of Table 13 and Table 14, as applicable. Following the occurrence of the Service Failure, Project Co shall be allowed an additional Rectification Time period equivalent to the initial Rectification Time (Column D of Table 13 and Table 14, as applicable).

- (i) If, before the expiry of this additional period, Project Co demonstrates, to the reasonable satisfaction of WDBA Representative, that it has Rectified the Service Failure, no further Service Failure Deduction shall be made in respect of the Service Failure.
- (ii) Otherwise, a further Service Failure Deduction shall be made of the appropriate amount (Column H of Table 13 and Table 14, as applicable) and a further Rectification Time period of equal duration shall apply, until such time as Project Co shall demonstrate, to the reasonable satisfaction of WDBA Representative, that it has Rectified the Service Failure.

Permanent Repair: If the Category Defect in respect of a Minimum Performance Criteria associated with a Performance Requirement is categorized as a Category 1 or Category 2 Defect (including classification of Category 2 Defects as Minor Maintenance Issues where applicable) and has a Rectification Time period in Table 13 in Appendix 25-4 (Column E), and Table 14 in Appendix 25-4 (Column E), as applicable, to this Schedule, a Service Failure shall only occur if the actions in question have not been completed within the initial Rectification Time period and a resulting Service Failure Deduction Amount shall apply in accordance with Column I of Table 13.

If Project Co informs WDBA that it is unable to effect a Permanent Repair within the applicable Rectification Time due to the unanticipated need for specialized materials for such Permanent Repair that are not available (through no fault of Project Co) solely as a direct result of winter season in the United States and/or Canada, restrictions on availability of such specialized materials then, subject to WDBA's approval:

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- (i) Project Co shall demonstrate, to the reasonable satisfaction of the WDBA Representative, that it has completed the Interim Remedy, as applicable; and
- (ii) A deadline by which a Permanent Repair must be made shall be agreed to by Project Co and WDBA, each acting reasonably, giving Project Co a period within which to carry out the Permanent Repair (the “**SF Permanent Repair Deadline**”);

If the Interim Remedy is effected within the applicable Rectification Time and the Permanent Repair is effected by no later than the SF Permanent Repair Deadline, no Service Failure will occur, and no Service Failure Deduction may be made, in respect of the Category Defect.

Following the occurrence of the Service Failure, subsequent Service Failure Deductions shall be applied in accordance with Column J of Table 13 and Table 14, as applicable, until such time as Project Co shall demonstrate, to the reasonable satisfaction of WDBA Representative, that it has Rectified the Service Failure.

(b) Service Failure Deduction Examples

*Example 6: Service Failure:* A bridge rail and traffic impact barrier experiences a deficiency which leads to a safety hazard to Users and is categorized as a Category 1 Defect in respect of the relevant Performance Requirement (Structures #1.3). Project Co arrives on site within 30 minutes (in compliance with the required Category Defect Response requirement) and completes Hazard Mitigation actions to secure the impacted area to a safe condition within 3 hours (in excess of the 1 hour Rectification Time period for Category 1 Defects). Project Co completes Interim Remedy actions within 24 hours and Permanent Repairs within 7 days, in compliance with the applicable Rectification Time periods for the relevant Performance Requirement.

Project Co’s failure to complete Hazard Mitigation within 1 hour leads to a Service Failure.

The Service Failure Deduction Amount for the Service Failure is \$[REDACTED], as per Column G of Table 13 in Appendix 25-4 of this Schedule, for the initial Service Failure by Project Co.

Following the occurrence of the initial Service Failure, Project Co takes greater than 1 additional hour to complete the required Hazard Mitigation actions and therefore an additional Service Failure Deduction Amount of \$[REDACTED] for the one (1) additional hour is applicable.

For the purposes of the example, assuming that the Canadian Escalation Factor is equal to 1, the relevant formula will be calculated as follows:

$$SFD_{n-1} = \sum_{i=1}^x SFDA * CESC_y$$

$$SFD_1 = (\$[REDACTED] + \$[REDACTED]) * 1 = \$[REDACTED]$$

The total Deduction for the Service Failure is \$[REDACTED].

*Example 7: Service Failure:* Water build-up or ponding occurs in the Bridge travel lanes and is categorized as a Category 2 Defect in respect of the relevant Performance

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Requirement (Roadways #2.3). Project Co arrives on site within 24 hours (in compliance with the required maintenance Category Defect Response requirement) and completes Permanent Repair of the travel lanes drainage in 52 hours.

As the Category Defect does not present an immediate health or safety concern for Users, it is classified as a Category 2 Defect with a Rectification Time period of 48 hours (as per Column E of Table 13 in Appendix 25-4 of this Schedule) to undertake and complete Permanent Repair. Project Co fails to complete these actions within 48 hours, which leads to a Service Failure.

The Service Failure Deduction Amount for the Service Failure is \$[REDACTED], as per Column I of Table 13 in Appendix 25-4 of this Schedule, for the initial Service Failure by Project Co.

Following the occurrence of the initial Service Failure, Project Co takes 4 additional hours to complete the required Permanent Repair actions and therefore further Service Failure Deduction of \$[REDACTED]/hour for the 4 additional hours shall be applicable, in accordance with Column J of Table 13 in Appendix 25-4 of this Schedule.

For the purposes of the example, assuming that the Canadian Escalation Factor is equal to 1, the relevant formula will be calculated as follows:

$$SFD_{n-1} = \sum_{i=1}^x SFDA * CESC_y$$

$$SFD_1 = (\$[REDACTED] + (\$[REDACTED] * 4 \text{ hours})) * 1 = \$[REDACTED]$$

The total Service Failure Deduction is \$[REDACTED].

## 6. TEMPORARY RECTIFICATIONS

### 6.1 Temporary Rectifications

If Project Co informs WDBA that it is unable to Rectify Unavailability related to one or more Functional Units due to the need for specialized materials or personnel that are not, and cannot reasonably be expected to be immediately available but that a Temporary Rectification can be effected then, subject to WDBA's approval:

- (a) Project Co shall carry out the Temporary Rectification proposed by Project Co unless WDBA, acting reasonably, considers that, if the Temporary Rectification proposed by Project Co is carried out, the use of the relevant Functional Unit will not be in accordance with Good Industry Practice; and
- (b) where a Temporary Rectification is permitted, a deadline by which a Permanent Rectification must be made shall be agreed to by Project Co and WDBA, each acting reasonably, giving Project Co a reasonable period within which to carry out the Permanent Rectification (the "**Permanent Rectification Deadline**").

During any period beginning at the time when a Temporary Rectification is permitted and ending at the earlier of: (i) the time at which a Permanent Rectification is successfully completed; and (ii) the Permanent Rectification Deadline, the Availability Conditions for the Functional Units shall be replaced by the Minimum Agreed Availability Conditions for the purposes of assessing if the relevant Functional Unit is Unavailable.

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If the Temporary Rectification is effected within the specified Rectification Time period, as per Table 9 or Table 10 of Appendix 25-3 of this Schedule, as applicable, and the Permanent Rectification is effected by no later than the Permanent Rectification Deadline, no POE Building Availability Failure will occur, and no Availability Failure Deduction may be made, in respect of the Failure Event.

(a) Failure to Complete Temporary Rectification

If the Temporary Rectification is not effected within the specified Rectification Time period, as per Table 9 or Table 10 of Appendix 25-3 of this Schedule, as applicable, a POE Building Availability Failure shall be deemed to occur and the following provisions shall apply:

- (i) there shall be a further period beginning at the expiry of the Rectification Time period and of a duration equal to that of the Rectification Time period;
- (ii) Project Co shall ensure that the Temporary Rectification is successfully carried out prior to the expiry of the additional period;
- (iii) if the Temporary Rectification is not successfully carried out prior to the expiry of the additional period, a further POE Building Availability Failure shall occur and a further additional period shall commence;
- (iv) unless the Temporary Rectification has been successfully carried out prior to the expiry of the additional period then a POE Building Availability Failure shall occur until such time as the Temporary Rectification shall have been successfully completed; and
- (v) if the Temporary Rectification is not successfully carried out within the applicable Rectification Time period, as per Table 9 or Table 10 of Appendix 25-3 of this Schedule, as applicable, and no Permanent Rectification has been successfully carried out prior to the Permanent Rectification Deadline, the right for Project Co to carry out a Temporary Rectification pursuant to this Section (a) shall cease and Section (b) of this Schedule shall apply.

(b) Failure to Complete Permanent Rectification

If the Permanent Rectification is not effected by the Permanent Rectification Deadline, a POE Building Availability Failure shall be deemed to occur and the provisions of Section 4.4 this Schedule shall apply.

## 7. REVIEW OF DEDUCTION PARAMETERS

### 7.1 Review of Functional Units List

Project Co shall provide an updated list of Functional Units, listed in Table 11 and Table 12, to WDBA no later than 30 days before the Substantial Completion Date, for WDBA's review.

If Project Co fails to provide an updated list of Functional Units in accordance with this Section 7.1, then for such failure, a Service Failure shall immediately occur and Service Failure Deduction of **[\$[REDACTED]]** shall be assigned to the Monthly Payment for the first Contract Month. An additional Service Failure Deduction of **[\$[REDACTED]]** shall be applied for each day that Project Co does not provide the updated list of Functional Units for WDBA's review.

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The Functional Units provided in Table 11 and Table 12 shall be reviewed by WDBA and Project Co at least once in every Contract Year, in accordance with the provisions set out in Section 7.2.

## 7.2 Annual Review

The identification of Rectification Time periods, time period classifications (Column B in Table 1, Table 3, Table 5 and Table 8), and the amount of Deductions for each category of Service Failure or Availability Failure shall be reviewed by WDBA and Project Co at any time if requested by either Project Co or WDBA but in any event shall be reviewed at least once in every Contract Year (the “Annual Review”).

WDBA and Project Co shall act reasonably and diligently in carrying out the Annual Review.

For the avoidance of doubt, the Project Co and WDBA intend that any changes made as a result of an Annual Review shall not alter the overall risk profile of the OMR Work or the likely magnitude of Deductions. Where proposed changes would result in any such alteration, the matter shall be deemed to be a Change Order and Schedule 22 [*Change Procedure*] shall apply.

WDBA and Project Co may, in respect of each matter that is the subject of an Annual Review, either:

- (a) agree that the status of the relevant matter shall continue to apply unchanged in the Contract Year immediately following the Annual Review; or
- (b) agree adjustments to the relevant matter to take effect in the Contract Year immediately following the Annual Review.

Any agreed adjustment pursuant to an Annual Review shall be effective from the commencement of the Contract Year immediately following the applicable Annual Review.

## 8. PERFORMANCE MONITORING AND REPORTING

### 8.1 Obligation to Report

In accordance with Schedule 11 [*Operations, Maintenance, and Rehabilitation*], Project Co shall prepare a Monthly Progress Report in respect of each Contract Month that shall be submitted to WDBA within 2 business days following the end of each Contract Month.

The Monthly Progress Report shall be the source of the factual information regarding the performance of the OMR Work for the relevant Contract Month for the purposes of reporting the occurrence of all Failure Events which it is aware of, including but not limited to, Category Defects, Service Failures and Availability Failures, and the calculation of resulting Deductions in accordance with the provisions of this Schedule. The Monthly Progress Report shall include the monthly Community Benefits Report and shall set out Project Co's calculation of each of the following (each stated separately):

- (a) any Availability Failures and associated Availability Failure Deductions in respect of that Contract Month;
- (b) any Service Failures and associated Service Failure Deductions in respect of that Contract Month; and
- (c) any System Acceptance Deduction in respect of that Contract Month.

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Project Co shall also report the aggregate Deductions resulting from Availability Failures, Service Failures, and the failure to achieve System Acceptance for each of the rolling monthly periods identified in Sections 32.4, 32.5, 32.6, 46.1(j), and 46.4 of the Project Agreement for the purposes of tracking Project Co's performance of the OMR Work in terms of the cumulative amount of Deductions incurred compared to the Deduction Thresholds set out in Sections 32.4, 32.5, 32.6, 46.1(j), and 46.5 of the Project Agreement.

For the purposes of tracking against the Deduction Thresholds only, the maximum Availability Failure Deduction allocated to a single Crossing Availability Failure shall not exceed **[\$REDACTED]**. For clarity, the amount of the Availability Failure Deduction shall be calculated in accordance with Section 3.2 of this Schedule based on the actual duration of the Crossing Availability Failure.

## **8.2 Failure by Project Co to Monitor or Report**

The classification of a Service Failure or Availability Failure shall be made at the time at which it occurs. A Failure Event which is incorrectly classified may be re-classified with the approval of WDBA Representative, acting reasonably, in which case the associated Rectification Time periods and Deductions will be revised accordingly. Further, if the Failure Event is re-classified, the applicable Monthly Progress Report will be revised accordingly.

If there is any error or omission in the Monthly Progress Report for any Contract Month, Project Co and WDBA shall agree, acting reasonably, to an amendment to the Monthly Progress Report or, failing agreement within 10 days of notification of the error or omission, which shall not be made more than two calendar months following the submission of the applicable Monthly Progress Report to WDBA, except in the "relevant circumstances" referred to in this Section (b) below, either Party may refer the matter to the Dispute Resolution Procedure.

### **(a) Deductions for Failure by Project Co to Monitor or Report**

If Project Co fails to identify, monitor or accurately report any Category Defect, Service Failure or Availability Failure then, without prejudice to the Deduction to be made in respect of the relevant Service Failure or Availability Failure (if any), the failure to monitor or report the Category Defect, Service Failure or Availability Failure then, for each such failure, a Service Failure shall immediately occur and Service Failure Deductions of **[\$REDACTED]** shall be assigned; unless the "relevant circumstances" set out in Section (b) apply, in which case Service Failure Deductions of **[\$REDACTED]** shall instead immediately be assigned.

In the event that any inspection or investigation by WDBA of records made available pursuant to the Project Agreement reveals any further matters to the type referred to in Section 8.2 and Section (a), those matters shall be dealt with in accordance with Section 8.2 and Section (a), as appropriate, and WDBA shall, in addition, be entitled to make Deductions in respect of any Service Failures or Availability Failures in the manner prescribed in Section 4.2 and Section 5.2. Any such Deductions shall be made from the Monthly Payment payable in respect of the Contract Month in which the relevant matters were revealed by WDBA's investigations or, to the extent that WDBA is unable to make any further deductions from the Monthly Payment in respect of that Contract Month by virtue of Section 2.4, may be carried forward and deducted from Monthly Payments due in respect of subsequent Contract Months.

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(b) Relevant Circumstances

For the purposes of Section 8.2, the “relevant circumstances” are:

- (i) fraudulent action or inaction;
- (ii) deliberate misrepresentation; or
- (iii) gross misconduct or incompetence in each case on the part of Project Co or a Project Co Party.

The provisions of this Section 8.2 shall be without prejudice to any rights of WDBA pursuant to Sections 32, 46.1 and 57.3 of the Project Agreement.

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**APPENDIX 25-1**

**CAPITAL PAYMENTS SCHEDULE**

**[REDACTED]**

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**APPENDIX 25-2**

**UNADJUSTED MONTHLY PAYMENT SCHEDULE**

**[REDACTED]**

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## APPENDIX 25-3

**FUNCTIONAL UNIT RANKINGS, RECTIFICATION TIMES, AND DEDUCTION AMOUNTS FOR POE BUILDING AVAILABILITY FAILURES**

POE Building Availability Failures and associated Availability Failure Deductions will only occur upon the expiry of the following Rectification Time periods as per this Appendix 25-3 of this Schedule.

**Table 9: Rectification Times and Deduction Amounts applicable to Functional Units within POE Buildings**

Functional Unit Rank Category	Rectification Time period	Deduction Amount (per Rectification Time period)
5	24 hours	[\$REDACTED]
4	24 hours	[\$REDACTED]
3	24 hours	[\$REDACTED]
2	24 hours	[\$REDACTED]
1	24 hours	[\$REDACTED]

**Table 10: Rectification Times and Deduction Amounts applicable to Overhead Pedestrian Walkway Functional Units connecting POE Buildings**

#	Element	Rectification Time period	Deduction Amount (per Rectification Time period)
<b>Canadian POE</b>			
1	Pedestrian bridge from the employee parking, crossing over the level of the passengers/bus inspection lanes canopy, leading to the second floor on the north side of the main building (CBSA side)	1 hour	[\$REDACTED]
2	Bridge from the PAR road on the south side over the commercial inbound inspection lanes into Canada leading to the second floor on the south side of the main building (CFIA side)	1 hour	[\$REDACTED]
<b>U.S POE</b>			
3	Elevated pedestrian walkway (Skyway) that connects the outbound building and the main building.	1 hour	[\$REDACTED]

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**Functional Units in POE Buildings**

The following tables presented in this Appendix 25-3 identify the Functional Units in the Canadian and U.S. POE Buildings, Functional Unit Rank Category and associated Deduction Amounts in the event of a POE Building Availability Failure.

**Table 11: Canadian POE Functional Units**

Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
<b>Passenger/Bus Traffic</b>					
Hard Secondary	B-201	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Tertiary Examination Garages	B-202	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Traffic Second Office Area	B-203	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Secondary Examination Ready Room	B-204	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
WR Area	B-205	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Utilities Area	B-206	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Tertiary Waiting Area	B-207	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
WR Area	B-208	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Tertiary Garage Vestibule	B-209	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Public Entrance Vestibule	B-401	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Public Elevator Lobby	B-402	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Public Waiting Area	B-405	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Public Interview Room	B-408	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Public Counter Area	B-403	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
CCEP Counter Area	B-406	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Public Washrooms	B-407	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Public Information Kiosk	B-404	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Triage Holding Area	B-409	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
General Office	B-410	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Director's Office	B-411	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Admin. Area	B-412	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Chief's Office	B-413	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Superintendent's Office Area	B-414a	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Superintendent's Office	B-414b	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Intelligence and Investigation Room	B-415	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Boardroom	B-424	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
[REDACTED]	B-425	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Storage Room	B-420	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Immigration Storage Room	B-419	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Briefing/Ready Room	B-421	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
General Office Equipment Space	B-416	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
File Area	B-417	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Business Centre	B-4.14	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Coat Closet	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
[REDACTED]	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
[REDACTED]	D-101	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
[REDACTED]	D-105	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Family Interview Room	D-104	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Interview Room	D-105	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Seizure Documentation (NIC) Room	D-106a	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Seizure Documentation Room	D-106b	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
[REDACTED]	D-107	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
[REDACTED]	D-108	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Dog Handler Room	D-109	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
CCTV- PASS Radio Equipment Room	E-101	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Radio Bench	E-106	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Communication - LAN Room	E-102	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
IT Storage Room	E-104	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Remote Communication Room	E-103	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Telecommunication Room	E-105	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Hold Area Room	B-501	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
[REDACTED]	B-502	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
[REDACTED]	B-503	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Lunch Room	F-101	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Women's Locker Room	F-102	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Men's Locker Room	F-104	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Women's Shower and Locker Room	F-103	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Men's Shower and Locker Room	F-105	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Simulation Prism Room	B-601	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Meeting/Training Room	B-602	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
First-Aid Room	F-107	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Pre-PIL Waiting Area	H-201	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Passenger PIL	H-202	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Passenger Secondary Area	H-2.3	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Cashier Counter	H-2.4	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Customs Exit Control Point	H-206	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Bus Embarkation Waiting Area	H-207	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
<b>Commercial</b>					
Fixed LSA	C-2.5	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Commercial Inspection Driver Waiting	C-412	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Commercial Inspection WR	C-413	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Public Entrance	C-301	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Public Entrance Lobby	C-302	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Waiting Area	C-3.4	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Interview Room	C-308	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Counter Area	C-304	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Public Washroom	C-307	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Public Information Kiosk	C-305	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
General Office Area	C-309	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Chief's Office	C-310	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Superintendent's Office Area	C-311a	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Superintendent's Office	C-311b	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Storage Room	C-312	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Briefing/Ready Room	C-3.8/C-7.2	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
General Office Equipment Space	C-314	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
File Area/Records-Files Storage	C-317	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Business Centre	C-315	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Use of Force	C-701	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
SBT Training Room	C-702	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Meeting/Training Room	C-703	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Cab Check Area	C-401	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Warehouse Examination Area	C-402	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Warehouse Office Area	C-403	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Warehouse Inspection Workstation	C-404	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Warehouse Equipment Area	C-404	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Warehouse Emergency Shower and Eyewash Area	C-406	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Commercial Storage Room	C-407	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Small Parcel Storage Area	C-409	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
[REDACTED]	C-408	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Commercial Offload Operator	TBD	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Commercial X-ray Area	C-411	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Receiving Area	G-101	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Mechanical Room	H-205	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Electrical Room	H-206	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Garbage Room	H-202	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Janitorial Supplies	H-203	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Janitor Closet	H-204	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Forklift Charging Area	C-415	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Forklift Storage	C-414	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
<b>CFIA</b>					
Inspection Area Vestibule	J-113	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
CFIA Inspection Area	J-118	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Prep Area	J-116	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Prep Storage Area	J-117	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Boot Wash	J-119	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Business Centre	J-103	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Coffee/Kitchenette	J-106	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Staff Washroom	J-118	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Locker Room	J-114	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Shower	J-115	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Senior Vet Office	J-104	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Meeting Room	J-105	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
General Office	J-102	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Public Lobby	J-101	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]
Public Counter	J-102	[REDACTED]	[REDACTED]	[\$[REDACTED]]	[\$[REDACTED]]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Comms. Rm.	J-110	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Commercial Driver Lobby	J-111	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Commercial Driver Counter	J-112	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Hydraulic Mech. Room	J-120	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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**Table 12: U.S POE Functional Units**

Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
<b>Main Building</b>					
Assistant Port Director/Watch Commander	4.4.3	[REDACTED]	[REDACTED]	\$(REDACTED)	\$(REDACTED)
Chief CBP Officer	4.4.4	[REDACTED]	[REDACTED]	\$(REDACTED)	\$(REDACTED)
Support Staff Supervisor	4.4.4	[REDACTED]	[REDACTED]	\$(REDACTED)	\$(REDACTED)
Port Director Secretary/Receptionist	4.4.6	[REDACTED]	[REDACTED]	\$(REDACTED)	\$(REDACTED)
Reception/Public Area	4.4.7	[REDACTED]	[REDACTED]	\$(REDACTED)	\$(REDACTED)
Support Staff	4.4.6	[REDACTED]	[REDACTED]	\$(REDACTED)	\$(REDACTED)
(Support Staff) Work Area	4.4.6	[REDACTED]	[REDACTED]	\$(REDACTED)	\$(REDACTED)
Files and Storage	4.4.10	[REDACTED]	[REDACTED]	\$(REDACTED)	\$(REDACTED)
Conference Room	4.4.11	[REDACTED]	[REDACTED]	\$(REDACTED)	\$(REDACTED)

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Document Handling Room	4.4.12	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Training Supervisor	4.4.4	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Training Officer	4.4.6	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Training Storage Room	4.6.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Computer Training Lab (Instructor Area)	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Computer Training Lab	4.6.6	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Processing - Pedestrian/Bus Queue Area	4.7.1	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Processing - Pedestrian/Bus Inspection Booths	4.7.2	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Secondary Baggage Queue Area	4.7.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Secondary Baggage Inspection Area	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Document Processing/Public Waiting Area	4.7.4	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Document Processing/Public Queuing Area	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Public Restrooms (Men)	4.7.5	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Public Restrooms (Women)	4.7.5	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Counter Positions (Minimum of 4)	4.7.8	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
CBP Officer Supervisor	4.4.4	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
CBP Technician	4.4.6	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
CBP Officer Work Area	4.4.6	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
CBP Coordination Centre	4.7.11	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Customs Area Security Centre (CASC) (optional)	4.7.12	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Cashier Station/Office	4.7.14	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Document Handling Room	4.4.12	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Files and Storage	4.4.10	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
CBP Officer (Enforcement) Supervisor	4.4.4	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
CBP Officer (Enforcement)	4.4.6	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Violator Processing Area - Control Room	4.7.11	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
IDENT/IAFIS/Identification	4.8.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Violator Waiting Area	4.8.4	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Interview Room (CTR Compatible CD3340-021B)	4.8.5	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Prep Area/Storage	4.8.6	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Search Room	4.8.7	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Holding Room - Male	4.8.8	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Holding Room - Female	4.8.9	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Holding Room - Family	4.8.9	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Holding Room - Juvenile	4.8.9	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Violator Personal Property Storage	4.8.12	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Supply/Storage Room	4.8.14	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Fraudulent Document/Forensic Laboratory	4.8.15	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Seizure Processing Area	4.8.16	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Weapons/Secure Storage	4.8.13	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Weapons Cleaning Room	4.8.17	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Weapons Secure Support Storage	4.8.18	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Temporary Seized Property Storage Vault	4.8.19	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Homeland Security Data Network (HSDN)	4.8.20	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Document Handling Room	4.4.12	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Agricultural Specialist Supervisor	4.4.4	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Agricultural Specialist Work Area	4.4.6	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Files and Storage	4.8.14	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Laboratory	4.10.5	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Bird Holding	4.10.6	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
LAN Administrator/Work Lab	4.11.1	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Union Office	4.4.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Distribution Room	4.11.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Files and Storage	4.8.14	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Conference Room/Muster Area/Training Room	4.11.5	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
LAN/Telco Room (MDF)	4.11.6	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Equipment Room (Radio/RVS)	4.11.7	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Staff Restroom (Men)	4.12.1	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Staff Shower (Male)	4.12.2	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Locker Room (Male)	4.12.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Staff Restroom (Women)	4.12.1	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Staff Shower (Female)	4.12.2	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Locker Room (Female)	4.12.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Health & Wellness Centre	4.12.7	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Break Room	4.12.8	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Lactation Support Room	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
CBP Officer Supervisor	4.4.4	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
CBP Officer Work Area	4.4.6	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Secure Storage	4.8.13	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Electrical Switchgear Room	4.16.2	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Emergency Generator	4.16.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Mechanical Room	4.16.4	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Electrical Closet	4.16.5	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Janitor Closet	4.16.6	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Sallyport (if provided)	4.8.11	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
<b>Non-Com Inspection &amp; Headhouse</b>					
Public Waiting	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
TEC Station	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Air Compressor	5.6.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Tool Storage	5.6.4	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Public Waiting Area	5.8.1	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Counter Positions	5.8.2	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Cashier Station/Office	5.8.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Public Restroom (Men)	5.8.4	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Public Restroom (Women)	5.9.4	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
CBP Coordination Centre	5.8.6	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
CBP Officer Supervisor	5.9.6	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
CBP Officer Work Area	5.8.8	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
CBP Technician	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Files and Storage	5.8.9	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Staff Restroom (Men)	5.9.4	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Staff Restroom (Women)	5.9.4	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Break Room	5.8.14	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Violator Waiting Area	5.9.1	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Search Room	5.9.2	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Holding Room (Female)	5.9.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Holding Room (Male)	5.9.4	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Interview Room	5.9.5	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
IDENT/IAFIS/Identification	5.9.6	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
LAN/Telco Room (IDF)	5.9.7	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Temporary Seized Property Storage Vault	5.9.8	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Violator Personal Property Storage	5.9.9	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Seizure Processing Area	5.9.10	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Document Handling Room	5.9.11	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Janitor Closet	5.10.1	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Mechanical Room	5.10.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Electrical Closet	5.10.4	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
<b>Commercial Inspection</b>					
Commercial Dock Unloading Area	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Enclosed Commercial Vehicle Inspection Area (Northern Border Only)	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Dock Scale	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Dock Booth	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Driver Waiting Area	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Public Restroom (Driver)	6.20.8	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Stevedore Break Area	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Emergency Shower/Eyewash Stations	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Narcotics Storage Vault	6.11.1	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Bulk Cargo Bins	6.11.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Hazardous Materials	6.11.4	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
NII Operations	6.11.6	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
NII Driver Waiting Room	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
NII Control Room (Super Booth)	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Assistant Port Director (Trade)	6.12.1	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Chief CBP Officer	6.12.2	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Support Staff	6.12.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
CBP Officer Supervisor	6.12.2	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
CBP Officer Work Area	6.12.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
CBP Technician	6.12.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Cashier Station/Office (one for Trade staff)	6.13.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Counter Positions	6.13.4	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Public Waiting	6.12.6	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Public Restrooms	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Broker Pick-up and Drop-off Boxes	6.12.5	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Files and Storage	6.13.6	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Document Handling Area	6.13.7	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Entry Specialist Supervisor	6.12.2	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Entry Specialist	6.12.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Files and Storage	6.13.6	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Document Handling Area	6.13.7	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Work Area (Trade Technicians)	6.12.2	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Import Specialist Supervisor	6.12.2	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Import Specialist	6.15.2	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Files and Storage	6.13.6	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Document Handling Room	6.13.7	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Reception/Waiting Area	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Conference Room	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Break Room	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Cargo Storage	6.16.1	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
CBP Officer Supervisor	6.12.2	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
CBP Officer Work Area	6.12.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Secure Storage	6.17.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Violator Waiting Area	6.18.1	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Search Room	6.18.2	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Holding Room	6.18.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Interview Room	6.18.4	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Temporary Seized Property Storage Vault	6.18.5	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Identification/Fingerprinting/IDENT/IAF IS Area	6.18.6	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Seizure Processing Area	6.18.7	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Agricultural Specialist Supervisor	6.12.2	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Laboratory	6.19.2	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Files and Storage	6.13.6	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Agricultural Specialist Workstation	6.12.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Digital Imaging Equipment Room	6.19.7	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Steam Sterilizer and/or Cooker	6.19.8	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Break Room	6.20.1	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Staff Restroom (Men)	6.20.2	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Staff Shower (Male)	6.20.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Locker Room (Male)	6.20.4	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Staff Restroom (Women)	6.20.2	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Staff Shower (Female)	6.20.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Locker Room (Female)	6.20.4	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
LAN/Telco Room (IDF)	6.20.9	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Janitor Closet	6.21.1	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Mechanical Room	6.21.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Electrical Closet	6.21.5	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Laboratory	6.19.2	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Office	6.12.2	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
<b>On-Site Kennel</b>					
Animal Processing Room	7.2.1	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Kennel Runs/Day Kennel	7.2.2	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Washer/Dryer	7.2.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Pseudo Narcotics Training Storage	7.2.6	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Hard Narcotics Training Storage	7.2.7	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Soft Narcotics Training Storage	7.2.8	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Agricultural Training Storage*	7.2.9	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Currency Training Storage*	7.2.10	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Canine General Storage	7.2.12	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Blank Training Aid Storage	7.2.13	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Canine Trainer/Supervisor Office	7.2.14	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Canine Officer Work Area	7.2.15	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Staff Restroom	7.2.16	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Break Room	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Meeting Room	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Janitor Closet	7.2.16	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Mechanical Room	7.2.17	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
LAN/Telco Closet	7.2.18	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Electrical Closet	7.2.19	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
<b>Outbound Inspection</b>					
Commercial Dock Unloading Area	8.5.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
CBP Officer Work Area	8.6.1	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
CBP Officer Supervisor	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Counter Positions	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Staff Restrooms	8.6.2	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Break Room	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Document Handling Room	8.6.3	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Interview Room	8.6.4	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Search Room	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Holding Room	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Public Waiting Area	8.6.5	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Public Restroom (Unisex)	8.6.6	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Mechanical Room	8.6.7	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
LAN/Telco Closet	8.6.8	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Electrical Closet	8.6.9	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
<b>Firing Range</b>					
Firing Lanes 25 Yards	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Bench/Shooting Areas for Firing Lanes	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Bullet Trap for Firing Lanes	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Control Room	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Weapon Cleaning Room	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Ammo Storage Room	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Weapon Storage	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Weapon Secure Storage Room	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Classroom	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
General Storage Room	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Officer Work Area	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Supervisor Office	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Training Room (Tactical)	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Training Room Storage	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Staff Restroom (Men)	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Staff Shower (Male)	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Staff Restroom (Women)	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Staff Shower (Female)	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Break Room	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Mechanical Room	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
LAN/Telco Closet	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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Item	Functional Unit Reference (Data Sheet Reference)	# of Functional Units	Rank 1-5	Deductions	
				\$ Deduction per Functional Unit for each Rectification Time period	\$ Deduction for all Functional Units per day
Electrical Closet	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]
Janitor Closet	TBD	[REDACTED]	[REDACTED]	[\$REDACTED]	[\$REDACTED]

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APPENDIX 25-4

**PERFORMANCE REQUIREMENTS AND SERVICE FAILURE DEDUCTION AMOUNTS**

Table 13: Performance Requirements and Service Failure Deductions

A – GENERAL PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIME <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
<b>1. HAZARDOUS MATERIALS AND STRUCTURAL ASSESSMENT</b>										
1.1	Hazardous Materials	For any Hazardous Materials spills or biohazard contamination comply with respective environmental requirements and Applicable Laws.	1.5 hrs	3 hrs	3 months	A. Contain Hazardous Material spills or releases in compliance with all environmental requirements and Applicable Laws.	[\$[REDACTED D]	[\$[REDACTED TED]	[\$[REDACTED D]	[\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			N/A	N/A	3 months	B. Maintain and submit incident log showing environmental mitigation compliance.	–	–	[\$[REDACTED D]	[\$[REDACTED] /day for next 2 days; \$[REDACTED] /day thereafter
1.2	Structural	Evaluate structural Damage to Structures and liaise with	N/A	N/A	12 hrs	Licensed structural engineer shall respond and perform preliminary	–	-	[\$[REDACTED	[\$[REDACTED] /day for next 2

<sup>1</sup> “Days” in this Appendix 25-4 refer to actual days without regard to Section 3(ii) of Schedule 1 [Definitions and Interpretation].

<sup>2</sup> “HAZ MITG” means Hazard Mitigation.

<sup>3</sup> “PER. REPAIR” means Permanent Repair.

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A – GENERAL PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIME <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
	Assessment	Emergency services to ensure safe working in clearing the incident.				assessment of structural element or Subcomponent Damage after a Category 1 Defect Hazard Mitigation, as required by Applicable Law.			D]	days; \$[REDACTED] /day thereafter
<b>2. OPERATIONAL REPORTS</b>										
2.1.	Operational Reports	Provide required Operations and Maintenance plan and reports.	**	N/A	24 hrs	A. Provide and submit Operations and Maintenance Plan in accordance with Section 9 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ]. The Operations and Maintenance Plan shall be submitted not later than 5 Business Days from the annual requirement date.  **Non-compliance shall constitute a Category 1 Defect.	\$[REDACTE D]	–	\$[REDACTE D]	\$[REDACTED] /day for next 2 days; \$[REDACTED] /day thereafter
			**	N/A	24 hrs	B. Provide and submit Maintenance Plan in accordance with Section 38 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ]. The Maintenance Plan shall be submitted no later than 5 Business days from the annual requirement date.	\$[REDACTE D]	–	\$[REDACTE D]	\$[REDACTED] /day for next 2 days; \$[REDACTED] /day thereafter

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A – GENERAL PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIME <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						**Non-compliance shall constitute a Category 1 Defect.				
			**	N/A	24 hrs	C. Provide and submit Operations Report in accordance with Section 18 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ]. Operations Report shall be submitted not later than 5 Business Days from the end of every quarter.  **Non-compliance shall constitute a Category 1 Defect.	[\$REDACTED D]	–	[\$REDACTED D]	[\$REDACTED] /day for next 2 days; [\$REDACTED] /day thereafter
			**	N/A	24 hrs	D. Provide and submit Monthly Progress Report in accordance with Section 10 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ], Meetings. Monthly Progress Report shall be submitted no later than 5 Business Days from the end of each month.  **Non-compliance shall constitute a	[\$REDACTED D]	–	[\$REDACTED D]	[\$REDACTED] /day for next 2 days; [\$REDACTED] /day thereafter

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<b>A – GENERAL PERFORMANCE REQUIREMENTS</b>										
			<b>RECTIFICATION TIME<sup>1</sup></b>				<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>			
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>		<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>	
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>
	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>	<b>Column H</b>	<b>Column I</b>	<b>Column J</b>
						Category 1 Defect.				
2.2	Project Agreement Plans and Reports		**	N/A	24 hrs	Provide and submit all other plans and reports as set out in the Project Agreement and Technical Provisions. All plans and reports shall be submitted not later than 5 Business Days after the required submittal day.  **Non-compliance shall constitute a Category 1 Defect.	[\$REDACTED D]	–	[\$REDACTED D]	[\$REDACTED] /day for next 2 days; [\$REDACTED] /day thereafter
2.3	Compliance with Project Agreement Plans and Reports		**	N/A	24 hrs	Comply with all Plans and Reports as set out in the Project Agreement and Technical Provisions.  **Non-compliance shall constitute a Category 1 Defect.	[\$REDACTED D]	–	[\$REDACTED D]	[\$REDACTED] /day for next 2 days; [\$REDACTED] /day thereafter
<b>3. CUSTOMER RESPONSE</b>										
3.1	Customer Contact Line	Customer Call Centre manned 24/7/365 with operator.	**	1 hr	N/A	Interruption or unavailability of service exceeding 2 minutes shall constitute a Category 1 Defect.	[\$REDACTED D]	[\$REDACTED]	–	

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<b>A – GENERAL PERFORMANCE REQUIREMENTS</b>										
			<b>RECTIFICATION TIME<sup>1</sup></b>				<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>			
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>		<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>	
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>
	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>	<b>Column H</b>	<b>Column I</b>	<b>Column J</b>
3.2	Response to Inquiries	Timely and effective response to customer inquiries and complaints.	N/A	N/A	14 days	A. All customer concerns/requests are resolved to WDBA’s satisfaction, acting reasonably, within the specified Rectification Time of the initial inquiry and within limitations of Project Agreement. Failure Events or Category Defects requiring faster response times or mitigation shall take precedence as per the respective Element’s Minimum Performance Criteria.	–	–	[\$[REDACTED D]	[\$[REDACTED] /day for next 14 days; \$[REDACTED] /day thereafter
			N/A	N/A	30 days	B. Conduct post corrective action customer survey not to exceed the specified Rectification Time from initial customer inquiry. Record survey comments in customer service log.	–	–	[\$[REDACTED D]	[\$[REDACTED] /day for next 14 days; \$[REDACTED] /day thereafter
<b>4. GRAFFITI AND VANDALISM</b>										
4.1	Graffiti and Vandalism	Remove graffiti in a manner utilizing materials that restore the surface to a like appearance similar to adjoining surfaces. Take corrective action on any Subcomponent or Element that	N/A	N/A	24 hrs	A. Graffiti or vandalism on any Element or any Subcomponent thereof that is generally interpreted as offensive (vulgar language, symbols, etc.) to Users shall be mitigated within 24 hours.	–	-	[\$[REDACTED D]	[\$[REDACTED] /day for next 7 days; \$[REDACTED] /day thereafter

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A – GENERAL PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIME <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
		has been vandalized. This performance measure applies to all Elements within the OMR Limits.								
			N/A	N/A	7 days	B. All other acts of graffiti or vandalism shall be mitigated within 7 days.	–	–	[\$[REDACTE D]	[\$[REDACTED] /day for next 7 days; \$[REDACTED] /day thereafter
<b>5. SECURITY SYSTEM</b>										
5.1.	Security System	Security system functions as intended for system wide coverage.	**	N/A	N/A	A. Notification of corresponding law enforcement agency shall not exceed an average greater than 5 minutes upon notification of a security incident or threat, measured on a monthly interval. Notification to WDBA shall not exceed 30 minutes after notification of law enforcement agency.  ** Non-compliance shall constitute a Category 1 Defect.	[\$[REDACTE D] plus if average notification time is: a) <u>5 min. – 10 min.:</u> [\$[REDACTE D] [REDACTED] per min. b) <u>Greater</u>	–	–	

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A – GENERAL PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIME <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
							than 10 min.: \$[REDACTE D] per min.			
			1.5 hrs	8 hrs	24 hrs	B. Maintain Security system and all Subcomponents thereof as per Schedule 10 Part 5. Security system shall be Operational and Functional. Non-compliance shall be assessed on the basis of: a) Defects impacting a specific part of the Subcomponents and systems; b) Defects impacting the functionality of the overall Subcomponents and systems.	(a) \$[REDACTE D]  (b) \$[REDACTE D]	(a) \$[REDACTE D]  (b) \$[REDACTE D]	(a) \$[REDACTE D]  (b) \$[REDACTE D]	\$[REDACTED] /hour for next 12 hours; \$[REDACTED] /hour thereafter
			**	N/A	24 hrs	C. Security Subcomponents shall be tested on a monthly basis and results included in the Monthly Progress Report.  **Non-compliance shall constitute a Category 1 Defect	\$[REDACTE D]	–	\$[REDACTE D]	\$[REDACTED] /day for next 2 days; \$[REDACTED] /day thereafter
5.2	CCTV System	CCTV system functions as intended for system wide	**	N/A	N/A	Security Closed Circuit Television (CCTV) reliability shall be measured weekly and shall meet or exceed a	\$[REDACTE D] plus if average	-		

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A – GENERAL PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIME <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
		coverage.				monthly average of [REDACTED]%. CCTV reliability is calculated as follows: [ $((\text{total \# CCTV} - \text{total \# of deficient CCTV}) / \text{total \# CCTV}) \times 100$ ]  ** Non-compliance shall constitute a Category 1 Defect.	reliability is: a) [REDACTED] % – [REDACTED] %: \$[REDACTED] per [REDACTED] % (rounded up to nearest [REDACTED] %); b) Lower than [REDACTED] %: \$[REDACTED] per [REDACTED] % (rounded up to nearest [REDACTED] %).			

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A – GENERAL PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIME <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
5.3	Security Plan	Update Security Assessment and Security Plan	**	N/A	3 months	The Security Assessment and Site Security Plan shall be reviewed annually and updated at an interval not to exceed 3 years as required in Part 5 [Security] of Schedule 10 [Design and Construction Specifications]. Review frequency shall coincide with the initial acceptance date of these documents and shall not migrate over time. All updates shall be completed no later than the Rectification Time in the Permanent Repair column from the initial update due date.  ** Non-compliance shall constitute a Category 1 Defect.	[\$REDACTED D]	–	[\$REDACTED D]	[\$REDACTED] /day for next 2 days; [\$REDACTED] /day thereafter
5.4	Security Exercises	Conduct Security exercises on a regular basis to test readiness of communication protocol, resource, contingency and response planning.	**	N/A	3 months	Project Co shall review Security Plan and conduct a system wide Security exercise at an interval not to exceed one year in accordance with Part 5 [Security] of Schedule 10 [Design and Construction Specifications].  ** Non-compliance shall constitute a Category 1 Defect.	[\$REDACTED D]	–	[\$REDACTED D]	[\$REDACTED] /day for next 7 days; [\$REDACTED] /day thereafter

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A – GENERAL PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIME <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
<b>6. AS-BUILT PLANS</b>										
6.1	As-Built Plans	Provide As-Built Plans for all corrective maintenance activities.	N/A	N/A	30 days	As-Built Plans shall be provided for maintenance activities as per Section 35 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ], As-Built and Drawing Management. As-Built drawings are not required for everyday routine maintenance activities.	\$(REDACTED D]	–	\$(REDACTED D]	\$(REDACTED) /day for next 30 days; \$(REDACTED) /day thereafter
<b>7. FIRE PROTECTION</b>										
7.1	Fire Protection Equipment	Maintain fire prevention system Subcomponents throughout the OMR Limits to ensure they remain Operational and Functional.	1.5 hrs	4 hrs	48 hrs	Maintain fire prevention system Subcomponents as per Section 37 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ], Fire Prevention Equipment and Fire Alarm System (fire sprinklers, standpipe and hose network, fire alarm system, etc.). Subcomponents shall be Operational and Functional. Non-compliance shall be assessed on the basis of: a) Defects impacting any	(a) \$(REDACTED D]  (b) \$(REDACTED D]	(a) \$(REDACTED TED]  (b) \$(REDACTED TED]	(a) \$(REDACTED D]  (b) \$(REDACTED D]	\$(REDACTED) /hour for next 12 hours; \$(REDACTED) /hour thereafter

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A – GENERAL PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIME <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						Subcomponent; b) Defects impacting the functionality of the overall POE Facilities or applicable Structures.				
<b>8. MINOR MAINTENANCE ISSUES</b>										
8.1	Minor Maintenance Issue	Maintain the aesthetic, cosmetic and ornamental appearance of each Element including all Subcomponents, including in accordance with the Aesthetic Design Guidelines, except for Zug Island Slip Events only to the extent they affect the aesthetics of the Bridge.	N/A	N/A	30 days	The aesthetic, cosmetic and ornamental appearance of all Elements, including all Subcomponents, shall be maintained, including in accordance with the Aesthetic Design Guidelines.	-	-	[\$[REDACTED] D]	[\$[REDACTED] /day

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<b>B – STRUCTURES PERFORMANCE REQUIREMENTS</b>										
			<b>RECTIFICATION TIMES<sup>1</sup></b>				<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>			
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>		<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>	
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>
	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>	<b>Column H</b>	<b>Column I</b>	<b>Column J</b>
<b>1. STRUCTURES</b>										
1.1	Structures	Inspect and maintain all structures (bridges, culverts, gantries, overhead sign structures, high mast poles, etc.) to a specified condition rating level.	N/A	N/A	9 months	A. NBIS overall rating for deck, superstructure, substructure, channel and culvert shall be equal or greater than 7. Rectification time commences from the documented NBIS inspection report date.	–	–	[\$[REDACTED D]	[\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			N/A	N/A	30 days	B. Inspection frequency shall coincide with the initial structure inspection date and shall not migrate over time. All inspections shall be completed no later than the Rectification Time in the Permanent Repair column from the inspection due date in accordance with Applicable Laws.	–	–	[\$[REDACTED D]	[\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			N/A	N/A	30 days	C. Seawall inspection frequency shall coincide with the initial inspection date	–	–	[\$[REDACTED D]	[\$[REDACTED] /day for next 30

<sup>1</sup> “Days” in this Appendix 25-4 refer to actual days without regard to Section 3(ii) of Schedule 1 [Definitions and Interpretation].

<sup>2</sup> “HAZ MITG” means Hazard Mitigation.

<sup>3</sup> “PER. REPAIR” means Permanent Repair.

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<b>B – STRUCTURES PERFORMANCE REQUIREMENTS</b>										
			<b>RECTIFICATION TIMES<sup>1</sup></b>				<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>			
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>		<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>	
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>
	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>	<b>Column H</b>	<b>Column I</b>	<b>Column J</b>
						and shall not migrate over time. All inspections shall be completed no later than the Rectification Time in the Permanent Repair column from the inspection due date				days; \$[REDACTED] /day thereafter
			1.5 hrs	24 hrs	30 days	D. Damage to structural elements or Subcomponents as a result of an impact or incident. Damage requiring inspection by a licensed structural engineer shall follow General Performance Requirement 1.2, Structural Assessment.	\$[REDACTED] D]	\$[REDACTED] TED]	\$[REDACTED] D]	\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			1.5 hrs	24 hrs	30 days	E. Any deficiency identified and communicated to Project Co during the required inspections that threatens life or welfare of public.	\$[REDACTED] D]	\$[REDACTED] TED]	\$[REDACTED] D]	\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			N/A	N/A	6 months	F. All routine and periodic maintenance recommendations identified in the inspection report shall be completed within the specified Rectification Time from inspection report date.	–	–	\$[REDACTED] D]	\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter

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<b>B – STRUCTURES PERFORMANCE REQUIREMENTS</b>										
			<b>RECTIFICATION TIMES<sup>1</sup></b>				<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>			
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>		<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>	
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>
	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>	<b>Column H</b>	<b>Column I</b>	<b>Column J</b>
			N/A	N/A	1 year	G. Recommended major rehabilitation work not classified as routine or periodic shall be prioritized, listed in the annual maintenance work program and shall be completed within specified Rectification Time from inspection report date. Exceptions shall be presented to WDBA for approval.	–	–	\$(REDACTED D)	\$(REDACTED) /day for next 30 days; \$(REDACTED) /day thereafter
			N/A	N/A	30 days	H. All bridge monitoring systems shall be Operational and Functional.	–	-	\$(REDACTED D)	\$(REDACTED) /day for next 30 days; \$(REDACTED) /day thereafter
			N/A	N/A	7 days	I. Ventilation/dehumidifier system is Operational and Functional. Relative humidity design threshold value is met or exceeded to prevent corrosion activity for each Subcomponent or section area.	–	–	\$(REDACTED D)	\$(REDACTED) /day for next 30 days; \$(REDACTED) /day thereafter
1.2	Bridge deck	Bridge deck wearing surface is Operational and Functional.	1.5 hrs	12 hrs	30 days	A. Wheel path and non-wheel path, localized deficiencies such as spalling, pop outs, scaling with a surface area	\$(REDACTED D)	\$(REDACTED TED)	\$(REDACTED D)	\$(REDACTED) /day for next 30 days;

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<b>B – STRUCTURES PERFORMANCE REQUIREMENTS</b>										
			<b>RECTIFICATION TIMES<sup>1</sup></b>				<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>			
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>		<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>	
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>
	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>	<b>Column H</b>	<b>Column I</b>	<b>Column J</b>
						not to exceed 0.09 Sq. m (1 Sq. ft.) and a depth of 12.5 mm (0.5 in).				[\$REDACTED] /day thereafter
			1.5 hrs	12 hrs	30 days	B. Any spalls, regardless of surface area or depth that extends to exposed reinforcing steel.	[\$REDACTE D]	[\$REDACTED]	[\$REDACTE D]	[\$REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			1.5 hrs	12 hrs	30 days	C. Depression or bump shall not exceed 12.5 mm (0.5 in) for any surface area greater than 0.09 Sq. m (1 Sq. ft.) or no single measurement greater than 2.5 cm (1 in).	[\$REDACTE D]	[\$REDACTED]	[\$REDACTE D]	[\$REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			N/A	N/A	30 days	D. Unsealed longitudinal or transverse deck cracks shall not exceed 1.59 mm (0.0625 in) wide.	–	–	[\$REDACTE D]	[\$REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			N/A	N/A	30 days	E. Cementitious overlays - Unsealed longitudinal or transverse deck cracks shall not exceed 2 mm (0.0787 in) wide.	–	–	[\$REDACTE D]	[\$REDACTED] /day for next 30 days; \$[REDACTED]

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<b>B – STRUCTURES PERFORMANCE REQUIREMENTS</b>											
			<b>RECTIFICATION TIMES<sup>1</sup></b>			<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>					
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>				<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>	
	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>	<b>Column H</b>	<b>Column I</b>	<b>Column J</b>	
										/day thereafter	
1.3	Bridge Rails	Bridge rail and traffic impact barrier are Operational and Functional	1.5 hrs	24 hrs	7 days	Bridge rails and barriers are Operational and Functional. Rail and traffic impact barrier condition meets design standards.	[\$REDACTED D]	[\$REDACTED]	[\$REDACTED D]	[\$REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter	
1.4	Expansion Joints	Expansion joint system is sealed and is able to expand and contract	1.5 hrs	12 hrs	30 days	A. Expansion joints are Operational and Functional.	[\$REDACTED D]	[\$REDACTED]	[\$REDACTED D]	[\$REDACTED] /day for next 7 days; \$[REDACTED] /day thereafter	
			N/A	N/A	14 days	B. Expansion joint is sealed and water tight across entire width of structure and Operational and Functional.	-	-	[\$REDACTED D]	[\$REDACTED] /day for next 7 days; \$[REDACTED] /day thereafter	
			N/A	N/A	30 days	C. Mechanical Subcomponents are Operational and Functional as per manufacturer's specifications.	-	-	[\$REDACTED D]	[\$REDACTED] /day for next 7 days; \$[REDACTED] /day thereafter	

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<b>B – STRUCTURES PERFORMANCE REQUIREMENTS</b>										
			<b>RECTIFICATION TIMES<sup>1</sup></b>				<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>			
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>		<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>	
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>
	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>	<b>Column H</b>	<b>Column I</b>	<b>Column J</b>
			N/A	N/A	14 days	D. Expansion joints shall not have more than 6.35 mm (0.25in) of vertical or horizontal alignment differential.	–	–	\$(REDACTED D)	\$(REDACTED) /day for next 7 days; \$(REDACTED) /day thereafter
1.5	Bearings	Expansion and fixed bearing function as designed.	3 hrs	48 hrs	90 days	A. Bearing area shall be Operational and Functional.	\$(REDACTED D)	\$(REDACTED)	\$(REDACTED D)	\$(REDACTED) /day for next 30 days; \$(REDACTED) /day thereafter
			N/A	N/A	90 days	B Bearing area shall be free of dirt, debris and vegetation.	-	-	\$(REDACTED D)	\$(REDACTED) /day for next 30 days; \$(REDACTED) /day thereafter
			3 hrs	48 hrs	90 days	C. Expansion bearings are free to move and rotate as per design specifications. There shall not be any restrictions to design movement range.	\$(REDACTED D)	\$(REDACTED)	\$(REDACTED D)	\$(REDACTED) /day for next 30 days; \$(REDACTED) /day thereafter

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			<b>RECTIFICATION TIMES<sup>1</sup></b>				<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>			
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>		<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>	
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>
	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>	<b>Column H</b>	<b>Column I</b>	<b>Column J</b>
1.6	Cables	Cable system to operate as designed	N/A	N/A	5 years	A. Cable sheath shall have a hands on inspection for any Defects that could cause a detrimental effect on cable tendon. Hands on inspection frequency shall not exceed the Rectification Time in the Permanent Repair column from NBIS inspection due date.	–	–	\$(REDACTED D)	\$(REDACTED) /day for next 30 days; \$(REDACTED) /day thereafter
			N/A	N/A	7 days	B. Cable dampers are Operational and Functional. Energy dissipation threshold values are kept within limit range at all times.	–	–	\$(REDACTED D)	\$(REDACTED) /day for next 7 days; \$(REDACTED) /day thereafter
1.7	Surface Coating	Maintain the protective coating and include a re-coating schedule in the Maintenance Plan.	N/A	N/A	1 year	A. Steel protective coatings. Maintain \$(REDACTED)% of paint systems on structures to a minimum, “Condition State” of 2 or better. A Condition State 2 is defined as painted steel element that has minor deterioration. The paint system may have moderate deterioration (chalking, peeling, blistering or other distress), but any exposed steel is limited. Surface corrosion (freckled rust) may be	–	-	\$(REDACTED D)	\$(REDACTED) /month for next 3 months; \$(REDACTED) /month thereafter

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			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						present, but there is no flaking rust. Spot painting is only acceptable for active corrosion areas as a preventive measure. For aesthetic reasons, the paint system shall always be of uniform colour and appearance.				
			N/A	N/A	1 year	B. Concrete protective coatings. Maintain \$[REDACTED]% of paint systems on concrete surfaces to a minimum, “Condition State” of 2 or better. A Condition State 2 is defined as a coated concrete element that has minor deterioration and is substantially effective. The underlying concrete is not exposed. Coating shows wear from UV exposure. For aesthetic reasons, the paint system shall always be of uniform colour and appearance.	–	–	\$(REDACTED D]	\$(REDACTED) /month for next 3 months; \$(REDACTED) /month thereafter
1.8	Deck Drainage	Maintain deck drainage system to be Operational and Functional	1.5 hrs	12 hrs	30 days	Maintain an Operational and Functional bridge deck and structure drainage system. Deck inlets and structure’s external and internal drainage system Subcomponents shall be Operational and Functional. Non-compliance shall	(a) \$(REDACTED D]  (b)\$ \$(REDACTED	(a) \$(REDACTED TED]  (b) \$(REDACTED	(a) \$(REDACTED D]  (b) \$(REDACTED	\$(REDACTED) /day for next 30 days; \$(REDACTED) /day thereafter

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<b>B – STRUCTURES PERFORMANCE REQUIREMENTS</b>											
			<b>RECTIFICATION TIMES<sup>1</sup></b>			<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>					
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>				<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>	
	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>	<b>Column H</b>	<b>Column I</b>	<b>Column J</b>	
						be assessed on the basis of: a) Defects impacting a specific Subcomponent; b) Defects impacting the functionality of the overall system.	<b>D]</b>	<b>TED]</b>	<b>D]</b>		
1.9	Vegetation	Eradicate undesirable vegetation.	N/A	N/A	3 months	There shall be no undesirable vegetation on any portion of the structure (foundation, pier pedestals, bearing areas, joints, deck, barriers, wing walls, etc.).	-	-	[\$REDACTED D]	[\$REDACTED] /day for next 30 days; [\$REDACTED] /day thereafter	
1.10	Culverts	Culverts are Operational and Functional.	N/A	N/A	30 days	A. [\$REDACTED]% of the cross section of each pipe or box culvert at any given point within the length of the structure is free of obstructions and the culvert is Operational and Functional.	-	-	[\$REDACTED D]	[\$REDACTED] /day for next 30 days; [\$REDACTED] /day thereafter	
			N/A	N/A	30 days	B. Pipe or box culvert construction joints are sealed and Operational and Functional.	-	-	[\$REDACTED D]	[\$REDACTED] /day for next 30 days; [\$REDACTED] /day thereafter	
			N/A	N/A	30 days	C. Culverts shall be free of scour Damage as identified through the	-	-	[\$REDACTED D]	[\$REDACTED] /day for next 30	

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<b>B – STRUCTURES PERFORMANCE REQUIREMENTS</b>										
			<b>RECTIFICATION TIMES<sup>1</sup></b>				<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>			
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>		<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>	
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>
	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>	<b>Column H</b>	<b>Column I</b>	<b>Column J</b>
						inspection process as per Applicable Law.			D]	days; \$[REDACTED] /day thereafter
1.11	Load Capacity	Bridge structures shall have no loading restriction for legal loads, including legally permitted vehicles. All Bridge structures shall maintain the design load capacity.	1.5 hrs	24 hrs	7 days	There shall be no vehicle load restrictions for legal loads (including legally permitted vehicles). Load capacity restrictions as a result of impact or incident Damage to structural Subcomponents shall be covered by Structures Element Ref. 1.1 - D.	\$[REDACTE D]	\$[REDACTED]	\$[REDACTE D]	\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
1.12	Permit Load Analysis	Analyze and respond to permit load request.	N/A	N/A	1 Business Day	Analyze, process and respond to MDOT and/or MTO within the specified Rectification Time.	–	–	\$[REDACTE D]	\$[REDACTED] /hour for next 12 hours; \$[REDACTED] /hour thereafter
1.13	Bridge Fence	Restrict trespassing or crossing at unauthorized locations.	1.5 hrs	3 hrs	72 hrs	A. No opening on fence fabric shall be greater than 0.09 Sq. m (1 Sq. ft.).	\$[REDACTE D]	\$[REDACTED]	\$[REDACTE D]	\$[REDACTED] /hour for next 12 hours; \$[REDACTED] /hour thereafter
			1.5 hrs	3 hrs	72 hrs	B. There shall be no more than 25 mm	\$[REDACTE	\$[REDACTED	\$[REDACTE	\$[REDACTED]

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<b>B – STRUCTURES PERFORMANCE REQUIREMENTS</b>										
			<b>RECTIFICATION TIMES<sup>1</sup></b>			<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>				
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>	<b>CATEGORY 1</b>			<b>CATEGORY 1 OR 2</b>	
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>
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						(1 in.) of a horizontal or vertical gap at fence fabric lap joints or against any abutting vertical or horizontal surface.	<b>D]</b>	<b>TE]D]</b>	<b>D]</b>	/hour for next 12 hours; \$[REDACTED] /hour thereafter
			1.5 hrs	3 hrs	72 hrs	C. Fence Posts shall be Operational and Functional and not be more than 38 mm (1.5 in) from vertically plumb for an 8 foot post, 50 mm (2 in) from vertically plumb for a 10 foot post, and 63 mm (2.5 in) from vertically plumb for a 12 foot post.	<b>\$(REDACTE D]</b>	<b>\$(REDACTED]</b>	<b>\$(REDACTE D]</b>	<b>\$(REDACTED]</b> /hour for next 12 hours; <b>\$(REDACTED]</b> /hour thereafter
1.14	Aesthetic Lighting	Lighting is free of Defects and provides a well-lit uniform lighting.	1.5 hrs	48 hrs	30 days	Aesthetic lights shall be Operational and Functional. Each individual light source meets specified lumen range at the respective coverage area.	<b>\$(REDACTE D]</b>	<b>\$(REDACTED]</b>	<b>\$(REDACTE D]</b>	<b>\$(REDACTED]</b> /day for next 30 days; <b>\$(REDACTED]</b> /day thereafter
1.15	Navigation Lights	Navigation lights on and operational as per USCG.	1.5 hrs	24 hrs	30 days	Navigation lights are Operational and Functional.	<b>\$(REDACTE D]</b>	<b>\$(REDACTED]</b>	<b>\$(REDACTE D]</b>	<b>\$(REDACTED]</b> /day for next 30 days; <b>\$(REDACTED]</b> /day thereafter

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<b>B – STRUCTURES PERFORMANCE REQUIREMENTS</b>										
			<b>RECTIFICATION TIMES<sup>1</sup></b>				<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>			
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>		<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>	
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>
	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>	<b>Column H</b>	<b>Column I</b>	<b>Column J</b>
1.16	Obstruction Lighting	Obstruction lights. Operate as required by FAA regulations.	1.5 hrs	24 hrs	30 days	Obstruction lights are Operational and Functional.	\$(REDACTED D]	\$(REDACTED TED]	\$(REDACTED D]	\$(REDACTED] /day for next 30 days; \$(REDACTED] /day thereafter
1.17	Inspection and Access Equipment	Inspection and access equipment is Operational and Functional including: A. Underdeck inspection gantries (travelers) B. Fixed access and inspection platforms C. Access stairways and lift systems	1.5 hrs	48 hrs	30 days	A. Conform to relevant standards for fixed and mobile inspection facilities and hoists/lifts. Electrical and mechanical (lifts, traveler, etc.) Subcomponents shall be Operational and Functional as per manufacturer’s specifications.  Non-compliance shall be assessed on the basis of: a) Defects impacting a specific Subcomponent; b) Defects causing full Operational failure of lifts or traveler.	(a) - (b) \$(REDACTED D]	(a) - (b) \$(REDACTED TED]	(a) \$(REDACTED D]  (b) \$(REDACTED D]	\$(REDACTED] /day for 7 days; \$(REDACTED] /day thereafter
			3 hrs	48 hrs	90 days	B. There shall not be any loose structural assemblies within any part of the platform and lift system.	\$(REDACTED D]	\$(REDACTED TED]	\$(REDACTED D]	\$(REDACTED] /day for next 30 days; \$(REDACTED]

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<b>B – STRUCTURES PERFORMANCE REQUIREMENTS</b>										
			<b>RECTIFICATION TIMES<sup>1</sup></b>				<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>			
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>		<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>	
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>
	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>	<b>Column H</b>	<b>Column I</b>	<b>Column J</b>
										/day thereafter
			N/A	N/A	90 days	C. Connecting hardware and anchor bolts shall not exceed [REDACTED]% overall section loss. Hardware functions as per design specifications for respective detail.	–	–	\$(REDACTE D]	\$(REDACTED] /day for next 30 days; \$(REDACTED] /day thereafter
			N/A	N/A	1 year	D. Protective coating for inspection and access equipment, access platforms and ladders, and all associated hardware shall not exceed [REDACTED]% of surface area rusted, flaking or delaminated.	–	–	\$(REDACTE D]	\$(REDACTED] /day for next 30 days; \$(REDACTED] /day thereafter
			1.5 hrs	24 hrs	30 days	E. Maintenance and inspection lighting system shall be Operational and Functional.	\$(REDACTE D]	\$(REDACTED]	\$(REDACTE D]	\$(REDACTED] /day for next 30 days; \$(REDACTED] /day thereafter
1.18	Vermin Control	Maintain structural Subcomponents, inspection and access equipment, pier caps, maintenance portals, interior box	N/A	N/A	30 days	A. Vermin guards and bird screenings shall be Operational and Functional.	–	–	\$(REDACTE D]	\$(REDACTED] /day for next 30 days; \$(REDACTED]

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<b>B – STRUCTURES PERFORMANCE REQUIREMENTS</b>										
			<b>RECTIFICATION TIMES<sup>1</sup></b>			<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>				
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>	<b>CATEGORY 1</b>			<b>CATEGORY 1 OR 2</b>	
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>
	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>	<b>Column H</b>	<b>Column I</b>	<b>Column J</b>
		segments, etc., free of vermin activity.								/day thereafter
			N/A	N/A	30 days	B. Keep locations congregated by birds free of waste and nesting sites in accordance with Applicable Laws.	–	–	[\$[REDACTE D]	[\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
1.19	Seawall	Maintain the seawall to be Operational and Functional.	1.5 hrs	7 days	90 days	A. Localized concrete deficiencies such as spalling, pop outs, scaling with a surface area not to exceed 0.09 Sq. m (1 Sq. ft.) and a depth of 12.5 mm (0.5 in).	[\$[REDACTE D]	[\$[REDACTED]	[\$[REDACTE D]	[\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			1.5 hrs	7 days	90 days	B. Any spalls, regardless of surface area or depth that extends to exposed reinforcing steel.	[\$[REDACTE D]	[\$[REDACTED]	[\$[REDACTE D]	[\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			N/A	N/A	90 days	C. Unsealed longitudinal or transverse cracks shall not exceed 1.25 mm (0.05 in) wide.	–	–	[\$[REDACTE D]	[\$[REDACTED] /day for next 30 days; \$[REDACTED]

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<b>B – STRUCTURES PERFORMANCE REQUIREMENTS</b>										
			<b>RECTIFICATION TIMES<sup>1</sup></b>			<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>				
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>	<b>CATEGORY 1</b>			<b>CATEGORY 1 OR 2</b>	
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>
	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>	<b>Column H</b>	<b>Column I</b>	<b>Column J</b>
										/day thereafter
			N/A	N/A	6 months	D. Section loss on steel sheet piles shall not exceed an average of loss of gauge thickness per any 0.5 Sq. M (5.38 Sq. ft.) sectional area at which the structural demand to capacity ratio is greater than one, as determined and established by Project Co's Engineer of Record.	–	–	[\$[REDACTED] D]	[\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			N/A	N/A	6 months	E. Steel sheet pile shall not have any perforations of any size protruding through gauge thickness.	–	–	[\$[REDACTED] D]	[\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			N/A	N/A	6 months	F. Wall facing units shall not be uniformly or differentially deflected beyond a magnitude that indicates the structural demand to capacity ratio is greater than one or serviceability of the wall as compromised, as determined and established by Project Co's Engineer of Record.	–	–	[\$[REDACTED] D]	[\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter

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<b>C – ROADWAYS PERFORMANCE REQUIREMENTS</b>										
			<b>RECTIFICATION TIMES<sup>1</sup></b>				<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>			
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>		<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>	
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>
	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>	<b>Column H</b>	<b>Column I</b>	<b>Column J</b>
<b>1. ROADWAYS</b>										
1.1	Obstructions and Debris	Roadway System shall be free of Obstructions and Debris, including Bridge Structures and POE Facility approach roadways.	1.5 hrs	12 hrs	24 hrs	Roadway System shall be clear and free of any sizable Obstruction or Debris. Roadway System impediment as a result of impact or incident Damage to structural Subcomponents other than bridge deck surface shall be covered by Structures Element Ref. 1.1 - C.	[\$[REDACTED D]	[\$[REDACTED TED]	[\$[REDACTED D]	[\$[REDACTED] /hour for next 12 hours; \$[REDACTED] /hour thereafter
1.2	Pavement - Rigid	All roadways have a smooth surface course (including bridge decks, covers, gratings, frames and boxes) with adequate skid resistance and are Operational and Functional.	N/A	N/A	4 months	A. Slab crack width shall not exceed 6.35 mm (0.25 in). Repair or replace accordingly. Sealing of cracks exceeding width criteria shall not be considered as compliant with Minimum Performance Criteria.	–	–	[\$[REDACTED D]	[\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			N/A	N/A	4 months	B. Intersecting, random cracks on slabs with a pattern that divides individual	–	–	[\$[REDACTED D]	[\$[REDACTED] /day for next 30

<sup>1</sup> Days in this Appendix refer to calendar days.

<sup>2</sup> “HAZ MITG” means Hazard Mitigation.

<sup>3</sup> “PER. REPAIR” means Permanent Repair.

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C – ROADWAYS PERFORMANCE REQUIREMENTS										
REF	ELEMENT	PERFORMANCE REQUIREMENT	RECTIFICATION TIMES <sup>1</sup>			MINIMUM PERFORMANCE CRITERIA	SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
			HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>		HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J	
						slab into three or more segments shall not exceed 3.175 mm (0.125 in) in width. Slabs shall be removed and replaced.				days; \$[REDACTED] /day thereafter
			N/A	N/A	6 months	C. All cracks shall be sealed with the exception of slabs that fall under the replacement criteria of 1.2 A. and 1.2 B. above.	–	–	\$[REDACTED] D]	\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			N/A	N/A	4 months	D. Corner breaks shall not exceed drop-off of 12.5 mm (0.5 in).	–	–	\$[REDACTED] D]	\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			1.5 hrs	12 hrs	30 days	E. Wheel path and non-wheel path, localized deficiencies such as spalling, pop outs, scaling with a surface area not to exceed 0.09 Sq. m (1 Sq. ft.) and a depth of 12.5 mm (0.5 in).	\$[REDACTED] D]	\$[REDACTED] TED]	\$[REDACTED] D]	\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			1.5 hrs	24 hrs	4 months	F. Faulting that causes an elevation differential across joints or cracks not to	\$[REDACTED] D]	\$[REDACTED] TED]	\$[REDACTED] D]	\$[REDACTED] /day for next 30

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C – ROADWAYS PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						exceed 12.5 mm (0.5 in).				days; \$[REDACTED] /day thereafter
			N/A	N/A	6 months	G. Roadway Smoothness (excluding shoulders and gores)  Roadway conditions shall meet the requirements set out in Section 24 of Schedule 11 [ <i>Operations, Maintenance and Rehabilitation</i> ], Roadway Condition – rigid pavement and flexible pavement	–	–	\$[REDACTED] D]	\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			N/A	N/A	6 months	H. Skid resistance (excluding shoulders and gores)  Pavement shall meet the average test value for any 0.25 mi. segment of any lane less than 35, and any single test value less than 30. ASTM E274 and a smooth tire in accordance with ASTM E524 at 40 MPH using a full scale smooth tire meeting the requirements of ASTM E 524. A minimum of 11 equally spaced tests shall be performed in each 0.25 mi. segment of each lane and averaged to obtain the average test	–	–	\$[REDACTED] D]	\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter

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C – ROADWAYS PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						value for each 0.25 mi. segment.				
		Road users warned of potential skidding hazards.	1.5 hrs	N/A	N/A	I. Road users to be warned of potential skidding hazard.	[\$REDACTE D]	-	-	
1.3	Pavement - Flexible	All roadways have a smooth surface course (including bridge decks, covers, gratings, frames and boxes) with adequate skid resistance and are Operational and Functional.	N/A	N/A	4 months	A. Crack width shall not exceed 12.5 mm (0.5 in).	-	-	[\$REDACTE D]	[\$REDACTED] /day for next 30 days; [\$REDACTED] /day thereafter
			N/A	N/A	6 months	B. All cracks shall be sealed.	-	-	[\$REDACTE D]	[\$REDACTED] /day for next 30 days; [\$REDACTED] /day thereafter
			1.5 hrs	12 hrs	30 days	C. Pothole surface area shall not exceed 0.09 Sq. m (1 Sq. ft.) and a depth of 12.5 mm (0.5 in).	[\$REDACTE D]	[\$REDACTED]	[\$REDACTE D]	[\$REDACTED] /day for next 30 days; [\$REDACTED] /day thereafter
			1.5 hrs	7 days	4 months	D. Shoved surface areas shall not exceed 0.46 Sq. m (5 Sq. ft.).	[\$REDACTE D]	[\$REDACTED]	[\$REDACTE D]	[\$REDACTED] /day for next 30

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C – ROADWAYS PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
										days; \$[REDACTED] /day thereafter
			N/A	N/A	4 months	E. Rutting depth shall not exceed: a) 3.125 mm (0.125 in) average per lane per 0.804 km (0.5 mi.); b) 6.35 mm (0.25 in) average per 91.44 m (300 ft.) section; c) Any instance greater than 12.5 mm (0.5 in).  ASTM E950.  Measurements of localized areas shall be carried out using a 6 ft. straight edge in accordance with ASTM E1707.	–	–	\$[REDACTED]	\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			1.5 hrs	12 hrs	30 days	F. Depression or bump shall not exceed 12.5 mm (0.5 in) for any surface area greater than 0.09 Sq. m (1 Sq. ft.) or no single measurement greater than 2.5 cm (1 in).	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter

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C – ROADWAYS PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
			1.5 hrs	24 hrs	30 days	G. Edge drop-off not to exceed 2.5 cm (1 in) for a continuous length of 6.1 m (20 ft.).	[\$REDACTED D]	[\$REDACTED TED]	[\$REDACTED D]	[\$REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			1.5 hrs	24 hrs	30 days	H. Unpaved shoulders shall not exceed a build-up of 5 cm (2 in) across the design template for a continuous 9.14 m (30 ft.).	[\$REDACTED D]	[\$REDACTED TED]	[\$REDACTED D]	[\$REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			N/A	N/A	6 months	I. Roadway Smoothness (excluding shoulders and gores)  Roadway conditions shall meet the requirements set out in Section 24 Roadway Condition – rigid pavement and flexible pavement.	–	–	[\$REDACTED D]	[\$REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			N/A	N/A	6 months	J. Skid resistance (excluding shoulders and gores)  Pavement shall meet the average test value for any 0.25 mi. segment of any lane less than 35, and any single test	–	–	[\$REDACTED D]	[\$REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter

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C – ROADWAYS PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						value less than 30. ASTM E274 and a smooth tire in accordance with ASTM E524 at 40 MPH using a full scale smooth tire meeting the requirements of ASTM E 524. A minimum of 11 equally spaced tests shall be performed in each 0.25 mi. segment of each lane and averaged to obtain the average test value for each 0.25 mi. segment.				
		Road users warned of potential skidding hazards.	1.5 hrs	N/A	N/A	K. Road users warned of potential skidding hazard.	[\$REDACTE D]	-	-	
1.4	Joints in Concrete	Joints in concrete pavement are sealed and watertight	N/A	N/A	4 months	A. Length of individual unsealed joints shall not exceed 0.91 m (3 ft.) in any continuous 3.05 m (10 ft.) section.	-	-	[\$REDACTE D]	[\$REDACTED] /day for next 30 days; [\$REDACTED] /day thereafter
			N/A	N/A	4 months	B. Joint widths shall not exceed 2.5 cm (1 in).	-	-	[\$REDACTE D]	[\$REDACTED] /day for next 30 days; [\$REDACTED] /day thereafter

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<b>C – ROADWAYS PERFORMANCE REQUIREMENTS</b>										
			<b>RECTIFICATION TIMES<sup>1</sup></b>				<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>			
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>		<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>	
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>
	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>	<b>Column H</b>	<b>Column I</b>	<b>Column J</b>
1.5	Curbs	Curbs are Operational and Functional including surrounding the POE Facilities.	N/A	N/A	30 days	A. Curb alignment shall not exceed 12.5 mm (0.5 in) in a continuous 9.14 m (30 ft.) section.	–	–	\$(REDACTED D)	\$(REDACTED) /day for next 30 days; \$(REDACTED) /day thereafter
			N/A	N/A	30 days	B. Localized deficiencies such as spalling, pop outs, scaling with a surface area not to exceed 0.09 Sq. m (1 Sq. ft.) and a depth of 12.5 mm (0.5 in).	–	–	\$(REDACTED D)	\$(REDACTED) /day for next 30 days; \$(REDACTED) /day thereafter
1.6	Sidewalks	Provide a safe walkway path, including Bridge structures and POE Facilities	1.5 hrs	48 hrs	7 days	A. Sidewalk vertical differential across joints or cracks not to exceed 6.35 mm (0.25 in).	\$(REDACTED D)	\$(REDACTED TED)	\$(REDACTED D)	\$(REDACTED) /day for next 7 days; \$(REDACTED) /day thereafter
			N/A	N/A	30 days	B. Localized deficiencies such as spalling, pop outs, scaling with a surface area not to exceed 0.09 Sq. m (1 Sq. ft.) and a depth of 12.5 mm (0.5 in).	\$(REDACTED D)	\$(REDACTED TED)	\$(REDACTED D)	\$(REDACTED) /day for next 7 days; \$(REDACTED) /day thereafter

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C – ROADWAYS PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
<b>2. DRAINAGE</b>										
2.1	Pipes and Channels	Each element of the drainage system is maintained in its proper function by cleaning, clearing and/or emptying as appropriate from the point at which water drains from the travel way to the outfall or drainage way.	N/A	N/A	30 days	<b>[REDACTED]</b> % of the cross section of each pipe, box culvert, open channel or drainage ditch at any given point within the length of the structure is free of obstructions and are Operational and Functional.	–	–	<b>[\$REDACTED D]</b>	<b>[\$REDACTED]</b> /day for next 30 days; <b>[\$REDACTED]</b> /day thereafter
2.2	Drainage Treatment Devices	Drainage treatment and balancing systems, flow and spillage control devices function correctly and their location and means of operation is recorded adequately to permit their correct operation in Emergency.	1.5 hrs	24 hrs	30 days	Devices shall be Operational and Functional as per environmental requirements. Non-compliance shall be assessed on the basis of: a) Defects impacting a specific Subcomponent; b) Defects impacting the functionality of the overall system.	(a) <b>[\$REDACTED D]</b>  (b) <b>[\$REDACTED D]</b>	(a) <b>[\$REDACTED TED]</b>  (b) <b>[\$REDACTED TED]</b>	(a) <b>[\$REDACTED D]</b>  (b) <b>[\$REDACTED D]</b>	<b>[\$REDACTED]</b> /day for next 30 days; <b>[\$REDACTED]</b> /day thereafter
2.3	Roadway System	Water does not encroach on the Roadway System to the extent that such water would represent a hazard by virtue of its position and depth.	1.5 hrs	4 hrs	48 hrs	a) Rain events up to and including a 100 year rainfall event for the Great Lakes / St. Lawrence Climate Region or Michigan's Rainfall Frequency Zone 10 - There shall not be any water build-up or ponding into travel lanes.	<b>[\$REDACTED D]</b>	<b>[\$REDACTED TED]</b>	<b>[\$REDACTED D]</b>	<b>[\$REDACTED]</b> /hour for next 12 hours; <b>[\$REDACTED]</b> /hour thereafter

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C – ROADWAYS PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						b) Rain events exceeding a 100 year rainfall event for the Great Lakes / St. Lawrence Climate Region or Michigan's Rainfall Frequency Zone 10 – any ponding shall drain off of travel lanes within one hour.				
2.4	Discharge Systems	Surface water discharge systems perform their proper function and discharge to groundwater and waterways complies with the relevant legislation and permits.	1.5 hrs	24 hrs	30 days	Devices shall be Operational and Functional as per environmental requirements. Non-compliance shall be assessed on the basis of: a) Defects impacting a specific Subcomponent; b) Defects impacting the functionality of the overall system.	(a) \$[REDACTED]  (b) \$[REDACTED]	(a) \$[REDACTED]  (b) \$[REDACTED]	(a) \$[REDACTED]  (b) \$[REDACTED]	\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
2.5	Underdrains	Underdrain pipes and outlets in a functioning condition to maintain the design drainage flow.	1.5 hrs	24 hrs	30 days	[REDACTED]% of the cross section of each pipe at any given point within the length of the structure is free of obstructions and are Operational and Functional.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
2.6	Protected Species	Protected species and habitats.	N/A	N/A	30 days	Maintenance work shall comply with all Applicable Laws.	–	–	\$[REDACTED]	\$[REDACTED] /day for next 30 days;

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			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
										[\$REDACTED] /day thereafter
<b>3. PAVEMENT MARKINGS, OBJECT MARKERS, BARRIER MARKER AND DELINEATORS</b>										
3.1	Pavement Markings & Symbols	Pavement markings and symbols are: - clean and visible during the day and at night whole and complete and of the correct colour, type, width and length; - installed to meet the MMUTCD and equivalent Canadian requirements.	N/A	N/A	4 months	A. [REDACTED]% of markings and symbols function as intended and meets retro-reflectivity reading specified in Standard Specification. Measured at continuous intervals of 91.44 m (300 ft.) sections.	–	–	[\$REDACTED D]	[\$REDACTED] /day for next 30 days; [\$REDACTED] /day thereafter
			N/A	N/A	5 days	B. Splatter from striping operations shall be Rectified within the specified Rectification Time in the Permanent Repair column.	–	–	[\$REDACTED D]	[\$REDACTED] /day for next 30 days; [\$REDACTED] /day thereafter
3.2	Delineators & Markers	Markers and delineators are: - clean and visible	N/A	N/A	30 days	Number of Operational and Functional delineators shall meet or exceed [REDACTED]%. Measured at	–	–	[\$REDACTED D]	[\$REDACTED] /day for next 30 days;

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C – ROADWAYS PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
		- of the correct colour and type - legible and reflective - straight and vertical				continuous intervals of 91.44 m (300 ft.) sections.				\$(REDACTED) /day thereafter
<b>4. GUARDRAILS, SAFETY BARRIERS AND IMPACT ATTENUATORS</b>										
4.1	Guard Rails, Attenuators and Safety	All guardrails, safety barriers, concrete barriers, attenuators, etc., are Operational and Functional. They are appropriately placed and correctly installed at the correct height and distance from roadway or obstacles.	1.5 hrs	24 hrs	7 days	A. Road restraint systems shall be Operational and Functional.	\$(REDACTED D)	\$(REDACTED TED)	\$(REDACTED D)	\$(REDACTED) /day for next 5 days; \$(REDACTED) /day thereafter
			1.5 hrs	24 hrs	7 days	B. Guardrails are Operational and Functional.	\$(REDACTED D)	\$(REDACTED TED)	\$(REDACTED D)	\$(REDACTED) /day for next 5 days; \$(REDACTED) /day thereafter
			1.5 hrs	24 hrs	72 hrs	C. Attenuators are Operational and Functional.	\$(REDACTED D)	\$(REDACTED TED)	\$(REDACTED D)	\$(REDACTED) /hour for next 72 hours;

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<b>C – ROADWAYS PERFORMANCE REQUIREMENTS</b>										
			<b>RECTIFICATION TIMES<sup>1</sup></b>				<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>			
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>		<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>	
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>
	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>	<b>Column H</b>	<b>Column I</b>	<b>Column J</b>
										[\$REDACTED] /hour thereafter
			1.5 hrs	24 hrs	7 days	D. Concrete barriers are Operational and Functional.	[\$REDACTED] D]	[\$REDACTED] TED]	[\$REDACTED] D]	[\$REDACTED] /day for next 5 days; [\$REDACTED] /day thereafter
<b>5. TRAFFIC SIGNS</b>										
5.1	Regulatory Signs	Regulatory signs shall be Operational and Functional in accordance with MMUTCD and equivalent Canadian standards.	N/A	N/A	7 days	A. Regulatory signs are Operational and Functional.	–	–	[\$REDACTED] D]	[\$REDACTED] /day for next 30 days; [\$REDACTED] /day thereafter
			1.5 hrs	4 hrs	48 hrs	B. There shall not be any regulatory signs knocked down.	[\$REDACTED] D]	[\$REDACTED] TED]	[\$REDACTED] D]	[\$REDACTED] /hour for next 12 hours; [\$REDACTED] /hour thereafter
5.2	Non-Regulatory	Non-regulatory signs shall be Operational and Functional in	N/A	N/A	30 days	Non-regulatory signs are Operational and Functional. Non-regulatory signs	–	–	[\$REDACTED] D]	[\$REDACTED] /day for next 30

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<b>C – ROADWAYS PERFORMANCE REQUIREMENTS</b>										
			<b>RECTIFICATION TIMES<sup>1</sup></b>				<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>			
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>		<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>	
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>
	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>	<b>Column H</b>	<b>Column I</b>	<b>Column J</b>
	Signs	accordance with MMUTCD and equivalent Canadian standards.				are free of Damage and shall not be knocked down.				days; \$[REDACTED] /day thereafter
<b>6. TRAFFIC SIGNALS</b>										
6.1	General	Traffic Signals shall be Operational and Functional in accordance with MMUTCD and equivalent Canadian standards.	1.5 hrs	4 hrs	24 hrs	Traffic signal lights shall be Operational and Functional in accordance with MMUTCD and equivalent Canadian standards. Non-compliance shall be assessed on the basis of: a) Defects impacting a specific Subcomponent; b) Defects impacting the functionality of the overall system.	(a) \$[REDACTED]  (b) \$[REDACTED]	(a) \$[REDACTED]  (b) \$[REDACTED]	(a) \$[REDACTED]  (b) \$[REDACTED]	\$[REDACTED] /day for next 6 hours; \$[REDACTED] /day thereafter
6.2	Identification Marking	Signals have identification markers and the telephone number for reporting faults are correctly located, clearly visible, clean and legible.	N/A	N/A	30 days	Traffic signal structures shall have identification markers and other information that is easily readable.	–	–	\$[REDACTED] D]	\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter

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C – ROADWAYS PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
<b>7. LIGHTING</b>										
7.1	Roadway Lighting - General	Roadway lighting system, including bridge structures, pedestrian pathways and high mast light poles shall be Operational and Functional in accordance with design specifications and manufacturer’s recommendations.	1.5 hrs	24 hrs	21 days	A. Lighting - lights shall be Operational and Functional, and reliability shall be measured weekly and shall meet or exceed a monthly average of [REDACTED]%. Each individual light source meets specified lumen range at the respective ground coverage area. Lighting reliability is calculated as follows: $(((\text{total \# lights} - \text{total \# of deficient lights}) / \text{total \# lights}) \times 100)$ .	\$(REDACTED D]	\$(REDACTED TED]	\$(REDACTED D]	\$(REDACTED] /day for next 30 days; \$(REDACTED] /day thereafter
			N/A	N/A	30 days	B. Lumen Output (lights in series) - There shall not be more than one light source in series or adjacent to each other that does not meet the specified lumen range at the respective ground coverage area.	–	–	\$(REDACTED D]	\$(REDACTED] /day for next 30 days; \$(REDACTED] /day thereafter
			N/A	N/A	30 days	C. Lumen Output (outage duration) - Individual light source shall meet specified lumen range at the respective ground coverage area.	–	–	\$(REDACTED D]	\$(REDACTED] /day for next 30 days; \$(REDACTED] /day thereafter

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<b>C – ROADWAYS PERFORMANCE REQUIREMENTS</b>										
			<b>RECTIFICATION TIMES<sup>1</sup></b>				<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>			
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>		<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>	
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>
	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>	<b>Column H</b>	<b>Column I</b>	<b>Column J</b>
7.2	Sign Structure Lighting	Sign structure lighting is Operational and Functional.	N/A	N/A	30 days	Sign structure lighting shall be Operational and Functional.	–	–	\$(REDACTED D)	\$(REDACTED) /day for next 30 days; \$(REDACTED) /day thereafter
7.3	Electrical Supply	Electricity supply, feeder pillars, load centres, cabinets, switches, fittings and ancillary components are electrically, mechanically and structurally sound and functioning.	1.5 hrs	8 hrs	7 days	Subcomponents shall be Operational and Functional.	\$(REDACTED D)	\$(REDACTED TED)	\$(REDACTED D)	\$(REDACTED) /day for next 30 days; \$(REDACTED) /day thereafter
7.4	High Mast Lights	High mast lighting shall be Operational and Functional in accordance with design specifications and manufacturer's recommendations.	1.5 hrs	7 days	30 days	Electrical and structural Subcomponents shall be Operational and Functional.	\$(REDACTED D)	\$(REDACTED TED)	\$(REDACTED D)	\$(REDACTED) /day for next 30 days; \$(REDACTED) /day thereafter
<b>8. FENCES, WALLS AND SOUND ABATEMENT</b>										
8.1	Design and Location	Fences and walls act as designed and serve the purpose for which they were intended.	1.5 hrs	24 hrs	30 days	A. Concrete walls and barriers shall be Operational and Functional.	\$(REDACTED D)	\$(REDACTED TED)	\$(REDACTED D)	\$(REDACTED) /day for next 30 days; \$(REDACTED)

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			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
										/day thereafter
			1.5 hrs	24 hrs	30 days	B. No opening on fence fabric shall be greater than 0.092 Sq. m (1 Sq. ft.). There shall not be any gaps on mesh lap joints.	[\$REDACTED D]	[\$REDACTED TED]	[\$REDACTED D]	[\$REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			1.5 hrs	24 hrs	30 days	C. There shall not be any two vertical fence posts in a row that are missing or Damaged.	[\$REDACTED D]	[\$REDACTED TED]	[\$REDACTED D]	[\$REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
<b>9. LANDSCAPE</b>										
9.1	Vegetated and Landscaped Areas	Vegetation and landscaped areas are maintained in accordance with the Minimum Performance Criteria.	N/A	N/A	Next Planting Season	A. Replace all dead vegetation and trees. Replanting shall follow all applicable planting requirements for the type of vegetation being replaced.	–	–	[\$REDACTED D]	[\$REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			N/A	N/A	Next Planting	B. [REDACTED]% of vegetated and landscaped areas are maintained in a healthy and attractive condition.	–	–	[\$REDACTED D]	[\$REDACTED] /day for next 30 days;

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REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
					Season	Replanting shall follow all applicable planting requirements for the type of vegetation being replaced. Unit of measure shall be 0.164 Sq. ha (1 Sq. ac).				[\$REDACTED] /day thereafter
			N/A	N/A	14 days	C. Roadside vegetation shall not exceed 15 cm (6 in). This excludes decorative vegetation.	–	–	[\$REDACTED D]	[\$REDACTED] /day for next 14 days; \$[REDACTED] /day thereafter
			N/A	N/A	14 days	D. Slope side vegetation must be maintained to ensure that no more than [REDACTED]% of the vegetation exceeds a height of 50 cm (20 in.). This excludes decorative vegetation.	–	–	[\$REDACTED D]	[\$REDACTED] /day for next 14 days; \$[REDACTED] /day thereafter
			N/A	N/A	14 days	E. Turf in mowing area is [REDACTED]% free of undesirable vegetation. Unit of measure shall be 0.164 Sq. ha (1 Sq. ac).	–	–	[\$REDACTED D]	[\$REDACTED] /day for next 14 days; \$[REDACTED] /day thereafter

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			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
			N/A	N/A	7 days	F. There shall be no encroachment of vegetation onto the curb or sidewalk exceeding 15 cm (6 in) in width.	–	–	[\$[REDACTED D]	[\$[REDACTED] /day for next 7 days; \$[REDACTED] /day thereafter
			N/A	N/A	Next Planting Season	G. [REDACTED]% of wildflower and respective plots are maintained in a healthy and attractive condition. Replanting shall follow all applicable planting requirements for the type of vegetation being replaced. Unit of measure shall be 0.164 Sq. ha (1 Sq. ac).	–	–	[\$[REDACTED D]	[\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
			1.5 hrs	24 hrs	14 days	H. Maintain sight lines or sight distance to signs per design specifications.	[\$[REDACTED D]	[\$[REDACTED TED]	[\$[REDACTED D]	[\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
9.2	Trees, shrubs and ornamentals	Trees, shrubs and ornamentals are maintained in accordance with the Minimum Performance Criteria and in accordance with Standards.	1.5 hrs	24 hrs	3 months	A. There shall not be any encroachment of trees, tree limbs in or over travel way or clear zone, lower than 4.42 m (14.5 ft.) or lower than 3 m (10 ft.) over sidewalks.	[\$[REDACTED D]	[\$[REDACTED TED]	[\$[REDACTED D]	[\$[REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter

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<b>C – ROADWAYS PERFORMANCE REQUIREMENTS</b>										
			<b>RECTIFICATION TIMES<sup>1</sup></b>				<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>			
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>		<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>	
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>
	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>	<b>Column H</b>	<b>Column I</b>	<b>Column J</b>
			N/A	N/A	3 months	B. Dead trees, shrubs, ornamentals and branches shall be removed. Potentially dangerous trees or limbs shall be removed. Invasive or noxious trees, vegetation, diseased vegetation and pests shall be removed in accordance with generally accepted eradication procedures and Applicable Laws at the time appropriate for the specific species. Diseased trees or limbs are treated or removed by licensed contractors.	-	-	\$(REDACTED D]	\$(REDACTED] /day for next 30 days; \$(REDACTED] /day thereafter
<b>10. EARTHWORKS, EMBANKMENT AND CUTTINGS</b>										
10.1	Slope Failure	All structural or natural failures of the embankment and cut slopes of the Facility are repaired.	1.5 hrs	24 hrs	30 days	Embankments and slopes are Operational and Functional. Slopes are maintained in general conformance to the original graded cross- sections, the replacement of landscaping materials, reseeding and re-vegetation for erosion control purposes and removal and disposal of all eroded materials from the roadway and shoulders.	\$(REDACTED D]	\$(REDACTED TED]	\$(REDACTED D]	\$(REDACTED] /day for next 30 days; \$(REDACTED] /day thereafter

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			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
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10.2	Fill Embankments	Achieve smooth transition between approach roadway and bridges or applicable Structures	1.5 hrs	24 hrs	6 months	Maintain differential settlement of the pavement surface at structure approach embankments as per Part 4 [Geotechnical] of Schedule 10 [Design and Construction Specifications], Fill Embankments.	[\$REDACTED D]	[\$REDACTED TED]	[\$REDACTED D]	[\$REDACTED] /day for next 30 days; [\$REDACTED] /day thereafter
<b>11. SNOW AND ICE CONTROL</b>										
11.1	Continuous Plowing and De-icing	Provide continuous plowing and de-icing activities in order to maintain Roadway System open to traffic flow.	**	N/A	N/A	Maintain Roadway System open. Exception will apply if adjacent roadway system is closed by law enforcement agencies.  **Closure of Roadway System prior to either Canadian or US system closing shall constitute a Category 1 Defect.	[\$REDACTED D]  Note: Subsequent deductions shall be subject to Availability Failures, as per Section 3.	–	–	
11.2	Priority 1 – roadways and walkways	Achieve Bare Pavement after end of the winter event.	6 hrs	N/A	N/A	Bare Pavement condition shall be achieved at end of winter event.	[\$REDACTED D]	–	–	

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			<b>RECTIFICATION TIMES<sup>1</sup></b>				<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>			
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>		<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>	
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>
	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>	<b>Column H</b>	<b>Column I</b>	<b>Column J</b>
11.3	Priority 2 – Secondary roadways, walkways and parking facility	Achieve Bare Pavement after end of the winter event.	12 hrs	N/A	N/A	Bare Pavement condition shall be achieved at end of winter event.	[\$REDACTE D]	–	–	
11.4	Snow Accumulation-Clean up	Removal of snow accumulation in areas not defined in Priority One and Priority Two including areas adjacent to barrier walls and other piled snow.	N/A	N/A	24 hrs	Bare Pavement condition shall be achieved at end of winter event.	–	–	[\$REDACTE D]	
11.5	Winter weather hazards	Address any winter weather hazard immediately upon detection or being made aware.	1.5 hrs	N/A	N/A	Identification of any winter weather hazard that threatens life or welfare of public is deemed as an Emergency. Corrective action shall be taken immediately.	[\$REDACTE D]	–	–	
11.6	Anti-icing or de-icing Storage	Anti-icing or de-icing stored according to local Applicable Law at all times.	1.5 hrs	7 days	30 days	Anti-icing or de-icing materials shall be stored as per the requirements of Schedule 11 [Operations, Maintenance, and Rehabilitation].	[\$REDACTE D]	[\$REDACTED]	[\$REDACTE D]	[\$REDACTED] /day for next 30 days; [\$REDACTED] /day thereafter

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11.7	Reporting and Monitoring Requirements	Submit detailed de-icing operations report.	N/A	N/A	7 days	Monitor, maintain and submit all reporting requirements as identified in Section 33, Snow and Ice Management Operations of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ].	–	–	[\$[REDACTE D]	[\$[REDACTED] /day for next 7 days; \$[REDACTED] /day thereafter
<b>12. ROADWAY INCIDENT RESPONSE</b>										
12.1	Lane Clearance	Take necessary corrective action to clear lanes and reinstate service to Project as per Minimum Performance Criteria.	a) 2.5 hrs b) 1 hr	N/A	N/A	Roadway Systems (travel lanes, toll lanes, inspection lanes, etc.) lane clearance time shall not exceed the Hazard Mitigation Rectification Time. Incident scene clearance is defined as the period beginning when: a) if first responders are at the incident site then the time at which the incident site is released by the first responders and allows Project Co to begin clearance operations, and b) if first responders are not required then the time at which Project Co is notified of the incident, and, in either case, ends at the time that all impacted travel lanes are open to normal traffic operation without any further traffic disruptions. Lane	a) \$[REDACTE D] b) \$[REDACTE D] Subsequent deductions shall be subject to Availability Failures, as per Section 3.	–	–	

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						clearance Rectification Time shall only apply to vehicular incidents: a) Class 3 and above as set out in Part 22 [Tolling Infrastructure] of Schedule 10 [Design and Construction Specifications]; b) All other vehicles.				
<b>13. ROADWAY SWEEPING AND CLEANING</b>										
13.1	Sweeping	A. Keep all channels, hard shoulders, gore areas, ramps, intersections, parking lots, islands and frontage roads swept clean.  B. Clear and remove debris from traffic lanes, hard shoulders, verges and central reservations, footways and cycle ways.  C. Remove all sweepings without stockpiling in the right of way and dispose of at approved location.	N/A	N/A	14 days	This performance measure applies to all Elements within the OMR Limits. Buildup of dirt, debris, etc. on roadways and bridges not to accumulate greater than 30.48 cm (12 in) wide and 12.5 mm (0.5 in) deep for a continuous length of 6.1 m (20 ft.).	-	-	[\$REDACTED D]	[\$REDACTED] /day for next 30 days; [\$REDACTED] /day thereafter
13.2	Litter	Keep the right of way clean and	N/A	N/A	14 days	This performance measure applies to all	-	-	[\$REDACTED	[\$REDACTED]

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		free of debris, remove litter regularly. Pick up litter before mowing operations.				Subcomponents and facilities within the OMR Limits. Volume of litter shall not exceed 0.028 cu m (1 cu ft.) per 91.44 m (300 ft.) interval sections measured along each side of the roadway.			D]	/day for next 30 days; \$[REDACTED] /day thereafter
<b>14. ITS SYSTEM</b>										
14.1	ITS Operations	Operate the ITS TMC and manage roadway traffic incidents effectively, efficiently with safety as a top priority for all Users.	**	1 hr	8 hrs	A. Operate the TMC 24/7/365. Provide at least one operator and one supervisor at all times. ** An unstaffed TMC resulting in TMC unavailability shall constitute a Category 1 Defect.	a) No staff - \$[REDACTED D]; b) 1 Staff - \$[REDACTED D]	\$[REDACTED]	\$[REDACTED D]	\$[REDACTED] /hour for next 8 hours; \$[REDACTED] /hour thereafter
			**	N/A	N/A	B. Respond to any detected incidents and notify system Users with an ITS alert (LCS messages, Dynamic Message Signs messages, calls to Emergency services) from the time the incident or event is identified. Response time shall not exceed an average of 5 minutes measured on a monthly interval. No individual response shall exceed 10 minutes.	\$[REDACTED D] plus if average response time is: a) 5 - 10 min. \$[REDACTED D] per min. (rounded up);			

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						** Non-compliance shall constitute a Category 1 Defect.	b) <u>Greater than 10 min.:</u> <b>[\$REDACTE D]</b> per min. (rounded up)			
14.2	ITS Reliability	Continually monitor and maintain ITS field devices and equipment.	**	N/A	N/A	A. ITS Closed Circuit Television (CCTV) System shall provide operators with an image and control for each camera in the system with a reliability of at least <b>[REDACTED]</b> % measured on a monthly interval.  ** Non-compliance shall constitute a Category 1 Defect.	<b>[\$REDACTE D]</b> for each camera with reliability below <b>[REDACTED]</b> % plus <b>[\$REDACTE D]</b> per <b>[REDACTED]</b> % below (rounded up to the nearest <b>[REDACTED]</b> %)			
			1.5 hrs	4 hrs	7 days	B. There shall not be more than <b>[REDACTED]</b> % of CCTV cameras with loss of image or control at any time.	<b>[\$REDACTE D]</b>	<b>[\$REDACTED]</b>	<b>[\$REDACTE D]</b>	<b>[\$REDACTED]</b> /day for next 7 days; <b>[\$REDACTED]</b>

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C – ROADWAYS PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
										/day thereafter
			1.5 hrs	4 hrs	7 days	C. There shall not be any coverage area missed due to a CCTV camera with loss of image or control.	[\$REDACTED D]	[\$REDACTED TED]	[\$REDACTED D]	[\$REDACTED] /day for next 7 days; \$[REDACTED] /day thereafter
			**	N/A	N/A	D. Dynamic Message Signs reliability shall meet or exceed an average of [REDACTED]% measured on a monthly interval.  ** Non-compliance shall constitute a Category 1 Defect.	[\$REDACTED D] plus if average reliability is: [REDACTED] % - [REDACTED] %: \$[REDACTED D] per [REDACTED] % (rounded up to nearest [REDACTED] %); <u>Below</u> [REDACTED]	-	-	-

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C – ROADWAYS PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
							%: \$[REDACTE D] per [REDACTED] % (rounded up to nearest [REDACTED] %).			
			1.5 hrs	N/A	7 days	E. There shall not be any Dynamic Message Signs with total failure, garbled message, incorrect message, loss of control or with more than [REDACTED]% of pixels failed. Impact or incidents causing Damage requiring inspection by a licensed structural engineer shall follow General Performance Requirements 1.2, Structural Assessment.	\$[REDACTE D]	-	\$[REDACTE D]	\$[REDACTED] /day for next 7 days; \$[REDACTED] /day thereafter
			**	N/A	N/A	F. For each detection zone in the Vehicle Detection Stations (VDS) reliability shall meet or exceed [REDACTED]% measured on a monthly interval.  ** Non-compliance shall constitute a	\$[REDACTE D] for each detection zone with reliability below [REDACTED]	-	-	-

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C – ROADWAYS PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						Category 1 Defect.	% plus \$[REDACTED D] per [REDACTED] % below (rounded up to the nearest [REDACTED] %)			
			1.5 hrs	4 hrs	7 days	G. [REDACTED]% or more of vehicle detector zones shall be Operational and Functional at all times.	\$(REDACTED D)	\$(REDACTED TED)	\$(REDACTED D)	\$(REDACTED) /day for next 7 days; \$(REDACTED) /day thereafter
			**	N/A	N/A	H. Lane Control Signs (LCS) reliability shall meet or exceed [REDACTED]% for each LCS measured on a monthly interval.  ** Non-compliance shall constitute a Category 1 Defect.	\$(REDACTED D) for each LCS with reliability below [REDACTED] % plus \$(REDACTED D) per 1% below			

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C – ROADWAYS PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
							(rounded up to the nearest 1%)			
			1.5 hrs	4 hrs	7 days	I. There shall not be two or more consecutive non-Functional and or non-Operational LCS in a lane.	[\$REDACTED D]	[\$REDACTED TED]	[\$REDACTED D]	[\$REDACTED] /day for next 7 days; \$[REDACTED] /day thereafter
			**	N/A	N/A	J. Conflicting LCS displays shall be Rectified within 5 minutes.  ** Non-compliance shall constitute a Category 1 Defect.	[\$REDACTED D]			
			**	N/A	N/A	K. RWIS reliability shall meet or exceed [REDACTED]% for each measurement feature for each RWIS station measured on a monthly interval.  ** Non-compliance shall constitute a Category 1 Defect.	[\$REDACTED D] for each RWIS Feature reliability below [REDACTED] % plus \$[REDACTED D]per [REDACTED]			

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C – ROADWAYS PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
							% below (rounded up to the nearest [REDACTED] %)			
			N/A	N/A	7 days	L. Each RWIS measurement feature shall be Functional at all times.	-	-	\$(REDACTED D)	\$(REDACTED) /day for next 7 days; \$(REDACTED) /day thereafter
14.3	ITS Central Computer, Traffic Management Software and TMC Video Walls	Continually monitor and maintain ITS computers and equipment in TMC.	**	N/A	N/A	A. Maintain Central Computer and Traffic Management Software Operational and Functional, and reliability shall meet or exceed [REDACTED]% measured on a monthly interval.  **Non-compliance shall constitute a Category 1 Defect.	\$(REDACTED D) plus if average reliability is: a) [REDACTED] % - [REDACTED] %: \$(REDACTED D) per [REDACTED] % (rounded up to nearest	\$(REDACTED TED]	\$(REDACTED D)	

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C – ROADWAYS PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
							[REDACTED] %); b) Below [REDACTED] %: \$[REDACTED D] per [REDACTED] % (rounded up to nearest [REDACTED] %).			
			1.5 hrs	4 hrs	7 days	B. There shall not be two or more non-Functional and/or non-Operational workstations at any time.	\$[REDACTED D]	\$[REDACTED]	\$[REDACTED D]	\$[REDACTED] /day for next 7 days; \$[REDACTED] /day thereafter
			1.5 hrs	4 hrs	7 days	C. The following Subcomponents shall be Operational and Functional at all times: a) software module for any subsystem b) map for the central computer	\$[REDACTED D]	\$[REDACTED]	\$[REDACTED D]	\$[REDACTED] /day for next 7 days; \$[REDACTED] /day thereafter

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C – ROADWAYS PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						c) database for the central computer				
			**	N/A	N/A	D. Maintain TMC Video Wall system Operational and Functional, and reliability shall meet or exceed <b>[REDACTED]</b> % measured on a monthly interval. Note: Individual Subcomponents of the ITS System Video Wall failure will be covered under Ref 16.2, ITS Reliability.  ** Non-compliance shall constitute a Category 1 Defect.	\$ <b>[REDACTE D]</b> plus if average reliability is: a) <b>[REDACTED]</b> % - <b>[REDACTED]</b> %: \$ <b>[REDACTE D]</b> per <b>[REDACTED]</b> % (rounded up to nearest <b>[REDACTED]</b> %); b) Below <b>[REDACTED]</b> %: \$ <b>[REDACTE D]</b> per <b>[REDACTED]</b> % (rounded			

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C – ROADWAYS PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
							up to nearest [REDACTED] %).			
			1.5 hrs	4 hrs	48 hrs	E. Interruption or unavailability of total system wide TMC Video Wall system service.	[\$REDACTED D]	[\$REDACTED TED]	[\$REDACTED D]	[\$REDACTED] /day for next 7 days; \$[REDACTED] /day thereafter
14.4	Fibre Optic Comm. System	Maintain entire fibre optic communication system in functioning order.	**	N/A	72 hrs	A. Maintain Fibre Optic Cable system Operational and Functional, and reliability shall meet or exceed [REDACTED]% at all times. Replace any Damaged fibre optic cable from termination point to termination point (i.e. do not introduce new splices).  **Non-compliance shall constitute a Category 1 Defect.	[\$REDACTED D] plus if average reliability is:  a) [REDACTED] % - [REDACTED] %: [\$REDACTED D] per [REDACTED] % (rounded up to nearest [REDACTED])	-	[\$REDACTED D]	[\$REDACTED] /day for next 7 days; \$[REDACTED] /day thereafter

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C – ROADWAYS PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
							%); b) Below [REDACTED] %: \$[REDACTE D] per [REDACTED] % (rounded up to nearest [REDACTED] %).			
			1.5 hrs	4 hrs	7 hrs	B. Failure of the primary circuit in any redundant Subcomponent of the fibre optic system.	\$[REDACTE D]	\$[REDACTED]	\$[REDACTE D]	\$[REDACTED] /day for next 7 days; \$[REDACTED] /day thereafter
			1.5 hrs	12 hrs	7 days	C. Repair or replace Damaged communications equipment (conduit, pull boxes, splice cabinets, hubs, etc.).	\$[REDACTE D]	\$[REDACTED]	\$[REDACTE D]	\$[REDACTED] /day for next 7 days; \$[REDACTED] /day thereafter
14.5	ITS Reporting	Provide Monthly Operations and Maintenance reports (hard copy and electronic format).	**	N/A	24 hrs	A. Maintain and submit monthly Maintenance Report identifying ITS reliability performance (system	\$[REDACTE D]	–	\$[REDACTE D]	\$[REDACTED] /day for next 2 days; \$[REDACTED]

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C – ROADWAYS PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						reliability, specific Subcomponent performance reliability, response time, clearance times, etc.), planned maintenance activities for the month and actual maintenance performed for the previous period. Report shall be submitted no later than 2 Business Days from the end of each month.  **Failure to submit reports as per requirements shall constitute a Category 1 Defect.				/day thereafter
			**	N/A	24 hrs	B. Provide and submit daily, weekly and monthly Traffic Data Management Report (traffic counts, vehicle types, incident details including occurrence and clearance time, number and types of involved vehicles, Emergency responders attending, Damage to infrastructure if any, etc.). Reports shall be submitted no later than:  A. Daily reports due within 24 hours.  B. Weekly reports due no later than the first Business Day of the week.	[\$REDACTED D]	–	[\$REDACTED D]	[\$REDACTED] /day for next 2 days; [\$REDACTED] /day thereafter

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<b>C – ROADWAYS PERFORMANCE REQUIREMENTS</b>										
			<b>RECTIFICATION TIMES<sup>1</sup></b>				<b>SERVICE FAILURE DEDUCTION AMOUNTS</b>			
			<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>		<b>CATEGORY 1</b>		<b>CATEGORY 1 OR 2</b>	
<b>REF</b>	<b>ELEMENT</b>	<b>PERFORMANCE REQUIREMENT</b>	<b>HAZ. MITG.<sup>2</sup></b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR<sup>3</sup></b>	<b>MINIMUM PERFORMANCE CRITERIA</b>	<b>HAZ. MITG.</b>	<b>INTERIM REMEDY</b>	<b>PER. REPAIR</b>	<b>SUBSEQUENT DEDUCTIONS</b>
	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>	<b>Column H</b>	<b>Column I</b>	<b>Column J</b>
						C. Monthly reports due no later than 2 Business Days from the end of each month. ** Failure to submit reports as per requirements shall constitute a Category 1 Defect.				

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D – POE FACILITIES PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
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<b>1. POE FACILITIES</b>										
1.1	POE Facility Grounds	Maintain POE Facility grounds safe, clean and aesthetically pleasing.	1.5 hrs	7 days	30 days	Maintain and repair facility Subcomponents as necessary to keep it safe, clean, Operational and in good general condition and appearance as per Section 35 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ], POE Facility Grounds (walking surfaces, curbs, potholes, drainage system, flagpole, exterior fixtures, fences, etc.). Subcomponents shall be Operational and Functional.	[\$REDACTED D]	[\$REDACTED TED]	[\$REDACTED D]	[\$REDACTED] /day for next 30 days; \$[REDACTED] /day thereafter
1.2	POE Facilities Maintenance	Maintain a safe and Functional POE Facility which include, structural shell, roof systems, interior and exterior walls, doors, windows and fixtures	1.5 hrs	24 hrs	7 days	A. Maintain roof system and Subcomponents as per Section 36 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ], Roof Systems (structural Elements, roof fabric, flashing, coping, vents, etc.).	(a) \$[REDACTED D]  (b) \$[REDACTED	(a) \$[REDACTED TED]  (b) \$[REDACTED	(a) \$[REDACTED D]  (b) \$[REDACTED	[\$REDACTED] /day for next 7 days; \$[REDACTED] /day thereafter

<sup>1</sup> “Days” in this Appendix 25-5 refer to actual days without regard to Section 3(ii) of Schedule 1 [*Definitions and Interpretation*].

<sup>2</sup> “HAZ MITG” means Hazard Mitigation.

<sup>3</sup> “PER. REPAIR” means Permanent Repair.

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D – POE FACILITIES PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						Subcomponents shall be Operational and Functional. Non-compliance shall be assessed on the basis of: a) Defects impacting a specific Subcomponent; b) Defects impacting the functionality of the overall system.	D]	TEDE]	D]	
			1.5 hrs	24 hrs	7 days	B. Maintain exterior Subcomponents as per Section 36 of Schedule 11 [Operations, Maintenance, and Rehabilitation], Exterior Walls and Foundations (drainage systems, soffits, stairwells, walkways, etc.). Subcomponents shall be Operational and Functional. Non-compliance shall be assessed on the basis of: a) Defects impacting a specific Subcomponent; b) Defects impacting the functionality of the overall system.	(a) \$[REDACTED]  (b) \$[REDACTED]	(a) \$[REDACTED]  (b) \$[REDACTED]	(a) \$[REDACTED]  (b) \$[REDACTED]	\$[REDACTED] /day for next 7 days; \$[REDACTED] /day thereafter
			1.5 hrs	24 hrs	7 days	C. Maintain all exterior door Subcomponents as per Section 36 of Schedule 11 [Operations, Maintenance, and Rehabilitation], Exterior Doors	(a) \$[REDACTED]	(a) \$[REDACTED]	(a) \$[REDACTED]	\$[REDACTED] /day for next 7 days; \$[REDACTED]

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D – POE FACILITIES PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						(hinges, locks, weather stripping, etc.). Subcomponents shall be Operational and Functional. Non-compliance shall be assessed on the basis of: a) Defects impacting a specific Subcomponent; b) Defects impacting the functionality of the overall system.	(b) \$[REDACTED D]	(b) \$[REDACTED TED]	(b) \$[REDACTED D]	/day thereafter
			1.5 hrs	24 hrs	7 days	D. Maintain all exterior window Subcomponents as per Section 36 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ], Exterior Windows (glazing, tracks, seals, glass pane, etc.). Subcomponents shall be Operational and Functional. Non-compliance shall be assessed on the basis of: a) Defects impacting a specific Subcomponent; b) Defects impacting the functionality of the overall system.	(a) \$[REDACTED D]  (b) \$[REDACTED D]	(a) \$[REDACTED TED]  (b) \$[REDACTED TED]	(a) \$[REDACTED D]  (b) \$[REDACTED D]	\$[REDACTED] /day for next 7 days; \$[REDACTED] /day thereafter
			1.5 hrs	24 hrs	7 days	E. Maintain ceiling Subcomponents as per Section 36 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ], Ceilings (acoustic tile,	\$[REDACTED D]	\$[REDACTED TED]	\$[REDACTED D]	\$[REDACTED] /day for next 30 days; \$[REDACTED]

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D – POE FACILITIES PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						gypsum boards, metal liner, etc.). Subcomponents shall be Operational and Functional.				/day thereafter
			1.5 hrs	24 hrs	7 days	F. Maintain interior wall Subcomponents as per Section 36 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ], Interior Walls and Partitions (paint, sheetrock, frame, etc.). Subcomponents shall be Operational and Functional.	[\$REDACTED D]	[\$REDACTED TED]	[\$REDACTED D]	[\$REDACTED] /day for next 30 days; [\$REDACTED] /day thereafter
			1.5 hrs	24 hrs	7 days	G. Maintain interior floor Subcomponents as per Section 36 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ], Floors (ceramic tile, carpets, mats, etc.). Subcomponents shall be Operational and Functional.	[\$REDACTED D]	[\$REDACTED TED]	[\$REDACTED D]	[\$REDACTED] /day for next 30 days; [\$REDACTED] /day thereafter
			1.5 hrs	24 hrs	7 days	H. Maintain fixture Subcomponents as per Section 36 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ], Fixtures, Fittings, Millwork and Equipment (cabinets, cupboards, counters, hardware, etc.). Subcomponents shall be Operational	[\$REDACTED D]	[\$REDACTED TED]	[\$REDACTED D]	[\$REDACTED] /day for next 30 days; [\$REDACTED] /day thereafter

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D – POE FACILITIES PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						and Functional.				
			1.5 hrs	24 hrs	7 days	I. Maintain interior door Subcomponents as per Section 36 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ], Interior Doors (metal, steel, solid and hollow doors, hinges, locks, etc.). Subcomponents shall be Operational and Functional.	\$(REDACTED D)	\$(REDACTED TED)	\$(REDACTED D)	\$(REDACTED) /day for next 30 days; \$(REDACTED) /day thereafter
			1.5 hrs	24 hrs	7 days	J. Maintain interior window Subcomponents as per Section 36 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ], Interior Windows (glass pane, track, ledges, etc.). Subcomponents shall be Operational and Functional.	\$(REDACTED D)	\$(REDACTED TED)	\$(REDACTED D)	\$(REDACTED) /day for next 30 days; \$(REDACTED) /day thereafter
1.3	POE Facility Operating Systems	Maintain Operational functionality of POE Facility systems (plumbing, electrical, HVAC, communication, etc.) at all times.	1.5 hrs	24 hrs	72 hrs	A. Maintain plumbing Subcomponents as per Section 37 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ], Plumbing System (cold and hot water service, pumps, drainage system, drinking fountains, etc.). Subcomponents shall be Operational	(a) \$(REDACTED D)  (b) \$(REDACTED D)	(a) \$(REDACTED TED)  (b) \$(REDACTED TED)	(a) \$(REDACTED D)  (b) \$(REDACTED D)	\$(REDACTED) /day for next 72 hours; \$(REDACTED) /day thereafter

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D – POE FACILITIES PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						and Functional. Non-compliance shall be assessed on the basis of: a) Defects impacting specific plumbing fixtures, in any room, space or other relevant area within any building within the OMR Limits (e.g. drinking fountains, restrooms, etc.); and b) Defects impacting the functionality of the overall plumbing system of any building within the POE Facilities.				
			1.5 hrs	24 hrs	72 hrs	B. Maintain ventilation system Subcomponents as per Section 37 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ], HVAC (chillers, HVAC units, boilers, compressors, BAS, etc.). Subcomponents shall be Operational and Functional.  Non-compliance shall be assessed on the basis of: a) Defects impacting ventilation Subcomponents within a specific room,	(a) \$[REDACTED D]  (b) \$[REDACTED D]	(a) \$[REDACTED TED]  (b) \$[REDACTED TED]	(a) \$[REDACTED D]  (b) \$[REDACTED D]	\$[REDACTED] /day for next 72 hours; \$[REDACTED] /day thereafter

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D – POE FACILITIES PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						space or other relevant area within any building within the OMR Limits; and b) Defects impacting the functionality of the overall ventilation system of any building within the POE Facilities.				
			1.5 hrs	24 hrs	72 hrs	C. Maintain interior and exterior lighting Subcomponents as per Section 37 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ], Interior and Exterior Lighting (light fixtures, lamps, bulbs, tubes, ballasts, Emergency lights, etc.). Subcomponents shall be Operational and Functional.  Non-compliance shall be assessed on the basis of: a) Defects impacting interior lighting related to a specific room, space or other relevant area within any building within the OMR Limits; localized exterior lighting areas; and b) Defects impacting the overall functionality of either the exterior lighting system or the interior lighting	(a) \$[REDACTED]  (b) \$[REDACTED]	(a) \$[REDACTED]  (b) \$[REDACTED]	(a) \$[REDACTED]  (b) \$[REDACTED]	\$[REDACTED] /day for next 72 hours; \$[REDACTED] /day thereafter

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D – POE FACILITIES PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						system of any building within the POE Facilities.				
			1.5 hrs	24 hrs	72 hrs	D. Maintain gantry, toll booth custom check point roadway light reliability as per Section 37 of Schedule 11 [Operations, Maintenance, and Rehabilitation], Interior and Exterior Lighting. Lights shall be Operational and Functional, and reliability shall be measured weekly and shall meet or exceed a monthly average of [REDACTED]%. Each individual light source meets specified lumen range. Lighting reliability is calculated as follows: $(((\text{total \# lights} - \text{total \# of deficient lights}) / \text{total \# lights}) \times 100)$  ** Non-compliance shall constitute a Category 1 Defect.	\$(REDACTED D)	\$(REDACTED TED)	\$(REDACTED D)	\$(REDACTED) /day for next 30 days; \$(REDACTED) /day thereafter
			1.5 hrs	24 hrs	7 days	E. Maintain parking light reliability as per Section 37 of Schedule 11 [Operations, Maintenance, and Rehabilitation], Interior and Exterior Lighting. Lights shall be Operational and	\$(REDACTED D)	\$(REDACTED TED)	\$(REDACTED D)	\$(REDACTED) /day for next 30 days; \$(REDACTED) /day thereafter

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D – POE FACILITIES PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						Functional, and reliability shall be measured weekly and shall meet or exceed a monthly average of [REDACTED]%. Each individual light source meets specified lumen range. Lighting reliability is calculated as follows: $(((\text{total \# lights} - \text{total \# of deficient lights}) / \text{total \# lights}) \times 100)$  ** Non-compliance shall constitute a Category 1 Defect.				
			**	1 hr	8 hrs	F. Maintain and provide continuous power to each building within the POE Facilities unless interrupted by the Utility Supplier. Should the supply from the Utility Supplier fail, backup power and UPS systems shall be Operational and Functional and shall not exceed specified transfer lag times.  ** Discontinuation of power service shall constitute a Category 1 Defect. For greater clarity, discontinuation of power shall not be construed to be power from the Utility Supplier.	(a) \$[REDACTED]  (b) \$[REDACTED]	(a) \$[REDACTED]  (b) \$[REDACTED]	(a) \$[REDACTED]  (b) \$[REDACTED]	\$[REDACTED] /day for next 8 hours; \$[REDACTED] /day thereafter

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			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2				CATEGORY 1	CATEGORY 1 OR 2
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
			1.5 hrs	24 hrs	72 hrs	G. Maintain electrical and mechanical Subcomponents as per Section 37 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ], Electrical/Mechanical - Other (transformers, transfer switches, electrical distribution panels, CBP/CBSA gates, hydraulic components, gears, etc. and all Subcomponents thereto). Subcomponents shall be Operational and Functional.	(a) \$[REDACTED]  (b) \$[REDACTED]	(a) \$[REDACTED]  (b) \$[REDACTED]	(a) \$[REDACTED]  (b) \$[REDACTED]	\$[REDACTED] /day for next 72 hours; \$[REDACTED] /day thereafter
			1.5 hrs	24 hrs	7 days	H. Maintain electrical and mechanical Subcomponents as per Section 37 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ], Electrical/Mechanical – Other (electrical outlets, receptacles, light switches etc.) Subcomponents shall be Operational and Functional.	(a) \$[REDACTED]  (b) \$[REDACTED]	(a) \$[REDACTED]  (b) \$[REDACTED]	(a) \$[REDACTED]  (b) \$[REDACTED]	\$[REDACTED] /day for next 72 hours; \$[REDACTED] /day thereafter
			1.5 hrs	4 hrs	24 hrs	I. Maintain communication system Subcomponents as per Section 37 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ], Communication	(a) \$[REDACTED]	(a) \$[REDACTED]	(a) \$[REDACTED]	\$[REDACTED] /day for next 24 hours; \$[REDACTED]

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			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						Systems (security alarm, access system, parking controls, clock, etc.). Subcomponents shall be Operational and Functional. Non-compliance shall be assessed on the basis of:  a) Defects impacting communication system Subcomponents to a specific room, space or other relevant area within any building within the OMR Limits and other associated spaces (e.g. clocks); and  b) Defects impacting the functionality of the overall communication system of any building within the POE Facilities.	(b) \$[REDACTED D]	(b) \$[REDACTED TED]	(b) \$[REDACTED D]	/day thereafter
			1.5 hrs	24 hrs	7 days	J. Maintain elevator system Subcomponents as per Section 37 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ], Elevators (elevator cab, cabling, telephone, pit drain, etc.). Subcomponents shall be Operational and Functional.  Non-compliance shall be assessed on the basis of:	(a) \$[REDACTED D]  (b) \$[REDACTED D]	(a) \$[REDACTED TED]  (b) \$[REDACTED TED]	(a) \$[REDACTED D]  (b) \$[REDACTED D]	\$[REDACTED] /day for next 48 hours; \$[REDACTED] /day thereafter

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D – POE FACILITIES PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
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REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						a) Defects impacting a specific or localized Subcomponent; and b) Defects impacting the overall functionality of the elevators of any building within the POE Facilities.				
			1.5 hrs	12 hrs	72 hrs	K. Maintain the hydraulic operated gates and animal squeeze, gating and penning system, and mechanical ramps in the Veterinary service facilities. Subcomponents shall be Operational and Functional per the manufacturers' specifications. Refer to Section 37 of Schedule 11 [Operations, Maintenance, and Rehabilitation] Specialty Areas and Equipment.	(a) \$[REDACTED D] (b) \$[REDACTED D]	(a) \$[REDACTED TED] (b) \$[REDACTED TED]	(a) \$[REDACTED D] (b) \$[REDACTED D]	\$[REDACTED] /day for next 48 hours; \$[REDACTED] /day thereafter
1.4	Cleaning Services	Provide a safe, clean working environment and ensure cleaning operations do not disrupt Project Work.	1.5 hrs	4 hrs	24 hrs	A. Mitigate imminent health or safety hazards as per Section 37 of Schedule 11 [Operations, Maintenance, and Rehabilitation] Cleaning Services. Janitorial services shall be provided 24/7/365.	(a) \$[REDACTED D] (b) \$[REDACTED D]	(a) \$[REDACTED TED] (b) \$[REDACTED TED]	(a) \$[REDACTED D] (b) \$[REDACTED D]	\$[REDACTED] /day for next 24 hours; \$[REDACTED] /day thereafter

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D – POE FACILITIES PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2				CATEGORY 1	CATEGORY 1 OR 2
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
			N/A	N/A	7 days	B. Meet or exceed cleaning specifications as per Section 37 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ] Exterior POE Facilities Subcomponents (sidewalks, grounds, walls, windows, etc.).	–	–	[\$REDACTE D]	[\$REDACTED] /hour for next 12 hours; \$[REDACTED] /hour thereafter
			**	N/A	1 hr	C. Maintain and provide restroom janitorial service as per Section 37 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ] POE Facilities Interior Subcomponents. Janitorial services and restroom facilities shall be kept open and in service 24/7/365.  a) Public area restrooms shall receive a minimum of four janitorial service cycles within a 24 hour period at evenly spaced intervals, but at not more than 7 hours.  b) Interior and non-public area restrooms shall receive a minimum of four janitorial service cycles within a 24 hour period at evenly spaced intervals, but at not more than 7 hours.	[\$REDACTE D]	-	[\$REDACTE D]	[\$REDACTED] /hour for next 12 hours; \$[REDACTED] /hour thereafter

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D – POE FACILITIES PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						**Non-compliance with delivery of service shall constitute a Category 1 Defect.				
			**	N/A	1 hr	D. Meet or exceed cleaning specifications as per Section 37 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ] POE Facility Interior Subcomponents (windows, carpets, floors, offices, countertops, furniture, lockers, kitchen, etc.). Janitorial services shall be provided 24/7/365 to each of the POE Facilities within the OMR Limits. The following cleaning cycles shall apply:  a) Public areas shall receive a minimum of two janitorial service cycles per day and spaced at not less than 10 hours.  b) Interior offices and work spaces shall receive a minimum of one janitorial service cycle per day.  **Non-compliance with delivery of service shall constitute a Category 1	[\$REDACTED D]	-	[\$REDACTED D]	[\$REDACTED] /hour for next 12 hours; [\$REDACTED] /hour thereafter

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			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						Defect.				
1.5	Facility Inspection Program	Inspect, document and provide an assessment condition report with corrective action recommendations for all POE Facilities.	**	N/A	30 days	A. POE Facilities shall be inspected as required by Applicable Laws and regulatory inspection requirements and in accordance with Section 39 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ], Specialist Inspections. Inspection frequency shall coincide with the initial facility inspection date and shall not migrate over time. All inspections shall be completed no later than the Rectification Time in the Permanent Repair column from the initial inspection due date.  ** Non-compliance shall constitute a Category 1 Defect	[\$REDACTED D]	–	[\$REDACTED D]	[\$REDACTED] /day for next 30 days; [\$REDACTED] /day thereafter
			N/A	N/A	6 months	B. All routine and periodic maintenance recommendations identified in the inspection report shall be completed within the specified Rectification Time from inspection date.	–	–	[\$REDACTED D]	[\$REDACTED] /day for next 30 days; [\$REDACTED] /day thereafter

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D – POE FACILITIES PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
1.6	Parking Services	Provide parking availability at all times	N/A	N/A	24 hrs	Provide parking availability 24/7/365 as per Section 35 of Schedule 11 [Operations, Maintenance, and Rehabilitation], Parking Services. Parking availability shall be assessed on the basis of: a) Unavailability of greater than [REDACTED]% of any individual parking area within the POE Facilities; and b) Unavailability of less than [REDACTED]% of any individual parking area within the POE Facilities.	-	-	a) \$[REDACTED] b) \$[REDACTED]	\$[REDACTED] /hour for next 24 hours; \$[REDACTED] /hour thereafter
1.7	Waste Management and Recycling Services	Provide proper storage and removal of waste and recycling products.	N/A	N/A	7 days	A. Provide waste disposal services as per Section 35 of Schedule 11 [Operations, Maintenance, and Rehabilitation], Waste Management and Recycling Services.	-	-	\$[REDACTED]	\$[REDACTED] /day for next 7 days; \$[REDACTED] /day thereafter
			N/A	N/A	7 days	B. Provide recycling services as per Section 35 of Schedule 11 [Operations, Maintenance, and Rehabilitation], Waste Management and Recycling Services.	-	-	\$[REDACTED]	\$[REDACTED] /day for next 7 days; \$[REDACTED] /day thereafter

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D – POE FACILITIES PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
			1.5 hrs	24 hrs	30 days	C. Provide Hazardous Material services as per Section 35 of Schedule 11 [ <i>Operations, Maintenance, and Rehabilitation</i> ], Waste Management and Recycling Services.	[\$REDACTED D]	[\$REDACTED TED]	[\$REDACTED D]	[\$REDACTED] /day for next 7 days; \$[REDACTED] /day thereafter
1.8	Pest Control	POE Facilities shall be free of common household pests	N/A	N/A	7 days	Provide pest control service to provide pest free POE Facilities. Pests include rodents, cockroaches, termites, bed bugs, flies, spiders, ants, mosquitos, fleas, ticks, beetles, moths, etc.	–	–	[\$REDACTED D]	[\$REDACTED] /day for next 7 days; \$[REDACTED] /day thereafter

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APPENDIX 25-5

**TOLLING PERFORMANCE REQUIREMENTS AND SERVICE FAILURE DEDUCTION AMOUNTS**

Table 14: Tolling Performance Requirements and Service Failure Deductions

TOLLING PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
<b>1. TOLLING SYSTEM</b>										
1.1.	Toll Systems Reliability	Back-Office Availability: Definition: Available - correctly processing toll transactions from the field and collecting tolls, as well as supporting field operations.	**	N/A	N/A	A. Back-Office availability shall exceed an average of [REDACTED]% for Toll Processing, measured on a monthly interval. Measured and reported monthly, using Maintenance Online Management System (MOMS) data for recorded downtime.  **Non-compliance shall constitute a Category 1 Defect.	\$[REDACTED] plus if average availability is: a) [REDACTED]% - [REDACTED]%; \$[REDACTED] per [REDACTED]% (rounded up to nearest [REDACTED]%; b) Below [REDACTED]%;	–	–	

<sup>1</sup> “Days” in this Appendix 25-5 refer to actual days without regard to Section 3(ii) of Schedule 1 [Definitions and Interpretation].

<sup>2</sup> “HAZ MITG” means Hazard Mitigation.

<sup>3</sup> “PER. REPAIR” means Permanent Repair.

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TOLLING PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
							\$[REDACTED] per [REDACTED]% (rounded up to nearest [REDACTED]%).			
		Customer Service Responsiveness: Available - the customer website and Interactive Voice Response (IVR) shall be available to the public to perform all account tasks.	**	N/A	N/A	B. Customer Service Channel availability shall exceed an average of [REDACTED]%, measured on a monthly interval. Measured and reported monthly, using MOMS data for recorded downtime.  **Non-compliance shall constitute a Category 1 Defect.	\$[REDACTED] plus if average availability is: a) [REDACTED]% - [REDACTED]%. \$[REDACTED] per [REDACTED]% (rounded up to nearest [REDACTED]%).  b) Below [REDACTED]%. \$[REDACTED] per [REDACTED]%. (rounded up to nearest [REDACTED]%)			

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TOLLING PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
1.2.	Toll Systems Accuracy	Failure of non-redundant function impacting toll collection.	**	N/A	N/A	A. toll lane vehicle detection accuracy shall exceed an average of <b>[REDACTED]</b> % measured on a monthly interval. Measured and reported monthly, using daily sampling and Video Audit to correlate vehicle counts. Minimum daily sample size shall be 50. Ref. Schedule 10 [ <i>Design and Construction Specification</i> ] Part 22 [ <i>Tolling Infrastructure</i> ].  **Non-compliance shall constitute a Category 1 Defect.	<b>[\$REDACTED] plus</b> if average accuracy is: a) <b>[REDACTED]</b> % - <b>[REDACTED]</b> %: <b>[\$REDACTED] per [REDACTED]</b> % (rounded up to nearest <b>[REDACTED]</b> %); and b) <b>Below [REDACTED]</b> %: <b>[\$REDACTED]</b> .	–	–	
		Detection and Classification Accuracy.  Correct classification - for any vehicle, the Tolling System shall correctly designate a class, and detect	**	N/A	N/A	B. toll lane vehicle classification accuracy shall exceed an average of <b>[REDACTED]</b> %, measured on a monthly interval. Measured daily and reported monthly, using sampling and Video Audit to correlate vehicle classes, as well as Toll Collector class	<b>[\$REDACTED] plus</b> if average accuracy is: a) <b>[REDACTED]</b> % - <b>[REDACTED]</b> %: <b>[\$REDACTED]per</b>	–	–	

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TOLLING PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
		trailers and axles (fixed and raised).				modification reports. Minimum daily sample size shall be 50. Ref. Part 22 [Tolling Infrastructure] of Schedule 10 [Design and Construction Specification].  **Non-compliance shall constitute a Category 1 Defect.	[REDACTED]% (rounded up to nearest [REDACTED]%; and b) Below [REDACTED]%; \$[REDACTED].			
		Automatic Identification Accuracy:  Correct identification - for any RFID transponder, the Tolling System shall correctly record the transponder ID.	**	N/A	N/A	C. Accuracy of Radio Frequency Identification (RFID) transponder identification function shall exceed an average of [REDACTED]%. Measured and reported monthly, using daily sampling and Video Audit to correlate vehicle classes, as well as Toll Collector class modifications reports. Minimum daily sample size shall be 50. Ref. Part 22 [Tolling Infrastructure] of Schedule 10 [Design and Construction Specification].  **Non-compliance shall constitute a Category 1 Defect.	\$[REDACTED] plus if average accuracy is: a) [REDACTED]% - [REDACTED]%; \$[REDACTED] per [REDACTED]% (rounded up to nearest [REDACTED]%; and b) Below [REDACTED]%; \$[REDACTED].	-	-	

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TOLLING PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
		Correct association - for any vehicle equipped with an RFID transponder, the Tolling shall correctly associate the detected transponder to the correct vehicle transaction.	**	N/A	N/A	D. Accuracy of transponder to vehicle association function shall exceed an average of [REDACTED]%. Measured and reported monthly, using daily sampling and Video Audit to correlate vehicle classes, as well as Toll Collector class modification reports. Minimum daily sample size shall be 50. Ref. Part 22 [Tolling Infrastructure] of Schedule 10 [Design and Construction Specification].  **Non-compliance shall constitute a Category 1 Defect.	\$[REDACTED] plus if average accuracy is: a) [REDACTED]% - [REDACTED]%; \$[REDACTED] per [REDACTED]% (rounded up to nearest [REDACTED]%); and b) Below [REDACTED]%; \$[REDACTED].	–	–	
1.3.	Toll System Responsiveness	Toll Supervisor Responsiveness to toll lanes Calls	**	N/A	N/A	A. toll lane intercom response times shall not exceed an average greater than 30 seconds unless already on a call with another lane measured on a monthly interval. Response times during situations when the Toll Supervisor is acting as a toll collector at another lane designated as a manual	\$[REDACTED]	–	–	

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TOLLING PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGOR Y 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						toll lane, will be included in the calculation. Measured and reported monthly. Ref. Schedule 13 [ <i>Tolling Operations</i> ].  **Non-compliance shall constitute a Category 1 Defect.				
		Customer Service Responsiveness.  Customer Service channels shall be available to customers: Interactive Voice Response (IVR) and website 24/7 unless approved; Live Customer Service during working hours.	**	N/A	N/A	B. Interactive Voice Response (IVR) or Customer Service representative response times shall not exceed an average greater than 30 seconds measured on a monthly interval. Measured and reported monthly. Ref. Schedule 13 [ <i>Tolling Operations</i> ].  **Non-compliance shall constitute a Category 1 Defect.	[\$REDACTED]	–	–	
			**	N/A	N/A	C. Customer Service call hold time before reaching a customer representative shall not exceed an average of 4 minutes, measured on a monthly interval. Measured and reported monthly. Ref. Schedule 13	[\$REDACTED]	–	–	

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TOLLING PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						[Tolling Operations]. **Non-compliance shall constitute a Category 1 Defect.				
			**	N/A	N/A	D. Response to customer e-mails and voicemails shall not exceed an average of more than 24 hours, measured on a monthly interval. Measured and reported monthly. Ref. Schedule 13 [Tolling Operations].  **Non-compliance shall constitute a Category 1 Defect.	[\$REDACTED]	—	—	
			**	N/A	N/A	E. Response to written correspondence shall not exceed an average of 3 Business Days, measured on a monthly interval. Measured and reported monthly. Ref. Schedule 13 [Tolling Operations].  **Non-compliance shall constitute a Category 1 Defect.	[\$REDACTED]	—	—	

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TOLLING PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
			**	N/A	N/A	F. Customer call drop rate while on hold shall not exceed an average of <b>[REDACTED]</b> %, measured on a monthly interval. Measured and reported monthly. Ref. Schedule 13 [ <i>Tolling Operations</i> ].  **Non-compliance shall constitute a Category 1 Defect.	<b>[\$REDACTED]</b>	–	–	
1.4.	User Account Management	Account Payment Processing Accuracy.  Accurate - correctly assigning payments to the balance of accounts for which they were submitted.	**	N/A	N/A	A. Posting of account payments not to exceed an average of 5 minutes after clearance of payment notice from the financial institution, measured on a monthly interval. Measured and reported monthly. Ref. Schedule 13 [ <i>Tolling Operations</i> ].  **Non-compliance shall constitute a Category 1 Defect.	<b>[\$REDACTED]</b>	–	–	
			**	N/A	N/A	B. Posting of account payments with an accuracy of <b>[REDACTED]</b> %, measured on a monthly interval. Measured and reported monthly. Ref. Schedule 13	<b>[\$REDACTED] plus if average reliability: a) [REDACTED]% - [REDACTED]%:</b>	–	–	

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TOLLING PERFORMANCE REQUIREMENTS										
REF	ELEMENT	PERFORMANCE REQUIREMENT	RECTIFICATION TIMES <sup>1</sup>			MINIMUM PERFORMANCE CRITERIA	SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	SUBSEQUENT DEDUCTIONS
			HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>		HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	
Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J	
						[Tolling Operations]. **Non-compliance shall constitute a Category 1 Defect.	\$[REDACTED]per [REDACTED]% (rounded up to nearest [REDACTED]%) b) Below [REDACTED]%. \$[REDACTED]per [REDACTED]% (rounded up to nearest [REDACTED]%).			
			**	N/A	N/A	C. Update process account payments to the Field subsystem not to exceed an average of 1 hour after posting, measured on a monthly interval. Measured and reported monthly. Ref. Schedule 13 [Tolling Operations]. **Non-compliance shall constitute a Category 1 Defect.	\$[REDACTED]	–	–	
1.5.	Tolling Customer	Tolling Customer	**	N/A	N/A	A. Calculate customer satisfaction every 3 months. Survey at least	\$[REDACTED]	–	–	

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TOLLING PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
	Service	Satisfaction.				[REDACTED]% of customers using various Customer Service Channels for satisfaction of level of service. Measured and reported quarterly, using survey results. Ref. Schedule 13 [Tolling Operations].  **Non-compliance shall constitute a Category 1 Defect.				
		Customer Call Centre Performance.  At least [REDACTED]% of all Customer Service Representative calls shall be reviewed by supervisors.	**	N/A	N/A	B. Calls reviewed for accuracy, efficiency, professionalism, and verification of friendly and courteous service. Meet or exceed [REDACTED]% of all Customer Service Representative calls reviewed by supervisors, measured on a monthly interval. Measured and reported monthly. Ref. Schedule 13 [Tolling Operations].  **Non-compliance shall constitute a Category 1 Defect.	[\$REDACTED]	–	–	
		Transponder and Card Inventory.	**	N/A	N/A	C. Transponders and cards distributed to customers shall not exceed an	[\$REDACTED]	–	–	

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TOLLING PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>			SERVICE FAILURE DEDUCTION AMOUNTS				
			CATEGORY 1		CATEGORY 1 OR 2	CATEGORY 1			CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
		Transponder and cards kits shall be available in inventory to be distributed to customers.				average of 3 Business Days following receipt of completed application. Compliance is measured on a monthly interval. Measured and reported monthly. Ref. Schedule 13 [Tolling Operations].  **Non-compliance shall constitute a Category 1 Defect.				
1.6.	Transaction Auditing	Conducting transaction auditing on a daily basis of the specified number of transactions in accordance with Schedule 13 [Tolling Operations] using the Video Audit Application in order to calculate the Tolling Infrastructure accuracy metrics.	**	N/A	N/A	Daily audits of tolling revenue transactions shall be undertaken using the Video Audit Application in accordance with Schedule 13 [Tolling Operations]. Compliance is measured daily and reported on a monthly interval through the monthly reporting requirements in Schedule 13 [Tolling Operations].  **Non-compliance shall constitute a Category 1 Defect.	\$(REDACTED) for each day of audit missed	–	–	

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TOLLING PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
<b>2. TOLLING OPERATIONS</b>										
2.1.	Toll Queuing	Queuing at the toll lanes.	N/A	N/A	15 minutes	Queue length at the toll lanes shall not exceed 75 metres upstream of the toll gates for longer than 5 minutes when the facility is not at capacity. An additional lane or lanes shall be opened to traffic in case of queue length at one or more toll lanes exceeding 75 metres upstream of the toll gates for longer than 5 minutes when the facility is not at capacity. The facility is considered at capacity when each and every toll lane is open and the queue length for each and every toll lane exceeds 75 metres, subject to the exception of minimum open lane requirements, by lane processing mode, as outlined in the Lane Assignment Policy set out in Schedule 13 [Tolling Operations]. Changes in operational mode for a lane or lanes may be required before the facility can be declared at capacity.	-	-	If number of occurrences in a particular month are: a) <u>Less or equal to 2</u> : <b>[\$[REDACTE D]</b> per occurrence; b) <u>Greater than 2 and less than or equal to 5</u> : <b>[\$[REDACTE D]</b> per occurrence; c) <u>Greater than 5</u> : <b>[\$[REDACTE D]</b> per	-

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TOLLING PERFORMANCE REQUIREMENTS										
REF	ELEMENT	PERFORMANCE REQUIREMENT	RECTIFICATION TIMES <sup>1</sup>			MINIMUM PERFORMANCE CRITERIA	SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	SUBSEQUENT DEDUCTIONS
			HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>		HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	
Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J	
						**Non-compliance shall constitute a Category 1 Defect.			occurrence.	
2.2.	Manual Tolling	Minimum manual toll lane collection requirement.	**	N/A	N/A	A. At least one toll lane in each direction shall be designated to manual toll collection at all times with capability of providing operational services for regular and heavy commercial traffic, measured on a per incident basis.  **Non-compliance shall constitute a Category 1 Defect.	[\$REDACTED] for either lane un-staffed	–	–	[\$REDACTED]/hour per un-staffed lane thereafter
		Toll supervisor at the Toll Services Operations Centre.	**	N/A	N/A	B. At least one toll supervisor shall be stationed at the Toll Services Operations Centre at all times, measured on a per incident basis.  **Non-compliance shall constitute a Category 1 Defect.	[\$REDACTED]	–	–	[\$REDACTED]/hour thereafter
2.3.	Transponders Cancellation	Cancellation of Transponders reported as stolen or requested to be cancelled by customers.	**	N/A	N/A	A. All Transponders, reported as stolen or requested to be cancelled by the user, shall be cancelled immediately upon customer request.	[\$REDACTED]per incident	–	–	–

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TOLLING PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGOR Y 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						**Non-compliance shall constitute a Category 1 Defect.				
		Complete reimbursement to customers for toll charges on accounts accumulated due to non-cancellation of Transponders as per customer requests.	**	N/A	N/A	B. Customers who have reported their Transponders as stolen or requested for the Transponders to be cancelled, but continue to be charged on their accounts due to non-cancellation of the Transponders shall be fully reimbursed for the additional charges.  **Non-compliance shall constitute a Category 1 Defect.	[\$REDACTED]per incident	-	-	-
2.4.	Customer Accounts Collections	Delivery of notices to customers with un-paid accounts	**	N/A	N/A	A. Two notices on collection of toll transaction revenue shall be sent out to all customers within the specified timeframes as set out below, as indicated by the notice periods below, of payment due dates, in accordance with Schedule 13 [Tolling Operations].  a) 1 <sup>st</sup> notice – 30 days after payment due date; and  b) 2 <sup>nd</sup> notice – 60 days after payment	Failure to provide: a) One notice only: [\$REDACTED] b) Both notices: [\$REDACTED]	-	-	[\$REDACTED]/day of notice delay thereafter

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TOLLING PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						due date. **Non-compliance shall constitute a Category 1 Defect.				
		Assembling and providing evidence for collections on un-paid customer accounts.	**	N/A	N/A	B. After expiry of the 60-day notice period (2 <sup>nd</sup> notice), customer service centre staff shall compile and submit to WDBA, within 15 days, an evidence package for each un-paid user account that will include photo evidence and detailed system information for the transaction or transactions belonging to the violating vehicles.  **Non-compliance shall constitute a Category 1 Defect.	[\$REDACTED] per evidence package not submitted	-	-	-
		Cancellation of Transponders for un-paid customer accounts.	**	N/A	N/A	C. Transponders for customer accounts with un-paid transaction balances shall be cancelled 90 days after the payment due dates.  **Non-compliance shall constitute a Category 1 Defect.	[\$REDACTED]	-	-	[\$REDACTED]/day thereafter

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TOLLING PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGORY 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
2.5.	Failure to Pay Customers	Providing envelope to customers refusing to pay or claiming no payment method is available at the toll lanes (failure to pay customers).	**	N/A	N/A	A. Envelopes containing invoices and instructions to pay at a later date shall be handed out to all customers either refusing to pay or claiming no payment is available at the toll lanes, in accordance with the process in Schedule 13 [Tolling Operations].  **Non-compliance shall constitute a Category 1 Defect.	[\$REDACTED]	-	-	-
		Delivery of notices to failure to pay customers	**	N/A	N/A	B. Two notices on collection of toll transaction revenue shall be sent out to all failure to pay customers within the specified timeframes as set out below, as indicated by the notice periods below, of payment due dates, in accordance with Schedule 13 [Tolling Operations].  a) 1 <sup>st</sup> notice – 30 days after payment due date; and  b) 2 <sup>nd</sup> notice – 60 days after payment due date.	Failure to provide: a) One notice only: [\$REDACTED] b) Both notices: [\$REDACTED]	-	-	[\$REDACTED]/day of notice delay thereafter

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TOLLING PERFORMANCE REQUIREMENTS										
			RECTIFICATION TIMES <sup>1</sup>				SERVICE FAILURE DEDUCTION AMOUNTS			
			CATEGORY 1		CATEGOR Y 1 OR 2		CATEGORY 1		CATEGORY 1 OR 2	
REF	ELEMENT	PERFORMANCE REQUIREMENT	HAZ. MITG. <sup>2</sup>	INTERIM REMEDY	PER. REPAIR <sup>3</sup>	MINIMUM PERFORMANCE CRITERIA	HAZ. MITG.	INTERIM REMEDY	PER. REPAIR	SUBSEQUENT DEDUCTIONS
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
						**Non-compliance shall constitute a Category 1 Defect.				

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## APPENDIX 25-6

CROSSING SECTIONS

Table 15: Crossing Sections

#	Section Description	Crossing Section	Deduction Basis	Maps Appendix Reference
1	Bridge lanes (approach bridge lanes and main span lanes)	A	Lane Kilometre	N/A
<b>Canada to USA</b>				
2	Area between the exit from the Rt. Hon. Herb Gray Parkway into the Canadian POE and to the Outbound-to-USA Toll Plaza	B	Area	Appendix 25-9
3	Outbound-to-USA Toll Plaza (including toll collection lanes/booths)	C	Lane Segment	Appendix 25-8
4	Area between the exit from Outbound-to-USA Toll Plaza to the start of lanes for roadway within the Canadian POE towards the Bridge lanes	D	Area	Appendix 25-9
5	Roadway lanes from Canadian POE to the start of the Bridge lanes	E	Lane Kilometre	Appendix 25-7
6	Outbound inspection lane to the outbound inspection/Nexus booths, within the Canadian POE (Connection from the roadway lanes in Section E) and including the outbound inspection/Nexus booths <sup>1</sup>	F	Lane Segment	Appendix 25-8
7	Area between exit from the Bridge lanes to the start of U.S inbound passenger/bus inspection lanes/booths at the U.S POE	G	Area	Appendix 25-9
8	Area between exit from the Bridge lanes to the start of U.S inbound commercial traffic inspection booths at the U.S POE	H	Area	Appendix 25-9
9	U.S inbound passenger/bus traffic inspection booths at the U.S POE <sup>1</sup>	I	Lane Segment	Appendix 25-8
10	U.S inbound commercial traffic inspection booths at the U.S POE <sup>1</sup>	J	Lane Segment	Appendix 25-8
11	Area between exit from U.S inbound passenger/bus traffic inspection booths to the start of passenger/bus traffic connector roadway at the U.S POE	K	Area	Appendix 25-9
12	Area between exit from U.S inbound commercial traffic inspection lanes/booths to the start of the commercial traffic connector roadway at the U.S POE	L	Area	Appendix 25-9
13	Start of exit roadway lanes from the commercial secondary inspection area to the start of the U.S inbound commercial traffic connector roadway, including the Commercial Secondary Exit Control Booths at the U.S POE	M	Lane Segment	Appendix 25-8
14	U.S inbound passenger/bus traffic connector roadway in the U.S POE to start of the I-75 Interchange ramp lanes	N	Lane Kilometre	Appendix 25-7
15	U.S inbound commercial traffic connector roadway in the U.S POE to the start of the I-75 Interchange	O	Lane Kilometre	Appendix 25-7

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#	Section Description	Crossing Section	Deduction Basis	Maps Appendix Reference
	ramp lanes			
<b>USA to Canada</b>				
16	U.S outbound connector roadway to the Bridge lanes, starting from the exit from the I-75 Interchange ramps into the U.S POE	P	Lane Kilometre	Appendix 25-7
17	Start of the U.S outbound primary inspection lanes, including the primary inspection lanes, and connecting onto the U.S outbound connector roadway to the Bridge lanes	Q	Lane Segment	Appendix 25-8
18	Area between exit from the Bridge lanes to the start of the Canada inbound passenger/bus traffic and commercial traffic inspection lanes/booths	R	Area	Appendix 25-9
19	Inbound-to-Canada passenger/bus traffic primary inspection lanes/booths <sup>1</sup>	S	Lane Segment	Appendix 25-8
20	Inbound-to-Canada commercial traffic primary inspection lanes/booths <sup>1</sup>	T	Lane Segment	Appendix 25-8
21	Area between the exit from Inbound-to-Canada passenger/bus traffic inspection lanes/booths to passenger/bus connector roadway towards the Outbound-to-Canada Toll Plaza	U	Area	Appendix 25-9
22	Area between the exit from Inbound-to-Canada commercial traffic inspection lanes/booths to the commercial traffic connector roadway towards the Outbound-to-Canada Toll Plaza	V	Area	Appendix 25-8
23	Start of the passenger/bus and traffic connector roadway to Section Z (as below)	W	Lane Kilometre	Appendix 25-7
24	Start of the commercial traffic connector roadway to Section Z (as below)	X	Lane Kilometre	Appendix 25-7
25	Area between exit from passenger/bus and commercial traffic connector roadways to open area leading to the Outbound-to-Canada Toll Plaza	Y	Area	Appendix 25-8
26	Outbound-to-Canada Toll Plaza (including toll collection lanes/booths)	Z	Lane Segment	Appendix 25-8
27	Area between exit from Canada inbound toll collection lanes/booths to start of the Rt. Hon. Herb Gray Parkway	AA	Area	Appendix 25-9
<b>Other Roadways</b>				
28	All other roadways within Canadian POE and US POE which are not covered within sections A to AA	BB	Lane Kilometre	Appendix 25-7

<sup>1</sup> For the purpose of this Schedule and specifically the application of any Crossing Availability Failure Deductions, all Crossing Sections comprising inspection lanes are inclusive of booths and other physical infrastructure related to the proper functioning of the inspection lane; Similarly, all Crossing Sections comprising toll lanes include the toll collection booths as well as the tolling system equipment components related to the proper functioning of the toll lanes.

**APPENDIX 25-7**

**LANE-KILOMETRE BASED CROSSING SECTIONS**

See Attached

**APPENDIX 25-8**

**LANE-SEGMENT BASED CROSSING SECTIONS**

See Attached

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Schedule 25 [Payment Mechanism (OMR)]

**APPENDIX 25-9**

**AREA BASED CROSSING SECTIONS**

See Attached

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Schedule 25 [Payment Mechanism (OMR)]

APPENDIX 25-10

ANNUAL TRAFFIC FORECAST

Table 16: Annual Traffic Forecast

Annual Traffic (in Thousands)			
Contract Year	Expected Annual Traffic	Upper Traffic Threshold	Lower Traffic Threshold
Column A	Column B	Column C	Column D
1	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]	[REDACTED]
4	[REDACTED]	[REDACTED]	[REDACTED]
5	[REDACTED]	[REDACTED]	[REDACTED]
6	[REDACTED]	[REDACTED]	[REDACTED]
7	[REDACTED]	[REDACTED]	[REDACTED]
8	[REDACTED]	[REDACTED]	[REDACTED]
9	[REDACTED]	[REDACTED]	[REDACTED]
10	[REDACTED]	[REDACTED]	[REDACTED]
11	[REDACTED]	[REDACTED]	[REDACTED]
12	[REDACTED]	[REDACTED]	[REDACTED]
13	[REDACTED]	[REDACTED]	[REDACTED]
14	[REDACTED]	[REDACTED]	[REDACTED]
15	[REDACTED]	[REDACTED]	[REDACTED]
16	[REDACTED]	[REDACTED]	[REDACTED]
17	[REDACTED]	[REDACTED]	[REDACTED]
18	[REDACTED]	[REDACTED]	[REDACTED]
19	[REDACTED]	[REDACTED]	[REDACTED]
20	[REDACTED]	[REDACTED]	[REDACTED]
21	[REDACTED]	[REDACTED]	[REDACTED]
22	[REDACTED]	[REDACTED]	[REDACTED]

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Annual Traffic (in Thousands)			
Contract Year	Expected Annual Traffic	Upper Traffic Threshold	Lower Traffic Threshold
Column A	Column B	Column C	Column D
23	[REDACTED]	[REDACTED]	[REDACTED]
24	[REDACTED]	[REDACTED]	[REDACTED]
25	[REDACTED]	[REDACTED]	[REDACTED]
26	[REDACTED]	[REDACTED]	[REDACTED]
27	[REDACTED]	[REDACTED]	[REDACTED]
28	[REDACTED]	[REDACTED]	[REDACTED]
29	[REDACTED]	[REDACTED]	[REDACTED]
30	[REDACTED]	[REDACTED]	[REDACTED]
31	[REDACTED]	[REDACTED]	[REDACTED]

**Note:** The annual traffic forecast provided in Table 16 above is provided for calculation of the Tolling Operations Payment Adjustment only, as per Section 2.8 only and is not to be used for any other purpose.

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APPENDIX 25-11

**ROADWAY REHABILITATION PAYMENTS SCHEDULE**

**Table 17: Annual Roadway Rehabilitation Payments Schedule**

Contract Year	Roadway Rehabilitation Payment (RRP <sub>y</sub> )
	(\$un-escalated)
Column A	Column B
1	[REDACTED]
2	[REDACTED]
3	[REDACTED]
4	[REDACTED]
5	[REDACTED]
6	[REDACTED]
7	[REDACTED]
8	[REDACTED]
9	[REDACTED]
10	[REDACTED]
11	[REDACTED]
12	[REDACTED]
13	[REDACTED]
14	[REDACTED]
15	[REDACTED]
16	[REDACTED]
17	[REDACTED]
18	[REDACTED]
19	[REDACTED]
20	[REDACTED]
21	[REDACTED]
22	[REDACTED]
23	[REDACTED]
24	[REDACTED]
25	[REDACTED]
26	[REDACTED]
27	[REDACTED]
28	[REDACTED]
29	[REDACTED]
30	[REDACTED]
31	[REDACTED]

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**Table 18: Annual Class 4 Vehicle Traffic Threshold Forecast**

<b>Contract Year</b>	<b>Class 4 Vehicle Threshold (Cumulative in Thousands)</b>
<b>Column A</b>	<b>Column B</b>
1	[REDACTED]
2	[REDACTED]
3	[REDACTED]
4	[REDACTED]
5	[REDACTED]
6	[REDACTED]
7	[REDACTED]
8	[REDACTED]
9	[REDACTED]
10	[REDACTED]
11	[REDACTED]
12	[REDACTED]
13	[REDACTED]
14	[REDACTED]
15	[REDACTED]
16	[REDACTED]
17	[REDACTED]
18	[REDACTED]
19	[REDACTED]
20	[REDACTED]
21	[REDACTED]
22	[REDACTED]

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Contract Year	Class 4 Vehicle Threshold (Cumulative in Thousands)
Column A	Column B
23	[REDACTED]
24	[REDACTED]
25	[REDACTED]
26	[REDACTED]
27	[REDACTED]
28	[REDACTED]
29	[REDACTED]
30	[REDACTED]
31	[REDACTED]

**Note:** The annual traffic forecast provided in Table 18 above is provided for the intended use as per Section 2.10 only and is not to be used for any other purpose.

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**SCHEDULE 26****CONSTRUCTION PERIOD PAYMENTS****1. DEFINITIONS**

Unless defined specifically in this Schedule or unless the context otherwise requires, capitalized but otherwise undefined terms in this Schedule will have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of this Project Agreement. Each Appendix to this Schedule including Appendices 26-1 to 26-18 inclusive, forms an integral part of this Schedule.

In this Schedule including its Appendices, the following terms have meanings set out in this Section 1.

**Aggregate Construction Costs** at any time, means the amount of total Construction Costs as set out in Column VI of the Costs and Payments Table at that time.

**Aggregate DB Costs** at any time, means the total of all DB Costs, as set out in Column XII of the Costs and Payments Table at that time.

**Aggregate DB Costs in Excess of Threshold Amount** at any time, means the amount in Column XIII of the Costs and Payments Table at that time.

**Aggregate Holdback Amount** at any time, means an amount equal to [REDACTED]% of the Aggregate DB Costs in Excess of Threshold Amount, as set out in Column XV of the Costs and Payments Table at that time.

**Assessed Traffic Payment Adjustments** has the meaning set out in Part 19 [*Traffic Management – Deductions*] of Schedule 10 [*Design and Construction Specifications*] of this Agreement.

**Base Date** means May 8, 2018.

**Bridge Capital Payment** means the fixed monthly amount to be paid by WDBA to Project Co, in each calendar month as set out in Appendix 25-1 of Schedule 25 [*Payment Mechanism (OMR)*], following the issuance of the Bridge Handover Certificate by the Independent Certifier.

**Bridge Handover Application** has the meaning set out in Section 2.4(a)(i).

**Canadian POE Capital Payment** means the fixed monthly amount to be paid by WDBA to Project Co, in each calendar month as set out in Appendix 25-1 of Schedule 25 [*Payment Mechanism (OMR)*], following the issuance of the later of Canadian POE Handover Certificate or Canadian POE Agency Building Handover Certificate by the Independent Certifier.

**Canadian Interim OM Payments** means the monthly amount specified in Column XXVI of the Costs and Payments Table, for Interim OM Work done in Canada pursuant to Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**Capital Payment** means any one or more of the Canadian POE Capital Payment, the US POE Capital Payment, the Bridge Capital Payment and the Michigan Capital Payment.

**Community Benefits Costs During Construction or CBC-C** means the amount as set out in Column XXIV of the Costs and Payments Table.

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**Construction Costs** means all costs, expenses, fees, and Tariff Cost but excluding, Interim OM Payments, Community Benefits Costs during Construction, LSI Costs, the Public Art Amount and Non-Construction Costs, Contamination Payments and the Early Work Fixed Amount, related to the performance of the DB Work in the amounts set out in the Financial Model.

**Construction Period Payments** means the payments to be made by WDBA to Project Co set out in Section 2.1.

**Costs and Payments Table** means Table 1 entitled "Costs and Payments Table" set out in Appendix 26-1.

**Contaminated Soil** has the meaning set out in Schedule 16 [*Environmental*].

**Contamination Payments** has the meaning set out in Section 2.14.

**DB Costs** means the sum of (i) Construction Costs and (ii) Non-Construction Costs.

**Design Unit** has the meaning set out in Part 2 [*Review Procedure*] of Schedule 6 [*Project Management*].

**Early Work Payments** means payments from the Early Work Fixed Amount to Project Co for Project Work completed.

**Early Work Fixed Amount** means \$[REDACTED].

**FS-LSI Equipment** means fixed site large scale imaging equipment in the LSI Building.

**Handover** has the meaning set out in Schedule 21 [*Certification Procedure*].

**Holdback** with respect to any Progress Payment means [REDACTED]% of the amount of the DB Costs used in calculating such Progress Payment.

**IC Progress Ratio** has the meaning set out in Section 2.3.

**Interim OM Payments** has the meaning set out in Section 2.5.

**Lender Advance Documentation** has the meaning set out in Section 2.2.

**Lenders' Technical Advisor** means BTY Consultancy Group, Inc.

**LSI Costs** means \$[REDACTED], which is the sum of all costs associated with the work outlined in Schedule 42 [*LSI Equipment*], including costs incurred by Project Co in the financing, procurement, purchase, and installation of the FS-LSI Equipment.

**LTA Progress Ratio** has the meaning set out in Section 2.3.

**LTA Report** means a report by the Lenders' Technical Advisor to the Senior Lenders as part of the Lender Advance Documentation.

**Maximum DB Costs** means [REDACTED].

**Maximum Progress Payment Amount** for a period means the amount shown in Column XVII of the Costs and Payments Table.

**Metered Utilities** means metered water, wastewater, and sewage (including storm sewer and sanitary sewer) delivered or disposed of at the Facilities.

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Schedule 26 [*Construction Period Payments*]

**Michigan Capital Payment** means the fixed monthly amount to be paid by WDBA to Project Co in each calendar month as set out in Appendix 25-1 of Schedule 25 [*Payment Mechanism (OMR)*], following the issuance of the Michigan Handover Certificate by the Independent Certifier.

**Michigan Handover Application** has the meaning set out in 2.4(a)(iv).

**Michigan Interchange Buy-Down Amount** has the meaning set out in Section 2.10.

**Michigan Interchange Buy-Down Process** means the process set out in Section 2.10 and Section 2.11 for the calculation of the Michigan Interchange Buy-Down Amount

**Minor Deficiencies** means any defects, deficiencies and items of outstanding DB Work arising from or related to the work required to achieve a POE Handover, POE Agency Buildings Handover, Bridge Handover, Michigan Handover or Substantial Completion and which alone or in combination, would not materially impair:

- (a) the public's, WDBA's or any other Relevant Authority's use and enjoyment of the Facility;
- (b) the performance, conduct or provision of any Governmental Activity;
- (c) the performance of the Interim OM Work or the OMR Work by Project Co; or
- (d) safety or traffic flow on any Project Infrastructure in any relevant respect,

provided that outstanding Non-Compliances and items subject to the Michigan Interchange Buy-down Process do not fall within the scope of this definition.

**Minor Deficiencies Holdback Amount** has meaning set out in Section 2.9(b).

**NCR Deductions** has the meaning set out in Section 2.3(d)(i).

**Non-Construction Costs** at any time during the Construction Period, means all costs, expenses and fees of any nature or type whatsoever at that time, (i) including debt financing costs, SPV Costs, other Project Co administration costs and the initial funding of cash reserves, but (ii) excluding acceleration penalties or default interest imposed under the Lending Agreements, Construction Costs, Interim OM Payments, the Public Art Amount, Applicable Canadian Taxes, Applicable US Taxes, and CBC-C, in the amounts set out in the Financial Model at that time, as set out in Column IX of the Costs and Payments Table.

**Partial Payment** has the meaning set out in Section 2.3.

**Pass-through Costs during Construction** means the following costs for the Interim OM Period only, as evidenced by applicable third party invoices, in respect of the following items, but in each case excluding overhead costs and profit:

- (a) cost of consumption, use, or disposal of Metered Utilities at the Facilities;
- (b) costs related to haulage and disposal of, in accordance with Schedule 11 [*Operations, Maintenance and Rehabilitation*]:
  - (i) Waste and recyclable materials from within the OMR Limits, with the exception of any Waste generated by Project Co for performance of Planned Maintenance; and

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- (ii) Hazardous Material within the OMR Limits, with the exception of any Hazardous Material generated by Project Co, through approved, certified waste handlers, as evidenced by successful disposal of the Hazardous Material.
- (c) costs of purchase of initial Transponders provided to customers, in accordance with Schedule 13 [*Tolling Operations*];
- (d) costs of purchase of initial inventory of toll account cards, in accordance with Schedule 13 [*Tolling Operations*].

**POE Agency Buildings Handover Application** has the meaning set out in Section 2.4(a)(i)

**POE Agency Buildings Handover Certificate** means the certificate relating to POE Agency Building Handovers set out in Appendix 26-5B.

**POE Handover Application** has the meaning set out in Section 2.4(a)(ii).

**POE Handover Certificate** means the certificate relating to POE Handovers set out in Appendix 26-13B.

**Progress** has the meaning set out in Schedule 21 [*Certification Procedure*].

**Progress Payment** means a payment, which shall be no more frequent than once per calendar month, calculated in accordance with Section 2.3.

**Progress Payment Application** has the meaning set out in Section 2.3.

**Progress Payment Number** has the meaning set out in Section 2.3.

**Public Art Amount** means \$[REDACTED], as set out in Column XXIII of the Costs and Payments Table.

**Remaining Early Work Amount** means the amount of \$[REDACTED] as at August 31, 2018 that has not been paid out from the Early Works Fixed Amount under the Early Work Agreement and is to be paid out under the terms of this schedule.

**RFC** means Released-for-Construction.

**Sandwich Street Handover Application** means the application to the Independent Certifier for the Sandwich Street Handover Certificate, in the form set out in Appendix 26-14A.

**Sandwich Street Handover Certificate** means the certificate of the Independent Certifier relating to the Sandwich Street Handover, set out in Appendix 26-14B.

**Schedule** means this Schedule 26 [*Construction Period Payments*] unless such term clearly refers to another schedule of this Project Agreement.

**Soil Management Plan** means the plan for the management of Contaminated Soil by Project Co as set out in Section 4.5(l) of Schedule 16 [*Environmental*].

**SPV Costs** means all costs and expenses of the operation and administration of Project Co as set out in the Financial Model.

**Substantial Completion Application** has the meaning set out in Section 2.8.

**Substantial Completion Payment** has the meaning set out in Section 2.8.

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**Tariffs** means tariffs or any surtaxes on tariffs imposed or announced on steel, iron or aluminum by (i) the US on the import into the US of steel, iron or aluminum manufactured or processed in Canada and (ii) by Canada on the import into Canada of steel, iron or aluminum manufactured or processed in the US, in each case, between June 1, 2018 and July 2, 2018.

**Tariff Change** means any decrease in the amount of Tariffs after July 2, 2018.

**Tariff Table** means the table set out in Appendix 26-19.

**Threshold Amount** means \$[REDACTED].

**Threshold Date** means the date that the Threshold Requirements have been met and the Independent Certifier has issued a Certificate to that effect in the form of Appendix 26-2B.

**Unintended Consequences Fund Fees** means all upfront fees, monthly fees, interest, costs, expenses and charges associated with the Unintended Consequences Fund during the Term provided that, for the period prior to Substantial Completion only, such amounts shall be as reflected in Column XXX of the Costs and Payments Table.

**Unit Price** has the meaning set out in Table 26-1 of Section 2.15.

**US Interim OM Payments** means the amount specified in Column XXV of the Costs and Payments Table, for Interim OM Work done in Michigan pursuant to Schedule 11 [*Operations, Maintenance and Rehabilitation*].

**US POE Capital Payment** means the fixed monthly amount to be paid by WDBA to Project Co in each calendar month as set out in Appendix 25-1 of Schedule 25 [*Payment Mechanism (OMR)*], following the issuance of the US POE Handover Certificate as well as the US POE Agency Building Handover Certificate by the Independent Certifier.

**Warranty Adjustment** has the meaning set out in Schedule 25 [*Payment Mechanism (OMR)*].

**Warranty Work** means the Michigan Interchange Warranty Work and the Canadian Roads Warranty Work.

**Waste** has the meaning set out in Schedule 11 [*Operations, Maintenance and Rehabilitation*].

All references to a Section number in this Schedule means a Section number of this Schedule, unless such Section number clearly refers to a Section of the body of this Project Agreement or another schedule or part of a schedule of this Project Agreement.

## 2. PAYMENTS DURING CONSTRUCTION

### 2.1 Payments Overview

- (a) WDBA shall pay to Project Co the following payments, (collectively the “**Construction Period Payments**”):
- (i) the Progress Payments, and if applicable, Partial Payments, as described in Section 2.3;
  - (ii) the Public Art Amount, as described in Section 2.6;
  - (iii) the Community Benefits Payments during Construction Period, as described in Section 2.7;

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- (iv) the Substantial Completion Payment, as described in Section 2.8;
- (v) Contamination Payments, as described in Section 2.14;
- (vi) the LSI Costs, as described in Section 2.15;
- (vii) the Remaining Early Work Amount, as described in Section 2.18;
- (viii) Capital Payments, as described in Section 2.4;
- (ix) Interim OM Payments, as described in Section 2.5; and
- (x) Unintended Consequences Fund Fees, as described in Section 2.16.

in each case, subject to the terms and conditions of this Project Agreement.

- (b) For Progress Payments, WDBA will pay Project Co within 5 Business Days from a receipt of the LTA Report.
- (c) For all payments referenced in Sections 2.1(a)(ii) to 2.1(a)(vii) inclusive, WDBA will pay Project Co within 5 Business Days from a receipt of a Certificate from the Independent Certifier.
- (d) The payments in Section 2.1(a)(viii), Section 2.1(a)(ix) and Section 2.1(a)(x) will not be subject to Schedule 21 [*Certification Procedure*].
- (e) For the Construction Period only, WDBA shall make the Capital Payments to Project Co within 5 Business Days from the date an invoice in form and content acceptable to WDBA, acting reasonably, is received from Project Co. For the OMR Period, Capital Payments will be made in accordance with the provisions of Schedule 25 [*Payment Mechanism (OMR)*].
- (f) Interim OM Payments and Unintended Consequences Fund Fees will be paid 5 Business Days from receipt of an invoice from Project Co.
- (g) Pass-through Costs during Construction will be paid within 5 Business Days from the receipt by WDBA of the relevant invoice from Project Co.

## 2.2 Lender Advance Documentation

- (a) In order to enable WDBA and the Independent Certifier to monitor progress from the Commencement Date until the Threshold Certification is completed, Project Co shall submit to WDBA, and the Independent Certifier, concurrently with submission to the Senior Lenders, the Lenders' Technical Advisor and/or the Lenders' Agent, as the case may be, copies of all draw requests and information and documentation supporting or required to be submitted to make applications for advances, draws, releases of funds or payments by the Senior Lenders under the Senior Lending Agreements, together with all payment or advance confirmations issued by or on behalf of the Senior Lenders (the "**Lender Advance Documentation**").
- (b) Project Co shall obtain, from the Senior Lenders or the Lenders' Agent, as part of the Senior Lending Agreements, the right for Project Co to receive and deliver copies of all Lender Advance Documentation to WDBA and the Independent Certifier. Project Co shall also retain the LTA to perform the functions of the LTA under Schedule 21 [*Certification Procedure*] and Schedule 26 [*Construction Period Payments*]. Project Co shall deliver to

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Schedule 26 [*Construction Period Payments*]

WDBA and the Independent Certifier, copies of all Lender Advance Documentation within 2 Business Days following receipt thereof by Project Co.

## 2.3 Progress Payments

### (a) Progress Payment Application

Project Co shall prepare, complete and deliver a payment application for Progress Payments substantially in the form attached as Appendix 26-3A (“**Progress Payment Application**”) no more than once a calendar month. Project Co may submit a Progress Payment Application when it believes it has completed sufficient work and it may choose to submit a request at dates which are later than those referenced in the Costs and Payment Table. Progress Payments will be made on a “cumulative-not-to-exceed” basis allowing Project Co to “catch up” on payments from prior periods in the event Project Co has not received full payment in a prior period, but not to exceed the “cumulative payment curve” (i.e. the Maximum Progress Payment Amount set out in the Costs and Payment Table) at any point in time.

Project Co shall co-operate with WDBA and the Independent Certifier, to permit WDBA and the Independent Certifier to review and fully assess all documentation submitted with the Progress Payment Application.

### (b) Progress Payments Calculation

Progress Payments will be calculated in accordance with the following formula:

$$P_n = \left\{ \left( \left( \sum_1^n C_c + \sum_1^n C_{nc} \right) \times PR1_n \right) - \left[ \left( \sum_1^{n-1} C_c + \sum_1^{n-1} C_{nc} \right) \times (PR1_{n-1} - PR2_{n-1}) \right] - T_{me} \right\} \times P_p - \left( \sum_1^{n-1} P_{n-1} \right) - NCRD_x$$

where

$n$  is the applicable Progress Payment Number (“**Progress Payment Number**”) set out in the Costs and Payments Table.

$P_n$  is the Progress Payment for the Progress Payment Number. This amount will, at minimum, be zero for any Progress Payment Number.

$C_c$  is the Construction Costs as reflected in Column V of the Costs and Payments Table, for the applicable Progress Payment Number.

$C_{nc}$  is the Non-Construction Costs as reflected in Column IX of the Costs and Payments Table, for the applicable Progress Payment Number.

$T_{me}$  is the Threshold Amount.

$P_p$  is equal to [REDACTED] %.

$NCRD_x$  is the deductions applied for the period  $x$ .

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$PR1_n$  is the progress ratio calculated by the LTA ("**LTA Progress Ratio**") for the applicable Progress Payment Number, which must be an amount that is no less than 0 and no greater than 1.

$PR2_n$  is the progress ratio calculated by the Independent Certifier ("**IC Progress Ratio**") for the applicable Progress Payment Number which must be an amount that is no less than 0 and no greater than 1. The IC Progress Ratio is calculated as certified "Aggregate Construction Costs" of Appendix 26-3B Table 2-3, over the "Aggregate Construction Costs" in the Costs and Payments Table forming part of Project Co's Financial Model.

$x$  is the applicable period in which the Progress Payment is being requested.

Where the calculated progress ratio is equal to a value less than 1.0, the Progress Payment for the applicable Progress Payment Number will be less than the Maximum Progress Payment Amount for the Progress Payment Number as reflected in Column XVII of the Costs and Payments Table (a "**Partial Payment**").

(c) **Progress Ratio Calculation and application to Progress Payments**

The LTA Progress Ratio and IC Progress Ratio will be applied to each applicable Progress Payment Number as follows.

- (i) For the first Progress Payment following the Threshold Certification, the LTA Progress Ratio will be determined using the LTA Report submitted to the Independent Certifier. The first Progress Payment will be paid using this LTA Progress Ratio.
- (ii) The Independent Certifier will review the LTA Report and information submitted in Schedule 21 [*Certification Procedure*]. In the event that the Independent Certifier disagrees with the determination of the LTA Progress Ratio set out in the LTA report, the IC Progress Ratio will be applied to the second Progress Payment following the Threshold Certification. The IC Progress Ratio will be applied to each subsequent Progress Payment, which will adjust the LTA Progress Ratio one period in arrears.
- (iii) Project Co will ensure that the Lenders' Technical Advisor cooperates and works with the Independent Certifier to resolve any issues that may arise in the course of the Independent Certifier's review. However, the determination of the Independent Certifier will be final in terms of determining the progress ratio applied to progress payments and will not be subject to the Dispute Resolution Procedure.

(d) **NCR Deductions**

- (i) If, at any time prior to Substantial Completion, a Critical NCR or Medium NCR is issued by WDBA pursuant to Part 2 [*Non-Compliance*] of Schedule 7 [*Quality Management*] which remains unresolved for a period beyond 90 days following the first existence of such NCR, WDBA may deduct an amount from the next Progress Payment due, calculated in accordance with Section 2.3(e) ("**NCR Deductions**")
- (ii) WDBA may extend the time for resolution of a corrective action plan for an NCR as outlined in Part 2 [*Non-Compliance*] of Schedule 7 [*Quality Management*]. In the event the NCR Deductions will apply after the approved time for the corrective action plan has been completed.

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- (iii) Resolution of Critical or Medium NCRs will not result in the reimbursement of deductions.

(e) **Calculation of NCR Deductions**

Each NCR Deduction shall be calculated in accordance with the following:

$$NCRD_x = \sum_c \text{Critical } NCRD_x + \sum_m \text{Medium } NCRD_x$$

Where:

$c$  is the number of Critical NCRs outstanding for more than 90 days as at period  $x$ .

$m$  is the number of Medium NCRs outstanding for more than 90 days as at period  $x$ .

$x$  is the applicable period in which the Progress Payment is being requested.

$NCRD_x$  is the total NCR deduction for the applicable period.

$\text{Critical } NCRD_x$  is \$[REDACTED] for each Critical NCR.

$\text{Medium } NCRD_x$  is \$[REDACTED] for each Medium NCR.

- (f) In addition to the requirements of Part 2 [*Non-Compliance*] of Schedule 7 [*Quality Management*], the NCR tracking system shall also record the NCR Deduction pursuant to this Schedule.
- (g) Deductions associated with Critical NCRs and Medium NCRs outstanding for more than 90 days prior to the Threshold Certification, including those incurred during the Project Co Early Work Period, will be accumulated and deducted from the first Progress Payment following Threshold Certification.

## 2.4 Capital Payments

- (a) Once Project Co believes that it has satisfied all requirements for:
- (i) the US POE Agency Buildings Handover or the Canadian POE Agency Buildings Handover, it shall deliver an Application to WDBA and the Independent Certifier substantially in the form attached as Appendix 26-5A (the "**POE Agency Buildings Handover Application**");
  - (ii) the US POE Handover or the Canadian POE Handover, it shall deliver an Application to WDBA and the Independent Certifier substantially in the form attached as Appendix 26-13A (the "**POE Handover Application**");
  - (iii) the Bridge Handover, it shall deliver an Application to WDBA and the Independent Certifier substantially in the form attached as Appendix 26-11A (the "**Bridge Handover Application**");
  - (iv) the Michigan Handover, it shall deliver an Application to WDBA and the Independent Certifier substantially in the form attached as Appendix 26-12A (the "**Michigan Handover Application**");
- (b) On the first Business Day of the calendar month, following the receipt of the Bridge Handover Certificate from the Independent Certifier, WDBA shall commence the Bridge Capital Payments.

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- (c) On the first Business Day of the calendar month, following the receipt of the Michigan Handover Certificate from the Independent Certifier, WDBA shall commence the Michigan Capital Payments.
- (d) On the first Business Day of the calendar month, following the month in which each of the Canadian POE Handover Certificate and the Canadian POE Agency Building Handover Certificate have been issued by the Independent Certifier, WDBA shall commence the Canadian POE Capital Payments.
- (e) On the first Business Day of the calendar month, following the month in which each of the US POE Handover Certificate and the US POE Agency Building Handover Certificate have been issued by the Independent Certifier, WDBA shall commence the US POE Capital Payments.

## 2.5 Interim OM Payments

- (a) Following the earlier of the US POE Agency Buildings Handover Date and the Canadian POE Agency Buildings Handover Date and extending to the Substantial Completion Date, Project Co will be required to perform the Interim OM Work identified in Schedule 11 [*Operations, Maintenance and Rehabilitation*] of this Project Agreement, including Appendix 11-2.
- (b) In return for the provision of Interim OM Work for the US POE Agency Buildings, WDBA shall pay to Project Co the US Interim OM Payments until Substantial Completion.
- (c) In return for the provision of Interim OM Work for the Canadian POE Agency Buildings WDBA shall pay to Project Co the Canadian Interim OM Payments until Substantial Completion.
- (d) WDBA shall pay the US Interim OM Payments and the Canadian Interim OM Payments (collectively, the "**Interim OM Payments**") on a monthly basis, within 5 Business Days of receipt of an invoice from Project Co. In the event that any month from the Handover Dates to Substantial Completion is a partial month, Interim OM Payments will be pro-rated for actual days in the month.
- (e) Canadian Interim OM Payments and US Interim OM Payments are not subject to certification procedures set out in Schedule 21 [*Certification Procedures*] nor Deductions set out in Schedule 25 [*Payment Mechanism (OMR)*].
- (f) If evidenced with applicable third party invoices, WDBA will pay to Project Co Pass-through Costs during Construction for the Interim OM Period. Project Co shall undertake an open and fair procurement or tendering process for any third party contracts/agreements which would result in any Pass-through Costs during Construction, to provide best value for money to WDBA (which need not be the lowest cost supplier). WDBA shall have the right to participate in Project Co negotiations for any such third-party agreements or contracts. Project Co shall ensure that any such agreements or contracts with third party contractors are submitted for WDBA approval, such approval not to be unreasonably withheld or delayed, prior to entering into any such agreements or contracts. Project Co shall prepare and submit all necessary supporting information, including vendor quotes, to WDBA for approval, such approval not to be unreasonably withheld or delayed.

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**2.6 Public Art Amount**

- (a) Once Project Co believes that it has satisfied all requirements for Public Art, it shall deliver a Public Art Application to WDBA and the Independent Certifier substantially in the form attached as Appendix 26-6A (the “**Public Art Application**”).
- (b) The Public Art Amount shall be paid as Public Art is delivered by Project Co, following WDBA’s receipt of a Public Art Certificate from the Independent Certifier as provided in Appendix 26-6B.
- (c) The maximum amount payable by WDBA for Public Art is \$[REDACTED].

**2.7 Community Benefits Payments during Construction Period**

- (a) WDBA will pay to Project Co the CBC-C in accordance with the timing set out in the Community Benefits Plan.
- (b) Payments for CBC-C will be subject to the process set out in Section 7 of Schedule 36 [Community Benefits] with respect to period monitoring.

**2.8 Substantial Completion Payment**

- (a) Once Project Co believes that it has satisfied all requirements for Substantial Completion, it shall deliver a Substantial Completion Application to WDBA and the Independent Certifier substantially in the form attached as Appendix 26-4A, which shall certify the satisfaction of all requirements for Substantial Completion and shall have attached to it all documents required to be included in the Substantial Completion Application.
- (b) Project Co may make the POE Handover Applications, Bridge Handover Application and the Michigan Handover Application together with the Substantial Completion Application.
- (c) Project Co cannot submit the POE Agency Buildings Handover Applications with the Substantial Completion Application. The Substantial Completion Application can only be made after 9 months have elapsed from the Canadian POE Agency Building Handover Date and 6 months have elapsed from the US POE Agency Building Handover Date.
- (d) Upon the issuance of the Substantial Completion Certificate from the Independent Certifier, as set out in Appendix 26-4B, WDBA shall pay to Project Co the Substantial Completion Payment in accordance with the provisions of this Project Agreement.
- (e) The payment due to Project Co (the “**Substantial Completion Payment**”) shall equal the following:
  - (i) the Aggregate Holdback at Substantial CompletionPLUS the sum of:
  - (ii) any unpaid Progress Payments as of the date of payment of the Substantial Completion Payment; plus
  - (iii) any unpaid Interim OM Payments as of the date of payment of the Substantial Completion Payment; andLESS the sum of:
  - (iv) the Minor Deficiencies Holdback Amount; and

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- (v) any outstanding Assessed Traffic Payment Adjustments.

## 2.9 Minor Deficiencies Holdback

- (a) The final Minor Deficiency list in respect of all Project Work shall be determined by the Independent Certifier in accordance with Section 25.3 (*Final Minor Deficiency List*) of the body of the Project Agreement and Schedule 21 [*Certification Procedure*].
- (b) An estimate of the cost and time for rectifying the Minor Deficiencies (other than FAER Minor Deficiencies) described in such list, shall be prepared by Project Co and agreed upon by the Independent Certifier and Project Co as part of the Certification Procedure for Substantial Completion. WDBA shall withhold from the Substantial Completion Payment, an amount equivalent to [REDACTED]% of the amount estimated to rectify such Minor Deficiencies (the “**Minor Deficiencies Holdback Amount**”).
- (c) When a Minor Deficiency (excluding FAER Minor Deficiencies) on the Minor Deficiency List has been corrected to the satisfaction of the Independent Certifier, the Independent Certifier shall so notify WDBA. WDBA shall then pay to Project Co from the Minor Deficiencies Holdback Amount, an amount equal to [REDACTED]% of the amount estimated to rectify that Minor Deficiency as set out on the final Minor Deficiency List. Any unpaid Minor Deficiency Holdback Amount will be released to Project Co at Final Completion.
- (d) As an alternative to the retention the Minor Deficiencies Holdback Amount, Project Co may provide a letter of credit in favour of WDBA in an amount equal to the Minor Deficiencies Holdback Amount and in form and content acceptable to and from a Financial Institution acceptable to, WDBA, acting reasonably. The letter of credit will be reduced by WDBA by the corresponding amount of the corrected Minor Deficiencies, using the same approach as in Section 2.9(c).
- (e) If Project Co does not rectify any Minor Deficiency on a Minor Deficiency List in a timely manner as specified in such Minor Deficiency List, WDBA may, upon notice to Project Co, do so at Project Co’s expense and shall be entitled to set off all costs of such rectification against the Minor Deficiencies Holdback Amount.
- (f) When all FAER Minor Deficiencies and Minor Deficiencies on the final Minor Deficiency List have been corrected to the satisfaction of the Independent Certifier, it shall so notify WDBA. WDBA shall then pay to Project Co from the Minor Deficiencies Holdback Amount, the balance remaining of the Minor Deficiencies Holdback Amount.
- (g) If all Minor Deficiencies and FAER Minor Deficiencies have not been corrected to the satisfaction of the Independent Certifier or WDBA, as applicable, by the second anniversary of the Substantial Completion Date, any remaining balance of the Minor Deficiencies Holdback Amount shall be forfeited to WDBA.

## 2.10 Michigan Interchange Buy-Down Process

- (a) A deduction may be applied to the earlier of (i) the first Michigan Capital Payment and (ii) Substantial Completion Payment as relevant, to account for accepted price adjustments related to materials, pursuant to Section 3(b) of Part 1 [*General*] of Schedule 7 [*Quality Management*], used in the Michigan Interchange that do not meet specification but are still within acceptable limits in accordance with Section 2.11. If the amount of the Michigan Interchange Buy-Down Amount exceeds the value of the first Michigan Capital Payment, remaining deductions shall apply to the following Michigan Capital Payments.

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The amount of the Michigan Interchange Buy-Down Amount shall be deposited into an escrow account in the name of WDBA.

- (b) The Michigan Interchange Buy-Down Amount is deducted in lieu of completely replacing Project Work where materials were not in compliance with the Technical Requirements for such work. Any such non-compliance that is subject to the Michigan Interchange Buy-Down Process shall not be considered a Non-Compliance nor a Minor Deficiency.
- (c) The DB Work subject to the Michigan Interchange Buy-Down Process is to be determined by the Designer. In preparing the Design, the Designer shall reference the "MDOT Standard Specifications for Construction and shall select all the applicable specification and the corresponding base prices as set out in Appendix 26-10.

### **2.11 Calculation of Michigan Interchange Buy-Down Amount**

- (a) For the Michigan Interchange, WDBA shall calculate price adjustments for applicable DB Work, that have been measured through the Construction Period, using the applicable specifications and the base prices as specified in Appendix 26-10. As part of the RFC submittal for each Design Unit, Project Co shall submit a table containing each applicable MDOT pay item code, pay item name, and pay unit to WDBA for review and acceptance.
- (b) DB Work subject to the Michigan Interchange Buy-Down Process shall be those material items that are identified in Section 3(b) of Part 1 [*General*] of Schedule 7 [*Quality Management*].
- (c) While price adjustments can be either positive or negative in nature, the cumulative price adjustments shall not result in a net increase in the amount payable to Project Co by WDBA.

### **2.12 Assessed Traffic Payment Adjustments**

Assessed Traffic Payment Adjustments will be calculated in accordance with the procedures set out in Sections 5.1 and 5.2 of Part 19 [*Traffic Management – Deductions*] of Schedule 10 [*Design and Construction Specifications*] of the Project Agreement. Assessed Traffic Payment Adjustments will be deducted in accordance with Section 5.3 of Part 19 [*Traffic Management – Deductions*] of Schedule 10 [*Design and Construction Specifications*] of the Project Agreement. In the event there are outstanding Assessed Traffic Payment Adjustments when Substantial Completion has been achieved, those amounts will be deducted from the Substantial Completion Payment.

### **2.13 Payment of Fees to the Independent Certifier**

- (a) WDBA shall be responsible for the payment of all fees and costs of the Independent Certifier, which shall be billed and paid in accordance with the terms set out in the Independent Certifier Agreement. Project Co shall reimburse WDBA for **[REDACTED]**% of all such fees and costs within 10 days after WDBA provides a copy of the paid invoice of the Independent Certifier to Project Co.
- (b) Should Project Co fail to comply with its reimbursement obligations, WDBA shall have the right, but not the obligation, to deduct the amount owing from the next payment due to Project Co, subject to the rights of Project Co to refer such matter to the Dispute Resolution Procedure.

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**2.14 Payment for Soil Contamination Disposal on US Lands**

- (a) This Section 2.14 only applies to Contaminated Soil, for US Lands which are not referenced or identified in Section [REDACTED] of the Project Agreement.
- (b) All Unit Prices shall include all costs associated with treatment of the Contaminated Soil including survey, testing, mobilization and demobilization of equipment, excavation, placement, removal, disposal fees, stockpiling and any other associated costs.
- (c) Based on the certification by the Independent Certifier, payments (“**Contamination Payments**”) in respect of Contaminated Soil which is handled by Project Co in accordance with the provisions of Schedule 16 [*Environmental*] will be made as follows:

*Payment for Soil Contamination<sub>n</sub>*

$$= \sum_1^n Actual\ Quantity_1 * Unit\ Price_1 + \sum_1^n Actual\ Quantity_2 * Unit\ Price_2 + \sum_1^n Actual\ Quantity_3 * Unit\ Price_3$$

Where:

*n* is the number of months over which the relevant quantity is disposed of; and

*Actual Quantities* as well as *Unit Prices* definitions follow Table 1 below:

**Table 26-1: Payment for Soil Contamination Management**

Soil Contamination	Unit	Bid Price [\$/Unit]
Category I Soil & Category II Soil – On-Site (“Actual Quantity <sub>1</sub> ”)	Cubic Yard	\$(REDACTED) (“Unit Price <sub>1</sub> ”)
Category II Soil – Off-Site Removal (“Actual Quantity <sub>2</sub> ”)	Cubic Yard	\$(REDACTED) (“Unit Price <sub>2</sub> ”)
Category III Soil – Off-Site Removal (“Actual Quantity <sub>3</sub> ”)	Cubic Yard	\$(REDACTED) (“Unit Price <sub>3</sub> ”)

- (d) Payment requests can be submitted on a date determined by Project Co, but cannot be made more than once per month.
- (e) Upon certification by the Independent Certifier, WDBA will pay for the contamination item “Category I Soil & Category II Soil – On-Site” by cubic yard based on actual measured in-situ quantities in the field for the excavation, reuse and all other treatment of all Category I and II materials on the US Lands in a manner consistent with Applicable Law. The quantity shall only be paid for the excavation and placement of the Category II materials from one onsite location to another onsite location and will not be paid for temporary stockpile of the materials.
- (f) Upon certification by the Independent Certifier, WDBA will pay for the contamination item “Category II Soil – Off-Site Removal” by cubic yard based on actual measured in-situ quantities in the field for the excavation and disposal, in a qualified landfill, of all Category

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II Soil on the US Lands. WDBA will not pay separately for any Category I soil on US Lands to be removed from the Site.

- (g) Upon certification by the Independent Certifier, WDBA will pay for the contamination item "Category III Soil – Off-Site Removal" by cubic yard based on actual measured in-situ quantities in the field for the excavation and disposal, in a qualified landfill, of all Category III Soil on the US Lands.
- (h) Unit Prices will not be adjusted during the Construction Period.
- (i) In the event Contamination is discovered after November 30, 2024, each Unit Price will be adjusted as follows:

$$\frac{CPI_y}{CPI_0}$$

Where:

$CPI_y$  is the value of the Canadian CPI on April 1 of the relevant Contract Year  $y$ , to be determined by reference to the monthly CPI index published by Statistics Canada in the month of February most recently preceding the indexation date.

$CPI_0$  is the value of Canadian CPI on Base Date "o", to be determined by reference to the monthly CPI index in the month of February most recently preceding the Base Date.

## 2.15 LSI Costs

WDBA will pay the LSI Costs to Project Co upon certification, by the Independent Certifier, of the scope of work outlined in Schedule 42 [*LSI Equipment*].

## 2.16 Unintended Consequences Fund

Project Co will provide the Unintended Consequences Fund in accordance with Schedule 36 [*Community Benefits*].

Any interest revenue earned on the unused funds in the [Unintended Consequences Fund Proceeds Account] shall accrue to WDBA and be used to offset Unintended Consequences Fund Fees payable to Project Co.

## 2.17 Adjustment for Failure to Complete Warranty Work

- (a) WDBA shall have the right to offset from the Progress Payments payable to Project Co for the relevant Construction Months, the amount of any Warranty Adjustment.
- (b) Where it is established in accordance with this Section 2.17, that a Warranty Adjustment arises, the adjustment shall be given effect by way of a decrease to the next Progress Payment, as calculated in Section 2.3 of this Schedule.

## 2.18 Early Work Payments

- (a) [Not Used]
- (b) 5 Business Days following the end of each month, Project Co shall submit an Early Work Payment Application, along with all relevant supporting documentation, in the form set out in in Appendix 26-17A.

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- (c) Following receipt of the Early Work Payment Application and all relevant supporting documentation, the Independent Certifier will assess Progress of the Project Work and issue the Early Work Monthly Certificate, in the format set out in Appendix 26-17B, certifying payment corresponding to the amount of Progress. The certification will be made within 10 business days of the receipt by WDBA of the Early Work Payment Application and relevant supporting documents.
- (d) Within 5 Business Days of receipt of the Early Work Monthly Certificate from the Independent Certifier, WDBA will make payment to Project Co.

### 2.19 Tariff Change

- (a) Project Co has set out in the Financial Model as at Financial Close the number of tons of steel, iron and aluminum which it will need from US manufacturers to perform the DB Work and the number of tonnes of steel, iron and aluminum which it will need from Canadian manufacturers to perform the DB Work.
- (b) Project Co shall be required to disclose to WDBA all information pertaining to the supply of steel and iron used for the Project Work including:
  - (i) copies of purchase order;
  - (ii) proof of country of origin; and
  - (iii) cost break down including Tariffs and duties paid, supported by valid third-party invoices.
- (c) Upon the occurrence of a Tariff Change at any time, whether before or after the date of this Agreement, WDBA shall be entitled to seek compensation for any decrease in the Capital Expenditures and Operating Costs of Project Co to perform the Project Work as a result of such Tariff Change up to the amounts set out in the Tariff Table. Any failure to reach agreement on such compensation shall be resolved pursuant to the Dispute Resolution Procedure, including any dispute as to the validity and reasonableness of the unit prices and volumes for US and Canadian steel, iron or aluminum set out in the Tariff Table.

### 3. CHANGES TO THE CONSTRUCTION SCHEDULE AND PAYMENT PROFILES

- (a) Pursuant to the Financial Model, Project Co has proposed and WDBA has accepted the Costs and Payments Table.
- (b) In the event that a Supervening Event occurs or there is a change in the DB Schedule due to a change (i) in the dates when portions of the Site are to be Parcel Project Ready as specified in Appendix 6 and Appendix 7 to Schedule 4 [*Lands and Site*] or (ii) to the Utilities Baseline Schedule in Schedule 17 [*Utilities Requirements*], Project Co may request a change in the Costs and Payment Tables to amend the Aggregate Construction Costs and Progress Payment profile.
- (c) Subject to the provisions of Schedule 22 [*Change Procedure*], WDBA may request a change in the Costs and Payments Table if the Lands are available sooner than indicated in Appendix 6 and Appendix 7 to Schedule 4 [*Lands and Site*] or Utilities work is completed sooner than indicated in the Utilities Baseline Schedule.
- (d) If Project Co seeks such a Change in the Costs and Payment Table, Project Co will submit to WDBA the updated DB Schedule in the level of detail required by Schedule 9

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[*Project Schedule*], and a summary of changes required in the Financial Model. WDBA will then consider recommendations for approval. Upon WDBA's approval, the Financial Model and the Costs and Payments Table shall be updated and such updated versions will form the basis for future certifications and payments.

#### 4. CONSTRUCTION LIENS AND PROMPT PAYMENTS

##### 4.1 Project Co Prompt Payment Obligation

- (a) Prior to the Threshold Date:
  - (i) Project Co shall be obligated to pay any direct Subcontractors any undisputed amounts owing within 30 days of receiving a valid and legitimate invoice and any supporting documentation reasonably required by Project Co; and
  - (ii) each Prime Contractor shall be obligated to pay each Subcontractor and subsequently each Subcontractor of any tier within the later of (A) 10 days of themselves receiving a corresponding payment; and (B) receiving a valid and legitimate invoice and any supporting documentation reasonably required.
- (b) After the Threshold Date:
  - (i) Project Co shall be obligated to pay any direct Subcontractors any undisputed amounts owing within 30 days of receiving a Construction Period Payment or Rehabilitation Payment from WDBA and a valid and legitimate invoice from the Subcontractor; and
  - (ii) each Prime Contractor shall be obligated to pay each Subcontractor and subsequently each Subcontractor of any tier within the later of (A) 10 days of themselves receiving a corresponding payment; and (B) receiving a valid and legitimate invoice and any supporting documentation reasonably required.

##### 4.2 Michigan Construction Contractor Lien Waivers & Disclosures

- (a) Notwithstanding Section 4.1 and the applicability of the *Michigan Construction Lien Act* (MCL 570.1110 et seq., as amended from time to time), Project Co shall comply with the requirements of the *Michigan Construction Lien Act*.
- (b) Prior to the first actual physical improvement of the US Lands, Project Co shall (i) obtain from WDBA a fully-executed Notice of Commencement, in the form attached to this Schedule as Appendix 26-9C as may be updated by WDBA or required by the Michigan Construction Lien Act from time to time; (ii) record the Notice of Commencement with the applicable Country Register of Deeds where the US Lands are located; (iii) post the recorded Notice of Commencement together with a blank form of Notice of Furnishing in a conspicuous place on the US Lands' portion of the Site. The Notice of Furnishing shall be in the form attached to this Schedule 26 as Appendix 26-9E as may be updated by WDBA or required by the *Michigan Construction Lien Act* from time to time; and (iv) deliver a copy of the recorded Notice of Commencement to WDBA.
- (c) Project Co shall deliver to WDBA, the statutory Sworn Statement (in substantially the form attached to Schedule 26 as Appendix 26-9D, as modified from time to time by the *Michigan Construction Lien Act*), setting out all Subcontractors' information as required by the Sworn Statement for those who have performed any design, construction, operation, maintenance or rehabilitation activities on or for the benefit of the US Lands, in accordance with the following timelines:

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- (i) for each 2 month period from the Commencement Date to the date of Threshold Certification;
  - (ii) along with any Progress Payment Application, or Rehabilitation Payment following the date of Threshold Certification until the end of the Term; and
  - (iii) as a condition of Substantial Completion.
- (d) The Sworn Statement shall be accompanied by statutory Partial Unconditional Lien Waivers (in substantially the form attached to this Schedule 26-9H, as modified from time to time by the *Michigan Construction Lien Act*) executed by all Subcontractors who have not completed their applicable portion of the Project Work on or for the benefit of the US Lands or been fully paid for such Project Work, and statutory Full Unconditional Lien Waivers (in substantially the form attached to this Schedule 26-9H, as modified from time to time by the *Michigan Construction Lien Act*) executed by all Subcontractors who have completed their applicable portion of the Project Work on or for the benefit of the US Lands and have been fully paid for such Project Work. In the event that Project Co requires Subcontractors to furnish Partial Conditional Waivers and/or Full Conditional Waivers at any time during the Term, copies of the Partial and Full Conditional Waivers shall also be furnished to WDBA with the next Progress Payment Application or other request for payment delivered to WDBA. Attached to this Schedule as Appendix 26-9G is the current statutory form of Full Conditional Waiver and attached to this Schedule as Appendix 26-9I is the current statutory form of Partial Conditional Waiver.
- (e) Project Co agrees that it shall not require or obtain any unconditional lien waivers from Subcontractors attesting to Subcontractors' receipt of payment if such payment has not been received by the applicable Subcontractors.
- (f) Upon achieving Substantial Completion of the Construction Work, Project Co shall cause the Notice of Commencement recorded with the applicable County Register of Deeds to be terminated. Each time there will be any actual physical improvement of the US Lands by Project Co Persons, Project Co shall comply with the *Michigan Construction Lien Act*, including, without limitation, recording a new Notice of Commencement in accordance with the requirements set out in this Section 4.2 and causing all Subcontractors comply with the terms of this Section 4.2.

#### **4.3 Applicability of Michigan's Construction Lien Act**

Project Co's obligations in this Agreement to comply with the requirements of the *Michigan Construction Lien Act* shall not be construed or interpreted as WDBA's admission, acknowledgment, consent or agreement that the *Michigan Construction Lien Act* applies to any part of the Project or the Project Work. Strict compliance with the *Michigan Construction Lien Act* by Project Co is intended to preserve and protect WDBA from any potential construction lien Encumbrances to the extent they shall apply notwithstanding the nature of the Project being an international public infrastructure project.

#### **4.4 Payment and Claims of US Subcontractors**

Notwithstanding the applicability of the Michigan Construction Lien Act, Project Co shall comply with the requirements of the Michigan Construction Lien Act (MCL 570.1110 et seq. as amended from time to time), including posting and recording the statutory notices of commencement on behalf of WDBA, furnishing sworn statements respecting the payment of Subcontractors to WDBA, and obtaining unconditional lien waivers from all Project Co Persons performing Project Work and furnishing them to WDBA, in accordance with all applicable provisions of this Schedule. If a Project Co Person shall file a lien against the Project for Project Work other than due to a

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breach by WDBA of its obligations under this Agreement to make the payment for the Project Work that is the subject matter of the lien, Project Co shall defend, indemnify and hold WDBA harmless against any such liens or claims of lien arising under the Michigan Construction Lien Act and agrees to pay any judgment or award resulting from any such actions, lawsuits or proceedings together with all costs and expenses incurred by WDBA arising therefrom, including all administrative and attorneys' fees.

#### 4.5 Payments to Canadian Subcontractors

- (a) Project Co is responsible for ensuring that all Subcontractors performing Project Work in Canada are paid promptly in accordance with the timelines set out in Section 4.1.
- (b) Project Co shall implement a system with respect to notification of Claims and payments for Canadian Subcontractors which affords them protection substantially equivalent to the protection afforded to US Subcontractors described in Section 4.2, including furnishing sworn statements respecting the payment of Subcontractors to WDBA from all Project Co Persons performing Project Work in Canada and furnishing them to WDBA, all in accordance with the provisions of this Schedule.
- (c) Project Co must, as a condition of Substantial Completion ensure that all Subcontractors who have performed Project Work in Canada with amounts due and owing on valid and legitimate invoices have been paid. In the event that Project Co disputes a payment to a Canadian Subcontractor it may purchase a bond as security in order to proceed with certification of Substantial Completion. The bond must be (i) issued by a surety acceptable to WDBA, acting reasonably, (ii) in form and substance satisfactory to WDBA, acting reasonably, (iii) in an amount not less than **[REDACTED]**% of amount of the Encumbrance, if relevant and (iv) in an amount not less than **[REDACTED]**% of Canadian Subcontractor Payment Claim.
- (d) The bond may be posted to the any of the following:
  - (i) to an escrow agent appointed by the WDBA;
  - (ii) a relevant court in Ontario; or
  - (iii) a relevant arbitrator appointed by Project Co and the relevant Subcontractor.
- (e) Project Co will be responsible for providing satisfactory evidence of payment to, or settlement of a disputed amount with, or the release of relevant Encumbrance by, the relevant Subcontractor or Project Co Person, so as to authorize a reduction in the posted bond.

#### 4.6 No Encumbrances by Project Co

- (a) Project Co shall not create, incur, permit or suffer to exist any Encumbrance to be filed, issued, recorded or registered against the Site or any part thereof or any interest therein due to an act or omission of Project Co or any Project Co Person. Project Co shall promptly notify WDBA of any Encumbrance which is not a Title Encumbrance as soon as it becomes aware thereof.
- (b) In the event that the Site or any part thereof or any interest therein becomes subject to any Encumbrance due to an act or omission of Project Co or any Project Co Person and has not been consented to in writing by WDBA, Project Co shall immediately take all steps necessary to remove, vacate or discharge such Encumbrance. If such Encumbrance is not removed, vacated or discharged within 30 days of the filing,

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issuance, recording or registration of such Encumbrance then, without prejudice to any other rights or remedies it may have, WDBA may take whatever steps it deems necessary and appropriate to remove, vacate, bond over or discharge the Encumbrance, including payment of any amount owing or claimed thereunder, and seek immediate recovery from Project Co of the amount of any such payment, and any associated costs, including legal costs (on a full indemnity basis), all of which shall be payable on demand and may be set-off by WDBA from any amount due to Project Co pursuant to this Agreement.

- (c) Subject to Applicable Law, Project Co's obligation to discharge an Encumbrance may be exercised by purchasing a bond as security for WDBA, in order to release the Encumbrance. The bond must be (i) issued by a surety acceptable to WDBA, (ii) in form and substance satisfactory to WDBA, and (iii) in an amount not less than [REDACTED]% of the Encumbrancer's Claim. Project Co is not relieved of any responsibilities or obligations under this Agreement, including the duty to defend and indemnify WDBA, by posting a bond. The cost of any premiums incurred in connection with the bond shall be the responsibility of Project Co and shall not be part of, or cause any adjustment in favour of Project Co to, any Construction Period Payments or the Monthly Payment to Project Co. Upon satisfactory evidence of payment to the Project Co Person, or settlement of a disputed amount, or the release of relevant Encumbrance, WDBA shall authorize a reduction in the posted bond.

#### **4.7 WDBA Audit Rights**

WDBA has the right to audit Project Co's prompt payment and lien waiver processes for both the US and Canadian Subcontractors at any time during the Term but no more than once a Contract Year.

#### **5. STATUS REPORTING**

- (a) On a monthly basis during the DB Period, Project Co will provide a status report to WDBA confirming the following:
- (i) no Project Co Event of Default has occurred which has not been cured or which is continuing, and no event or circumstance has occurred that is likely, with the passage of time or the giving of notice, to constitute a Project Co Event of Default under the Project Agreement; and
  - (ii) Project Co is in compliance with all of its obligations under the Senior Lending Agreements and no default or event of default (howsoever described) has occurred and is continuing under the Senior Lending Agreements.
- (b) Such report shall provide full details of any non-compliance with or default under the Senior Lending Agreements or of any Project Co Event of Default.
- (c) The status report is separate and distinct from the Progress Payment Application and will not be tied to Construction Period Payments.

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**APPENDIX 26-1  
TABLE 1  
COSTS AND PAYMENTS TABLE**

	Column I	Column V	Column VI	Column IX	Column X	Column XI	Column XII	Column XIII	Column XIV	Column XV	Column XVI	Column XVII	Column XXIII	Column XXIV	Column XXV	Column XXVI	Column XXVII	Column XXX
Date (from Financial Close until end of Construction)	Progress Payment Number	Construction Costs	Aggregate Construction Costs	Non-Construction Costs	Aggregate Non-Construction Costs	DB Costs for that period	Aggregate DB Costs	Aggregate DB Costs In Excess of Threshold Amount	Aggregate of Max. Progress Payment for the month	Aggregate Holdback Amount	Remaining Aggregate Holdback	Maximum Progress Payment Amount for the period	Public Art Amount	Community Benefits Costs During Construction – CBC-C	US Interim OM Payments	Canadian Interim OM Payments	Interim OM Payments	Unintended Consequences Fund Fees and Costs during Construction and Interim OM Period
As per the Financial Model	(Identify First Progress Payment after Threshold Date, all subsequent Progress Payments, Handover Payments and SCP)	As per the Financial Model	As per the Price Form	As per the Financial Model	As per the Price Form	As per the Price Form	As per the Price Form	As per the Price Form	As per the Price Form	As per the Price Form	As per the Price Form	As per the Price Form	\$400,000 paid when delivered	As per Community Benefits Plan	As per the Financial Model	As per the Financial Model	Sum of US Interim OM Payments as bid, and Canadian Interim OM Payments as bid.	As per the Financial Model
...	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Until the end of construction	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Maximum DB Costs are [REDACTED]

Threshold Amount is [REDACTED]

LSI Cost is \$[REDACTED]

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**APPENDIX 26-2A  
THRESHOLD APPLICATION**

*This template specifies the minimum scope and content for a Threshold Application. It shall be used by Project Co to attest that the DB Costs paid for from Project Co Funds are equal to or greater than the Threshold Amount.*

<b>TO: Windsor Detroit Bridge Authority,</b>  <b>AND TO: [Independent Certifier]</b>	<b>BRIDGING NORTH AMERICA GENERAL PARTNERSHIP, a</b> <b>BY: general partnership constituted under the laws of Ontario.</b> (“Project Co”)
<b>Threshold Application</b>	<b>Project: GHIB (“Project”)</b>
<b>Date: [Date]</b>	<b>Project Agreement dated as of 28 September, 2018 (“Project Agreement”)</b>

**RE:** Project Agreement (“**Project Agreement**”) dated as of 28 September, 2018 between the Windsor-Detroit Bridge Authority (“**WDBA**”) and Bridging North America General Partnership, a general partnership constituted under the laws of Ontario. (“**Project Co**”).

1. We certify that (i) the DB Costs as at the date hereof are \$<@> and such DB Costs have been paid solely from Project Co Funds and (ii) such amount is equal to or greater than the Threshold Amount.
2. Attached hereto is a copy of all Lender Advance Documentation not previously submitted prior to the Threshold Date.
3. The Threshold Date occurred on <@> [insert date] in accordance with the requirements of the Project Agreement. All requirements for Threshold Certification that are required to have been performed and satisfied prior to the date of this certificate have been performed and satisfied.
4. We certify that all of the documents, material and information required to be submitted or made available to the Independent Certifier by Section 4.1 of Schedule 21 [Certification Procedure] of the Project Agreement has been submitted or made available. Accordingly we request that the Independent Certifier certify the Threshold Requirement has been met and that the Threshold Date is <@>.

Signed: ..... <div style="text-align: right; margin-right: 50px;">For Project Co</div>
Name: .....
Date: .....

5. Unless defined specifically in this Threshold Application or unless the context otherwise requires, capitalized but otherwise undefined terms in this Application will have the respective meanings given to such terms in Schedule 1 [Definitions and Interpretation] of the Project Agreement.

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Schedule 26 [*Construction Period Payments*]



**APPENDIX 26-2B  
THRESHOLD CERTIFICATE**

*This template shall be used by the Independent Certifier to certify, or not, whether Project Co's attestation is correct. Section 1 of the form shall be completed by the Independent Certifier.*

---

1. Certification by Independent Certifier that the Threshold Requirement has been met and that the Threshold Date is <@>.

<b>a) CERTIFIED *</b>		
<b>b) REJECTED *</b>		<i>* delete as appropriate</i>
Signed: .....		
	For Independent Certifier	
Name: .....		Date: .....
<b>Rationale for Decision:</b>		

All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.

**APPENDIX 26-3A  
PROGRESS PAYMENT APPLICATION**

*This template specifies the minimum scope and content for the Progress Payment Application. It shall be used by Project Co and its Construction Contractor and Designer to certify that the DB Work described in the application has been completed in accordance with the requirements in the Project Agreement and to make application for Progress Payment. Sections 1 to 9 of the form, as well as Table 2-1 - Extract from Costs and Payments Table to Current Progress Payment, and Table 2-2 - Request by Project Co for Payment and Calculation of Progress Payment: Project Co Period [#], shall be completed by Project Co Persons.*

<b>TO: Windsor Detroit Bridge Authority,</b>  <b>AND TO: [Independent Certifier]</b>	<b>BRIDGING NORTH AMERICA GENERAL PARTNERSHIP, a</b> <b>BY: general partnership constituted under the laws of Ontario.</b> <span style="float: right;"><b>("Project Co")</b></span>
<b>Progress Payment No:</b>	<b>Project: GHIB</b> <span style="float: right;"><b>("Project")</b></span>
<b>Date:</b> [Date]	<b>Project Agreement dated as of 28 September, 2018</b> <b>("Project Agreement")</b>

**RE:** Project Agreement ("**Project Agreement**") dated as of 28 September, 2018 between the Windsor-Detroit Bridge Authority ("**WDBA**") and Bridging North America General Partnership, a general partnership constituted under the laws of Ontario. ("**Project Co**").

**Part 1**

1. We certify that Project Co has performed DB Work as set out in the DB Schedule [*Describe DB Work Performed*] ("**DB Work Performed**") having Progress of \$<@> during the preceding calendar month. The DB Work Performed including setting out materials, workmanship and testing used, has been performed in compliance with the requirements of this Agreement, subject to the closure of the following Non-Compliances: [(list of Non-Compliances with full details).]

Signed: ..... For Construction Contractor Name: ..... Date: .....
--

2. We confirm that we have used reasonable professional skill and care in the Design Work for the DB Work Performed. We have seen Project Co's documentation referring to the DB Work Performed and have so far as we deemed it necessary witnessed the construction thereof and have found conformance between such documentation and the DB Work Performed as designed for construction.

Signed: ..... For Designer Name: ..... Date: .....
---

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- 3. We certify based on our audit of the quality control procedures that the DB Work Performed has been carried out in accordance with the Project Agreement. We certify that all of the documents, material and information required to be submitted or made available to the Independent Certifier by Section 4.2 of Schedule 21 [*Certification Procedure*] of the Project Agreement has been submitted or made available. Accordingly we request that the Independent Certifier certify the DB Work Performed so that we may apply for a Progress Payment.

Signed: .....
For Project Co
Name: .....
Date: .....

**Part 2**

- 4. Project Co hereby makes application for Progress Payment No. \_\_\_\_ in the amount of [**insert amount in words**] Dollars (\$[**insert amount in numbers**]) in respect of DB Costs pursuant to the terms of the Project Agreement and Schedule 26 [*Construction Period Payments*].
- 5. The period for which this Progress Payment Application is made is: \_\_\_\_\_. The date and the amount set out in this Section 5 corresponds to the date and amount set out under Column XVII of the Costs and Payments Table for the relevant payment period as set out in Appendix 26-1 to the Project Agreement. [*In the event of Partial Payments, Project Co can input multiple values in the Progress Payment No., or the same Progress Payment No. in multiple Progress Payment Application forms. The Total Progress Payments previously paid by WDBA is: \$\_\_\_\_\_.*]
- 6. Project Co hereby certifies that the progress of the DB Work qualifies Project Co for the Progress Payment being requested. In respect of Non-Construction Costs forming part of this claim for payment, Project Co certifies that the applicable portion of the Progress Payment being requested, is for payment of Non-Construction Costs paid or payable by Project Co in respect of the Project for the period.
- 7. Attached hereto in the form prescribed by Appendix 26-3A to Schedule 26 of the Project Agreement is a breakdown of the Maximum Progress Payment Amount for the period set out above into components reflecting: (i) Table 2-1 - Extract from Costs and Payments Table to Current Progress Payment, and (ii) Table 2-2 to - Request by Project Co for Payment and Calculation of Progress Payment: Project Co Period [#].
- 8. The information and calculations contained herein and in the Appendices are certified to be true, accurate and complete.
- 9. All funds received and disbursed by Project Co in connection with the Project prior to the date of this certificate have been solely in respect of the payment of Construction Costs and the Non-Construction Costs due and payable.
- 10. Unless defined specifically in this Progress Payment Application or unless the context otherwise requires, capitalized but otherwise undefined terms in this Progress Payment Application will have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of the Project Agreement.

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Dated at [City], [Province] this [day] day of [month], 20 [ ].

**BRIDGING NORTH AMERICA GENERAL  
PARTNERSHIP**

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

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**Table 2-1  
EXTRACT FROM COSTS AND PAYMENTS TABLE TO CURRENT PROGRESS PAYMENT**

	Column I	Column V	Column VI	Column IX	Column X	Column XI	Column XII	Column XIII	Column XIV	Column XV	Column XVI	Column XVII	Column XXIII	Column XXIV	Column XXV	Column XXVI	Column XXVII	Column XXX
Date (from Financial Close until end of Construction)	Progress Payment Number	Construction Costs	Aggregate Construction Costs	Non-Construction Costs	Aggregate Non-Construction Costs	DB Costs for that period	Aggregate DB Costs	Aggregate DB Costs In Excess of Threshold Amount	Aggregate of Max. Progress Payment for the month	Aggregate Holdback Amount	Remaining Aggregate Holdback	Maximum Progress Payment Amount for the period	Public Art Amount	Community Benefits Costs During Construction – CBC-C	US Interim OM Payments	Canadian Interim OM Payments	Interim OM Payments	Unintended Consequences Fund Fees and Costs during Construction and Interim OM Period
Current Period Progress Payment	As per Appendix 26-1 Table 1	As per Appendix 26-1 Table 1	As per Appendix 26-1 Table 1	As per Appendix 26-1 Table 1	As per Appendix 26-1 Table 1	As per Appendix 26-1 Table 1	As per Appendix 26-1 Table 1	As per Appendix 26-1 Table 1	As per Appendix 26-1 Table 1	As per Appendix 26-1 Table 1	As per Appendix 26-1 Table 1	As per Appendix 26-1 Table 1	As per Appendix 26-1 Table 1	As per Appendix 26-1 Table 1	As per Appendix 26-1 Table 1	As per Appendix 26-1 Table 1	As per Appendix 26-1 Table 1	As per Appendix 26-1 Table 1

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**TABLE 2-2  
REQUEST BY PROJECT CO FOR PAYMENT AND CALCULATION OF PROGRESS PAYMENT: PROJECT CO PERIOD [#]**

	Column I	Column V	Column VI	Column IX	Column X	Column XI	Column XII	Column XIII	Column XIV	Column XV	Column XVI	Column XVII	Column XXIII	Column XXIV	Column XXV	Column XXVI	Column XXVII	Column XXX
Date (from Financial Close until end of Construction)	Progress Payment Number	Construction Costs	Aggregate Construction Costs	Non-Construction Costs	Aggregate Non-Construction Costs	DB Costs for that period	Aggregate DB Costs	Aggregate DB Costs In Excess of Threshold Amount	Aggregate of Max. Progress Payment for the month	Aggregate Holdback Amount	Remaining Aggregate Holdback	Maximum Progress Payment Amount for the period	Public Art Amount	Community Benefits Costs During Construction – CBC-C	US Interim OM Payments	Canadian Interim OM Payments	Interim OM Payments	Unintended Consequences Fund Fees and Costs during Construction and Interim OM Period
Current Period Progress Payment	Actuals	Costs proposed to be certified by the IC under Schedule 21 procedures against the Financial Model	Costs proposed to be certified by the IC under Schedule 21 procedures against the Financial Model	Difference between last period's Table 2-2 "Aggregate Non-Construction Costs", and this period's Table 2-2 "Aggregate Non-Construction Costs"	Pro-rate amount (Progress Ratio * Aggregate Non-Construction Costs" in the Costs and Payments Table	As calculated by Project Co	As calculated by Project Co	As calculated by Project Co	As calculated by Project Co	As calculated by Project Co	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals

Applicable HST and other applicable taxes on:

Construction Costs for the period are \$[REDACTED]

Non-Construction Costs for the period are \$[REDACTED]

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*



**TABLE 2-3  
CERTIFICATION FOR PROGRESS PAYMENT**

	Column I	Column V	Column VI	Column IX	Column X	Column XI	Column XII	Column XIII	Column XIV	Column XV	Column XVI	Column XVII	Column XXIII	Column XXIV	Column XXV	Column XXVI	Column XXVII	Column XXX
Date (from Financial Close until end of Construction)	Progress Payment Number	Construction Costs	Aggregate Construction Costs	Non-Construction Costs	Aggregate Non-Construction Costs	DB Costs for that period	Aggregate DB Costs	Aggregate DB Costs In Excess of Threshold Amount	Aggregate of Max. Progress Payment for the month	Aggregate Holdback Amount	Remaining Aggregate Holdback	Maximum Progress Payment Amount for the period	Public Art Amount	Community Benefits Costs During Construction – CBC-C	US Interim OM Payments	Canadian Interim OM Payments	Interim OM Payments	Unintended Consequences Fund Fees and Costs during Construction and Interim OM Period
Current Period Progress Payment	Actuals	Actuals certified by the IC under Schedule 21 procedures against the Financial Model	Actuals certified by the IC under Schedule 21 procedures against the Financial Model	Difference between last period's Table 2-3 "Aggregate Non-Construction Costs", and this period's Table 2-3 "Aggregate Non-Construction Costs"	Pro-rate amount (Progress Ratio * Aggregate Non-Construction Costs) in the Costs and Payments Table	Actuals as calculated by the IC	Actuals as calculated by the IC	Actuals as calculated by the IC	Lesser of "Aggregate of Max. Progress Payment for the month" in the Costs and Payments Table and "Aggregate of Max. Progress Payment for the month" in Table	Actuals as calculated by the IC	Actuals as calculated by the IC	Actuals as calculated by the IC	Actuals as calculated by the IC	Actuals as calculated by the IC	Actuals	Actuals	Actuals	Actuals

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**APPENDIX 26-4A  
SUBSTANTIAL COMPLETION APPLICATION**

*This template specifies the minimum scope and content for a Substantial Completion Application. It shall be used by Project Co and its Construction Contractor and Designer to attest the scope and status of all of the DB Work, including any deficiencies. It shall additionally be used by Project Co to make application for payment for Substantial Completion. Sections 1 to 10 of the form, as well as Schedule 1: Information for Substantial Completion Payment, shall be completed by Project Co Persons.*

<p><b>TO:</b> Windsor Detroit Bridge Authority,</p> <p><b>AND TO:</b> [Independent Certifier]</p>	<p><b>BRIDGING NORTH AMERICA GENERAL PARTNERSHIP</b>, a general partnership constituted under the laws of Ontario. <b>(“Project Co”)</b></p>
<p><b>Substantial Completion Application</b></p>	<p><b>Project: GHIB</b> <b>(“Project”)</b></p>
<p><b>Date:</b> [Date]</p>	<p><b>Project Agreement dated as of 28 September, 2018</b> <b>(“Project Agreement”)</b></p>

**RE:** Project Agreement (**“Project Agreement”**) dated as of 28 September, 2018 between the Windsor-Detroit Bridge Authority (**“WDBA”**) and Bridging North America General Partnership, a general partnership constituted under the laws of Ontario. (**“Project Co”**).

**Part 1**

1. We certify that the design of all Project Infrastructure as described in Review Submittal Certificates RSC # [...] Rev# [...] ... has been satisfactorily translated into the construction of all Components of the Facility and this DB Work including setting out, materials, workmanship and testing used is in compliance with the requirements of the Project Agreement, subject to the closure of the following deficiencies: [..... (list of deficiencies with full details) .....].

<p>Signed: .....</p> <p>For Construction Contractor</p> <p>Name: .....</p> <p>Date: .....</p>
---

2. We confirm that we have successfully arranged for the financing for the Unintended Consequences Fund, in accordance with the terms of Schedule 36 [*Community Benefits*] of this Project Agreement.

3. We confirm that we have used reasonable professional skill and care in the design of the DB Work. We have seen Project Co’s documentation referring to the DB Work and have so far as we deemed it necessary witnessed the construction thereof and have found conformance between such documentation and the DB Work.

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

\*We have reviewed the deficiency list for the DB Work, and we are of the opinion that the deficiencies are minor in nature, and subject to the closure of the deficiency items being accepted by all parties, we are satisfied that the design intent will not be compromised.

(\* delete if no deficiencies)

Signed: .....
For Designer
Name: .....
Date: .....

4. We certify based on our audit of the quality control procedures that the relevant DB Work has been carried out in accordance with the Project Agreement. We certify that all of the documents, material and information required to be submitted or made available to the Independent Certifier by Section 4.6 of Schedule 21 [*Certification Procedure*] of the Project Agreement has been submitted or made available. We request that the Project Infrastructure be certified to be at Substantial Completion.

Signed: .....
For Project Co
Name: .....
Date: .....

**Part 2**

5. Project Co hereby makes application for the Substantial Completion Payment in the amount of [**insert amount in words**] Dollars (**[\$insert amount in numbers]**) pursuant to the terms of the Project Agreement and Schedule 26 [*Construction Period Payments*] to the Project Agreement.
6. Project Co has certified to WDBA that all requirements for Substantial Completion and all conditions for issuance of the Substantial Completion Certificate have been satisfied, and that it has performed all requirements and provided all assurances and documents to obtain Substantial Completion.
7. Attached hereto as Table 1 is a breakdown of the amount of the Substantial Completion Payment set out above into components reflecting: (i) Construction Costs and (ii) Non-Construction Costs.
8. Project Co has completed and submitted the Project Co Lien Waiver Form, as well as all Contractor Lien Waiver Forms, provided in Appendix 26-9.
9. Project Co has complied with all requirements of Applicable Law in connection with the Project.
10. Unless defined specifically in this Substantial Completion Application or unless the context otherwise requires, capitalized but otherwise undefined terms in this Substantial Completion Application will have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of the Project Agreement.

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

The information and calculations contained herein and in Schedule 1 of this Appendix are certified to be true, accurate and complete.

Dated at [City], [Province] this [day] day of [month], 20<@>.

**BRIDGING NORTH AMERICA GENERAL  
PARTNERSHIP**

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

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

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**TABLE 1**  
**INFORMATION FOR SUBSTANTIAL COMPLETION PAYMENT**

(a)	the Aggregate Holdback at Substantial Completion	
(b)	any unpaid Progress Payments as of the date of payment of the Substantial Completion Payment;	
(c)	any unpaid Interim OM Payments as of the date of payment of the Substantial Completion Payment;	
	LESS the sum of:	
(d)	any outstanding deductions to be made for the Michigan Interchange Buy-Down Amount pursuant to Section 2.12 of this Schedule;	
(e)	Minor Deficiency Holdback Amounts to be applied against the Substantial Completion Payment pursuant to this Schedule and Schedule 21 [ <i>Certification Procedure</i> ], as applicable; and	
(f)	any outstanding Assessed Traffic Payment Adjustments.	

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

**APPENDIX 26-4B  
SUBSTANTIAL COMPLETION CERTIFICATE**

*This template shall be used by the Independent Certifier to certify, or not, Substantial Completion. Section 1 of the form shall be completed by the Independent Certifier.*

---

- 1. The Independent Certifier has certified to WDBA that all requirements for Substantial Completion and all conditions for issuance of the Certificate have been satisfied, and that Project Co has performed all requirements and provided all assurances and documents set out in Section 4.7 of Schedule 21 [*Certification Procedure*] of the Project Agreement.

<b>a) CERTIFIED *</b>	
<b>b) CERTIFIED WITH LIST OF MINOR DEFICIENCIES *</b>	
<b>c) REJECTED *</b>	<i>* delete as appropriate</i>
Signed: .....	
For Independent Certifier	
Name: .....	Date: .....
<b>Rationale for Decision:</b>	

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

**APPENDIX 26-5A  
POE AGENCY BUILDINGS HANDOVER APPLICATION**

*This template specifies the minimum scope and content for a POE Agency Buildings Handover Application. It shall be used by Project Co and its Construction Contractor and Designer to attest the scope and status of the relevant POE work, including any deficiencies. The Canadian POE Agency Buildings Handover Application will attest to the commissioning and licensing of the LSI Building and FS-LSI Equipment. Sections 1 to 3 of the form shall be completed by Project Co Persons.*

<p><b>TO:</b> Windsor Detroit Bridge Authority,</p> <p><b>AND TO:</b> [Independent Certifier]</p>	<p><b>BRIDGING NORTH AMERICA GENERAL PARTNERSHIP</b>, a general partnership constituted under the laws of Ontario. <b>(“Project Co”)</b></p>
<p><b>POE:</b> [Canadian POE Agency Building/US POE Agency Building]</p>	<p><b>Project: GHIB</b> <b>(“Project”)</b></p>
<p><b>Date:</b> [Date]</p>	<p><b>Project Agreement dated as of 28 September, 2018</b> <b>(“Project Agreement”)</b></p>

**RE:** Project Agreement (“**Project Agreement**”) dated as of 28 September, 2018 between the Windsor-Detroit Bridge Authority (“**WDBA**”) and Bridging North America General Partnership, a general partnership constituted under the laws of Ontario. (“**Project Co**”).

1. We certify that the design of [\*POE] as described in Review Submittal Certificates RSC # [...] Rev# [...] ... has been satisfactorily translated into the construction of [\*POE] (the “**POE Work**”) and the POE Work including setting out materials, workmanship and testing used, are in compliance with the requirements of the Project Agreement, subject to the correction of the following deficiencies: [..... (list of deficiencies with full details) .....]

Signed: ..... For Construction Contractor Name: ..... Date: .....
--

2. We confirm that we have used reasonable professional skill and care in the Design Work for the POE Work. We have seen Project Co’s documentation referring to the POE Work and have so far as we deemed it necessary witnessed the construction thereof and have found conformance between such documentation and the POE Work as designed for construction.

\* We have reviewed the deficiency list for the POE Work, and we are of the opinion that the deficiencies are minor in nature, and subject to the correction of the deficiency items being accepted by all parties, we are satisfied that the design intent will not be compromised.  
 (\* delete if no deficiencies)

Signed: ..... For Designer Name: ..... Date: .....
---

*All information contained in this Record/Document shall not be disclosed in confidence by the parties. The R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

- 3. We certify based on our audit of the quality control procedures that the POE Work has been carried out in accordance with the Project Agreement and that [*the Canadian POE Agency Buildings/US POE Agency Buildings*] are ready for safe access and occupancy by the relevant Governmental Authorities for the installation of furniture, fixtures and equipment and for the purpose of training their personnel. We certify that all of the documents, material and information required to be submitted or made available to the Independent Certifier by Section 4.5 of Schedule 21 [*Certification Procedure*] of the Project Agreement has been submitted or made available. We request that the POE Work be certified to be ready for Handover.

Signed: .....	
	For Project Co
Name: .....	
Date: .....	

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

**Appendix 26-5B  
POE AGENCY BUILDINGS HANDOVER CERTIFICATE**

*This template shall be used by the Independent Certifier to certify, or not, whether the DB Work relevant to the Canadian POE Agency Buildings – including the commissioned and licensed LSI Building and FS-LSI Equipment - or the US POE Agency Buildings, as applicable, has been completed in a manner sufficient to provide safe access to and use of such buildings by the relevant Governmental Authorities and their employees and contractors for the installation of furniture, fixtures and equipment and the occupancy of such buildings for training purposes. Section 1 of the form shall be completed by the Independent Certifier.*

---

Certification by Independent Certifier that the [Canadian POE Agency Buildings/US POE Agency Buildings] are ready for safe access and occupancy by the relevant Governmental Authorities for the installation of furniture, fixtures and equipment and for the purpose of training their personnel.

1. The Independent Certifier has certified to WDBA that all requirements for [US POE Agency Buildings Handover/Canadian POE Agency Buildings Handover] and all conditions for issuance of the Certificate for such Certification Event have been satisfied and that Project Co has performed all requirements and provided all assurances and documents set out in Section 4.5 of Schedule 21 [Certification Procedure] of the Project Agreement.

<p><b>a) CERTIFIED *</b></p> <p><b>b) CERTIFIED WITH LIST OF MINOR DEFICIENCIES *</b></p> <p><b>c) REJECTED *</b></p> <p>Signed: .....                      For Independent Certifier</p> <p>Name: .....                      Date: .....</p> <p><b>Rationale for Decision:</b></p>	<p><i>* delete as appropriate</i></p>
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*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*



**APPENDIX 26-6A  
PUBLIC ART APPLICATION**

**[Note: This template can be revised to provide for payment as components of the public art are completed]** This template specifies the minimum scope and content for Public Art Application. It shall be used by Project Co to attest that the Public Art is fully complete and delivered. It shall additionally be used by Project Co to make application for Public Art Payment. Sections 1 to 4 of the form shall be completed by Project Co Persons.

<p><b>TO: Windsor Detroit Bridge Authority,</b></p> <p><b>AND TO: [Independent Certifier]</b></p>	<p><b>BRIDGING NORTH AMERICA GENERAL PARTNERSHIP, a</b> <span style="float:right"><b>(“Project Co”)</b></span>                  a general partnership constituted under the laws of Ontario.</p>
<p><b>Public Art Application</b></p>	<p><b>Project: GHIB</b> <span style="float:right"><b>(“Project”)</b></span></p>
<p><b>Date:</b> [Date]</p>	<p><b>Project Agreement dated as of 28 September, 2018</b>  <b>(“Project Agreement”)</b></p>

**RE:** Project Agreement (“**Project Agreement**”) dated as of 28 September, 2018 between the Windsor-Detroit Bridge Authority (“**WDBA**”) and Bridging North America General Partnership, a general partnership constituted under the laws of Ontario. (“**Project Co**”).

**Part 1**

1. We certify that the Public Art has been satisfactorily completed and delivered in accordance with the Project Agreement. We certify that all of the documents, materials and information required to be submitted or made available to the Independent Certifier by Section 4.3 of Schedule 21 [Certification Procedure] of the Project Agreement has been submitted or made available.

Signed: ..... For Project Co Name: ..... Date: .....
---

**Part 2**

Project Co hereby makes application for the Public Art Payment in the amount of [insert amount in words] Dollars (\$[insert amount in numbers]) pursuant to the terms of the Project Agreement and Schedule 26 [Construction Period Payments] to the Project Agreement.

1. Project Co has certified to WDBA that the Public Art has been fully completed and delivered, and all requirements and conditions for issuance of the Public Art Certificate have been satisfied.

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

2. Unless defined specifically in this Public Art Application or unless the context otherwise requires, capitalized but otherwise undefined terms in this certificate will have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of the Project Agreement.

The information and calculations contained herein are certified to be true, accurate and complete.

Dated at [City], [Province] this [day] day of [month], 20<@>.

**BRIDGING NORTH AMERICA GENERAL  
PARTNERSHIP**

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

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

**APPENDIX 26-6B  
PUBLIC ART CERTIFICATE**

*This template shall be used by the Independent Certifier to certify, or not, completion of the Public Art. Section 1 of the form shall be completed by the Independent Certifier.*

---

- 1. Certification by Independent Certifier that completion and delivery of the Public Art is complete.

<b>a) CERTIFIED *</b>		
<b>b) REJECTED *</b>		<i>* delete as appropriate</i>
Signed: .....	For Independent Certifier	
Name: .....	Date: .....	
<b>Rationale for Decision:</b>		

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

**APPENDIX 26-7A  
COMMUNITY BENEFITS APPLICATION**

*This template specifies the minimum scope and content for a Community Benefits Application. It shall be used by Project Co to attest that the Community Benefits Plan for the applicable period is fully complete and delivered. Sections 1 to 5 of the form shall be completed by Project Co Persons.*

---

<b>TO:</b> Windsor Detroit Bridge Authority,  <b>AND TO:</b> [Independent Certifier]	<b>BY:</b> BRIDGING NORTH AMERICA GENERAL PARTNERSHIP, a general partnership constituted under the laws of Ontario. ("Project Co")
<b>Construction Month # / OMR Month #:</b>	<b>Initiative Title:</b>
<b>Community Benefits Application</b>	<b>Project: Ghib</b> ("Project")
<b>Date:</b> [Date]	<b>Project Agreement dated as of 28 September, 2018</b> ("Project Agreement")

**RE:** Project Agreement ("**Project Agreement**") dated as of 28 September, 2018 between the Windsor-Detroit Bridge Authority ("**WDBA**") and Bridging North America General Partnership, a general partnership constituted under the laws of Ontario. ("**Project Co**").

1. We certify that the Community Benefits Plan for the applicable period has been satisfactorily completed and delivered in accordance with the Project Agreement. We certify that all of the documents, materials and information required to be submitted or made available to the Independent Certifier by Section 4.4 of Schedule 21 [*Certification Procedure*] of the Project Agreement has been submitted or made available.

Signed: ..... For Project Co Name: ..... Date: .....
---

2. We certify that Project Co has performed DB Work as set out in Project Co's Community Benefits Plan, having completed the Plan for the applicable period, worth \$<@> during the preceding calendar month. The work performed including setting out materials, workmanship and testing used, has been performed in compliance with the requirements of the Project Agreement, subject to the correction of the following Non-Compliances: [..... (list of Non-Compliances with full details) .....].

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*



**APPENDIX 26-7B  
COMMUNITY BENEFITS CERTIFICATE**

*This template shall be used by the Independent Certifier to certify, or not, completion of the Community Benefits Plan for the applicable period. Section 1 of the form shall be completed by the Independent Certifier.*

---

Certification by Independent Certifier of the DB Work performed under the Community Benefits Plan for the applicable period.

- 1. Certification by Independent Certifier that completion and delivery of the Community Benefits Plan for the applicable period, is complete.

<p><b>a) CERTIFIED *</b></p> <p><b>b) CERTIFIED WITH MINOR DEFICIENCIES*</b></p> <p><b>c) REJECTED *</b></p> <p>Signed: .....</p> <p>For Independent Certifier</p> <p>Name: ..... Date: .....</p> <p><b>Rationale for Decision:</b></p>	<p><i>* delete as appropriate</i></p>
---	---------------------------------------

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

**APPENDIX 26-8A  
FINAL COMPLETION APPLICATION**

*This template specifies the minimum scope and content for a Final Completion Application [Note: This template can be used for periodic certification, that Minor Deficiencies have been remedied]. It shall be used by Project Co and its Construction Contractor and Designer to attest the scope and status of the DB Work. Sections 1 to 3 of the form shall be completed by Project Co Persons.*

<b>TO:</b> Windsor Detroit Bridge Authority,	<b>BY:</b> BRIDGING NORTH AMERICA GENERAL PARTNERSHIP, a general partnership constituted under the laws of Ontario. (“Project Co”)
<b>AND TO:</b> [Independent Certifier]	
<b>Final Completion Application</b>	<b>Project: GHIB</b> (“Project”)
<b>Date:</b> [Date]	<b>Project Agreement dated as of 28 September, 2018</b> (“Project Agreement”)

**RE:** Project Agreement (“Project Agreement”) dated as of 28 September, 2018 between the Windsor-Detroit Bridge Authority (“WDBA”) and Bridging North America General Partnership, a general partnership constituted under the laws of Ontario. (“Project Co”).

1. We certify that the DB Work including setting out, materials, workmanship and testing used are in compliance with the requirements of the Project Agreement.

We certify that all Minor Deficiencies identified in the relevant Minor Deficiency Lists pertaining to all Project Infrastructure have been remedied. (\* delete if no deficiencies).

We certify that all FAER Minor Deficiencies have been remedied. (\* delete if no deficiencies).

We certify that all Medium Non-Compliances and Critical Non-Compliances categorized as such at the time of Final Completion, have been resolved.

Signed: .....	For Construction Contractor
Name: .....	
Date: .....	

2. We certify based on our audit of the quality control procedures that the DB Work has been carried out in accordance with this Agreement. We certify that all of the documents, material and information required to be submitted or made available to the Independent Certifier by Section 4.7 of Schedule 21 [Certification Procedure] of the Project Agreement has been submitted or made available. We request that the Project Infrastructure be certified to be at Final Completion.

Signed: .....	For Project Co
Name: .....	
Date: .....	

*All information contained in this Record/Document shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

3. Unless defined specifically in this Final Completion Application or unless the context otherwise requires, capitalized but otherwise undefined terms in this Application will have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of the Project Agreement.

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*



**APPENDIX 26-8B  
FINAL COMPLETION CERTIFICATE**

*This template shall be used by the Independent Certifier to certify, or not, Final Completion. Section 1 of the form shall be completed by the Independent Certifier.*

---

**1. Certification by Independent Certifier that the Project Infrastructure is at Final Completion.**

<b>a) CERTIFIED *</b>		
<b>b) REJECTED *</b>		<i>* delete as appropriate</i>
Signed: .....		
For Independent Certifier		
Name: .....	Date: .....	
<b>Rationale for Decision:</b>		

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

**APPENDIX 26-9A  
CANADIAN PROMPT PAYMENT FORMS**

I/we \_\_\_\_\_ Bridging North America General Partnership, a general partnership constituted under the laws of Ontario. ("**Project Co**").state that all payments have been made to Subcontractors other than the itemized list below:

Contractor Name	Invoice No.	Work Performed	Disputed Amount (\$)	Reason for Dispute

Additional rows to be created as necessary.

Project Co confirms that bonds have been posted in the amount of **[REDACTED]**% of the total disputed amount. Attached hereto are the relevant Canadian Contractor Payment forms.

**BRIDGING NORTH AMERICA GENERAL PARTNERSHIP**

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

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

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**APPENDIX 26-9B  
CANADIAN CONTRACTOR PAYMENT FORMS**

Amounts duly owing to \_\_\_\_\_ (Subcontractor), per contract \_\_\_\_\_ (ID #), with \_\_\_\_\_ (Contractor) to provide \_\_\_\_\_ (description of materials or services) for work on the Ghib Project have been:

Fully paid and satisfied. By signing this waiver, all my/our rights of dispute or claims against the described property are waived and released.

Will be fully paid and satisfied if paid \$ \_\_\_\_\_ due by \_\_\_\_\_ (date). By signing this waiver, and subject to such payment, all my/our rights of dispute or claims against the described property are waived and released.

Has not been paid and is currently under dispute with \_\_\_\_\_ (Subcontractor), because \_\_\_\_\_ (description of dispute).

Has not been paid, and no dispute proceedings have been instigated.

Other

\_\_\_\_\_  
\_\_\_\_\_  
(description of situation).

\_\_\_\_\_ (Subcontractor Payor) hereby indemnifies and holds harmless \_\_\_\_\_ (Prime Contractor) from and against all liability and costs (including reasonable legal fees) arising from any dispute or claim that may be asserted at any time in the future against \_\_\_\_\_ (Prime Contractor), or its successors or assigns, by \_\_\_\_\_ (Subcontractor) or any other party by virtue of the work performed on the Ghib Project.

Dated at [City], [Province] this [day] day of [month], 20<@>.

**[Subcontractor]**

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

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**APPENDIX 26-9C  
MICHIGAN CONSTRUCTION LIEN ACT NOTICE OF COMMENCEMENT**

STATE OF \_\_\_\_\_ )  
 :ss.  
 COUNTY OF \_\_\_\_\_ )

<p>1. Owner(s) or Lessee(s), address(es), and capacity(ies)</p> <p>Lessee and Contracting Party:                  Windsor-Detroit Bridge Authority,                  a Canadian Crown Corporation,                  100 Ouellette Avenue, Suite 400                  Windsor, ON N9A 6T3</p> <p>With a U.S. PO Box:                  Windsor-Detroit Bridge Authority                  PO Box _____                  100 Renaissance Ctr., Suite 104                  Detroit, Michigan 48243</p>	<p>4. Legal Description of Real Property</p> <p>See <b>Exhibit A</b> attached to this Notice of Commencement.</p>
<p>2. Fee Owner(s) and address(es) if different</p> <p>State of Michigan                  Department of Transportation                  Murray D. Van Wagoner Building                  PO Box 30050                  Lansing, Michigan 48909</p>	
<p>3. Owner(s) or Lessee(s) Designee and address for receipt of notices</p> <p><u>If Notice is sent by Certified Mail:</u>                  Windsor-Detroit Bridge Authority                  PO Box _____                  100 Renaissance Ctr., Suite 104                  Detroit, Michigan 48243                  Attn: _____</p> <p><u>If Notice is sent by Personal Delivery:</u>                  Windsor-Detroit Bridge Authority                  100 Ouellette Avenue, Suite 400                  Windsor, ON N9A 6T3                  Attn: _____</p>	<p>5. General Contractor (if any) and address</p>

To lien claimants and subsequent purchasers:

Take notice that work is about to commence on an improvement to the real property described in this instrument. A person having a construction lien may preserve the lien by providing a

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Notice of Furnishing to the above-named designee and the general contractor, if any, and by timely recording a claim of lien, in accordance with law.

A person having a construction lien arising by virtue of work performed on this improvement should refer to the name of the owner or lessee and the legal description appearing in this Notice. A person subsequently acquiring an interest in the land described is not required to be named in a claim of lien.

A copy of this Notice with an attached form for Notice of Furnishing may be obtained upon making a written request by certified mail to the above-named owner or lessee, the designee, or the person with whom you have contracted.

I, \_\_\_\_\_, not individually but as \_\_\_\_\_ of Windsor-Detroit Bridge Authority, being first sworn, depose and say: that Windsor-Detroit Bridge Authority is the Lessee of the above-described real property; that I have read and signed the foregoing Notice of Commencement and know the contents thereof and have knowledge of the facts therein contained and that the same are true to the best of my knowledge and belief.

WINDSOR-DETROIT BRIDGE AUTHORITY

By \_\_\_\_\_  
Name printed: \_\_\_\_\_  
Its \_\_\_\_\_

Subscribed to, sworn to, and acknowledged before me in \_\_\_\_\_ County, Michigan, on \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

Notary public, State of Michigan, County of \_\_\_\_\_  
My commission expires \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

Prepared by:

**PLEASE NOTE: A BLANK NOTICE**

**OF FURNISHING FORM MUST BE  
APPENDED TO THIS DOCUMENT IF  
IT IS NOT TO BE RECORDED.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(name and address of party)

**NOTICE: THE LESSEE HAS EXECUTED THIS NOTICE OF COMMENCEMENT TO COMPLY WITH THE MICHIGAN CONSTRUCTION LIEN ACT TO THE EXTENT THAT IT APPLIES TO THIS INTERNATIONAL PUBLIC INFRASTRUCTURE PROJECT KNOWN AS THE GORDIE HOWE INTERNATIONAL BRIDGE. EXECUTION, RECORDING AND POSTING OF THIS NOTICE OF COMMENCEMENT SHALL NOT BE CONSTRUED OR INTERPRETED AS AN ADMISSION, ACKNOWLEDGMENT, CONSENT OR AGREEMENT THAT THE MICHIGAN CONSTRUCTION LIEN ACT APPLIES TO THIS PUBLIC PROJECT.**

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**EXHIBIT A**

**MICHIGAN PROPERTY  
LEGAL DESCRIPTION OF PROPERTY IN MICHIGAN  
FOR THE INTERNATIONAL PUBLIC INFRASTRUCTURE PROJECT KNOWN  
AS THE GORDIE HOWE INTERNATIONAL BRIDGE**

[Insert Legal Descriptions]

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Schedule 26 [Construction Period Payments]



I make this statement as the (contractor (subcontractor) or as \_\_\_\_\_ of the (contractor) (subcontractor) to represent to the owner or lessee of the property and his or her agents that the property is free from claims of construction liens, or the possibility of construction liens, except as specifically set out in this statement and except for claims of construction liens by laborers which may be provided under section 109 of the construction lien act, 1980 PA 497, MCL 570.1109.

WARNING TO OWNER OR LESSEE: AN OWNER OR LESSEE OF THE PROPERTY SHALL NOT RELY ON THIS SWORN STATEMENT TO AVOID THE CLAIM OF A SUBCONTRACTOR, SUPPLIER, OR LABORER WHO HAS PROVIDED A NOTICE OF FURNISHING OR A LABORER WHO MAY PROVIDE A NOTICE OF FURNISHING UNDER SECTION 109 OF THE CONSTRUCTION LIEN ACT, 180 PA 497, MCL 570.1109, TO THE DESIGNEE OR TO THE OWNER OR LESSEE IF THE DESIGNEE IS NOT NAMED OR HAS DIED.

IF THIS SWORN STATEMENT IS IN REGARD TO A RESIDENTIAL STRUCTURE, ON RECEIPT OF THE SWORN STATEMENT, THE OWNER OR LESSEE, OR THE OWNER'S OR LESSEE'S DESIGNEE, MUST GIVE NOTICE OF ITS RECEIPT, EITHER IN WRITING, BY TELEPHONE, OR PERSONALLY, TO EACH SUBCONTRACTOR, SUPPLIER, AND LABORER WHO HAS PROVIDED A NOTICE OF FURNISHING UNDER SECTION 109 OR, IF A NOTICE OF FURNISHING IS EXCUSED UNDER SECTION 109 OR, IF A NOTICE OF FURNISHING IS EXCUSED UNDER 108 OR 108A, TO EACH SUBCONTRACTOR, SUPPLIER, AND LABORER NAMED IN THE SWORN STATEMENT. IF A SUBCONTRACTOR, SUPPLIER, OR LABORER WHO IS ENTITLED TO NOTICE OF RECEIPT OF THE SWORN STATEMENT MAKES A REQUEST, THE OWNER, LESSEE, OR DESIGNEE SHALL PROVIDE THE REQUESTER A COPY OF THE SWORN STATEMENT WITHIN 10 BUSINESS DAYS AFTER RECEIVING THE REQUEST.

/s/ \_\_\_\_\_  
Deponent

WARNING TO DEPONENT: A PERSON WHO GIVES A FALSE SWORN STATEMENT WITH INTENT TO DEFRAUD IS SUBJECT TO CRIMINAL PENALTIES AS PROVIDED IN SECTION 110 OF THE CONSTRUCTION LIEN ACT, 1980 PA 497 MCL 570.1110.

Subscribed and sworn to before me on (DATE).

/s/ \_\_\_\_\_

**[Notary public's name, as it appears on application for commission]**

Notary public, State of Michigan, County of [county].

My commission expires [date].

**[If acting in county other than county of commission: Acting in the County of [county].]**

15557735-1

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**APPENDIX 26-9E  
MICHIGAN CONSTRUCTION LIEN ACT NOTICE OF FURNISHING**

TO: Windsor Detroit Bridge Authority \_\_\_\_\_  
(Name of Designee (or Owner or Lessee) from Notice of Commencement)

\_\_\_\_\_  
(Address from Notice of Commencement)

Please take notice that the undersigned is furnishing to

\_\_\_\_\_  
(Name and address of other contracting party)

certain labor or material for \_\_\_\_\_

\_\_\_\_\_  
(Describe type of work)

in connection with the improvement to the real property described in the Notice of Commencement recorded in liber \_\_\_\_\_, on page \_\_\_\_\_,

\_\_\_\_\_  
(Name of county)

records, \_\_\_\_\_  
or (a copy of which is attached hereto)

**WARNING TO OWNER: THIS NOTICE IS REQUIRED BY THE MICHIGAN CONSTRUCTION LIEN ACT. IF YOU HAVE QUESTIONS ABOUT YOUR RIGHTS AND DUTIES UNDER THIS ACT, YOU SHOULD CONTACT AN ATTORNEY TO PROTECT YOU FROM THE POSSIBILITY OF PAYING TWICE FOR THE IMPROVEMENTS TO YOUR PROPERTY.**

Dated: \_\_\_\_\_, 20\_\_\_\_

(Name of Lien Claimant)

\_\_\_\_\_  
(Address of Lien Claimant)

By

\_\_\_\_\_  
(Name and capacity of party signing for Lien Claimant)

\_\_\_\_\_  
(Address of party signing)

*[A notice of furnishing is required to be provided to the designee and the general contractor, if any, as named in the notice of commencement. If no designee is named in the notice of*

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*commencement, use the name of the owner or lessee. If no notice of commencement was recorded or given, use the name and address from the county records.*

*If the instrument number or liber and page of recording are not available, a copy of the notice of commencement may be attached. If no notice of commencement is available or if the legal description on it is not correct, a correct legal description should be obtained and attached.]*

15723354

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Schedule 26 [Construction Period Payments]

**APPENDIX 26-9F  
MICHIGAN CONTRACTOR LIEN WAIVER FORMS**

**FULL UNCONDITIONAL WAIVER**

My/our contract with \_\_\_\_\_ to provide \_\_\_\_\_  
for the improvement of the property described as: \_\_\_\_\_ has been fully paid and  
satisfied. By signing this waiver, all my/our construction lien rights against the described property are  
waived and released.

If the improvement is provided to property that is a residential structure and if the owner or lessee of the  
property or the owner's or lessee's designee has received a notice of furnishing from me/one of us or if  
I/we are not required to provide one, and the owner, lessee, or designee has not received this waiver  
directly from me/one of us, the owner, lessee, or designee may not rely upon it without contacting me/one  
of us, either in writing, by telephone, or personally, to verify that it is authentic.

Signed on: \_\_\_\_\_

/s/ \_\_\_\_\_  
(signature of lien claimant)

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

**DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.**

15557731-1

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**APPENDIX 26-9G  
MICHIGAN CONTRACTOR LIEN WAIVER FORMS**

**FULL CONDITIONAL WAIVER**

My/our contract with \_\_\_\_\_  
(other contracting party)

to provide \_\_\_\_\_  
for the improvement of the property described as: \_\_\_\_\_

\_\_\_\_\_ has been fully paid and satisfied. By signing this waiver, all my/our construction lien rights against the described property are waived and released.

This waiver is conditioned on actual payment of \_\_\_\_\_

If the improvement is provided to property that is a residential structure and if the owner or lessee of the property or the owner's or lessee's designee has received a notice of furnishing from me/one of us or if I/we are not required to provide one, and the owner, lessee, or designee has not received this waiver directly from me/one of us, the owner, lessee or designee may not rely upon it without contacting me/one of us, either in writing, by telephone, or personally, to verify that it is authentic.

\_\_\_\_\_  
\_\_\_\_\_  
(signature of lien claimant)

Signed on: \_\_\_\_\_ Address: \_\_\_\_\_  
(date)

Telephone: \_\_\_\_\_

**DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.**

15557715-1

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**APPENDIX 26-9H  
MICHIGAN CONTRACTOR LIEN WAIVER FORMS**

**PARTIAL UNCONDITIONAL WAIVER**

I/we have a contract with \_\_\_\_\_  
(other contracting party)  
to provide \_\_\_\_\_ for the improvement to  
the property described as \_\_\_\_\_

\_\_\_\_\_, and by signing this waiver waive  
my/our construction lien to the amount of \$ \_\_\_\_\_, for  
labor/materials provided through \_\_\_\_\_  
(date)

This waiver, together with all previous waivers, if any, (circle one) does / does not cover  
all amounts due to me/us for contract improvement provided through the date shown above.

If the improvement is provided to property that is a residential structure and if the owner  
or lessee of the property or the owner's or lessee's designee has received a notice of furnishing from  
me/one of us or if I/we are not required to provide one, and the owner, lessee, or designee has not  
received this waiver directly from me/one of us, the owner, lessee or designee may not rely upon it  
without contacting me/one of us, either in writing, by telephone, or personally, to verify that it is authentic.

\_\_\_\_\_  
\_\_\_\_\_  
(signature of lien claimant)

Signed on: \_\_\_\_\_  
(date)

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

**DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.**

15557703-1

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**APPENDIX 26-9I  
MICHIGAN CONTRACTOR LIEN WAIVER FORMS**

**PARTIAL CONDITIONAL WAIVER**

I/we have a contract with \_\_\_\_\_  
(other contracting party)  
to provide \_\_\_\_\_ for the improvement to  
the property described as \_\_\_\_\_

\_\_\_\_\_, and by signing this waiver waive  
my/our construction lien to the amount of \$ \_\_\_\_\_, for  
labor/materials provided through \_\_\_\_\_  
(date)

This waiver, together with all previous waivers, if any, (circle one) does / does not cover all amounts due to me/us for contract improvement provided through the date shown above. This waiver is conditioned on actual payment of the amount shown above.

If the improvement is provided to property that is a residential structure and if the owner or lessee of the property or the owner's or lessee's designee has received a notice of furnishing from me/one of us or if I/we are not required to provide one, and the owner, lessee, or designee has not received this waiver directly from me/one of us, the owner, lessee, or designee may not rely upon it without contacting me/one of us, either in writing, by telephone, or personally, to verify that it is authentic.

\_\_\_\_\_  
\_\_\_\_\_  
(signature of lien claimant)

Signed on: \_\_\_\_\_  
(date)

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

**DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.**

15557700-1

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**APPENDIX 26-9J  
MICHIGAN CONTRACTOR PAYMENT FORMS**

Amounts duly owing to \_\_\_\_\_ (Subcontractor), per contract \_\_\_\_\_ (ID #), with \_\_\_\_\_ (Contractor) to provide \_\_\_\_\_ (description of materials or services) for work on the Ghib Project have been:

Fully paid and satisfied. By signing this waiver, all my/our rights of disputer or claims against the described property are waived and released.

Will be fully paid and satisfied if paid \$ \_\_\_\_\_ due by \_\_\_\_\_ (date). By signing this waiver, and subject to such payment, all my/our rights of disputer or claims against the described property are waived and released.

Has not been paid and is currently under dispute with \_\_\_\_\_ (Subcontractor), because \_\_\_\_\_ (description of dispute).

Has not been paid, and no dispute proceedings have been instigated.

Other

\_\_\_\_\_  
\_\_\_\_\_  
(description of situation).

\_\_\_\_\_ (Subcontractor Payor) hereby indemnifies and holds harmless \_\_\_\_\_ (Prime Contractor) from and against all liability and costs (including reasonable legal fees) arising from any dispute or claim that may be asserted at any time in the future against \_\_\_\_\_ (Prime Contractor), or its successors or assigns, by \_\_\_\_\_ (Subcontractor) or any other party by virtue of the work performed on the Ghib Project.

Dated at [City], State of Michigan this [day] day of [month], 20<@>.

**[Subcontractor]**

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

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**APPENDIX 26-10  
BASE UNIT PRICES APPLICABLE FOR THE MICHIGAN BUY-DOWN**

<b>Pay Item Code</b>	<b>Pay Item Name</b>	<b>Unit</b>	<b>Base Price</b>
3030004	Open-Graded Dr Cse, 4 inch	Syd	[\$[REDACTED]]
3030005	Open-Graded Dr Cse, 5 inch	Syd	[\$[REDACTED]]
3030006	Open-Graded Dr Cse, 6 inch	Syd	[\$[REDACTED]]
3030015	Open-Graded Dr Cse, Shld	Syd	[\$[REDACTED]]
3030030	Open-Graded Dr Cse, CIP	Cyd	[\$[REDACTED]]
5010025	Hand Patching	Ton	[\$[REDACTED]]
5010030	HMA, 2C	Ton	[\$[REDACTED]]
5010031	HMA, 3C	Ton	[\$[REDACTED]]
5010032	HMA, 4C	Ton	[\$[REDACTED]]
5010033	HMA, 13A	Ton	[\$[REDACTED]]
5010034	HMA, 36A	Ton	[\$[REDACTED]]
5010037	HMA, 2E03	Ton	[\$[REDACTED]]
5010038	HMA, 2E1	Ton	[\$[REDACTED]]
5010039	HMA, 2E3	Ton	[\$[REDACTED]]
5010040	HMA, 2E10	Ton	[\$[REDACTED]]
5010041	HMA, 2E30	Ton	[\$[REDACTED]]
5010042	HMA, 2E50	Ton	[\$[REDACTED]]
5010043	HMA, 3E03	Ton	[\$[REDACTED]]
5010044	HMA, 3E1	Ton	[\$[REDACTED]]
5010045	HMA, 3E3	Ton	[\$[REDACTED]]
5010046	HMA, 3E10	Ton	[\$[REDACTED]]
5010047	HMA, 3E30	Ton	[\$[REDACTED]]
5010048	HMA, 3E50	Ton	[\$[REDACTED]]
5010049	HMA, 4E03	Ton	[\$[REDACTED]]
5010050	HMA, 4E1	Ton	[\$[REDACTED]]
5010051	HMA, 4E3	Ton	[\$[REDACTED]]
5010052	HMA, 4E10	Ton	[\$[REDACTED]]
5010053	HMA, 4E30	Ton	[\$[REDACTED]]
5010054	HMA, 4E50	Ton	[\$[REDACTED]]
5010055	HMA, 5E03	Ton	[\$[REDACTED]]
5010056	HMA, 5E1	Ton	[\$[REDACTED]]
5010057	HMA, 5E3	Ton	[\$[REDACTED]]
5010058	HMA, 5E10	Ton	[\$[REDACTED]]
5010059	HMA, 5E30	Ton	[\$[REDACTED]]
5010060	HMA, 5E50	Ton	[\$[REDACTED]]
5010061	HMA Approach	Ton	[\$[REDACTED]]
5010500	HMA, 3E03, High Stress	Ton	[\$[REDACTED]]

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<b>Pay Item Code</b>	<b>Pay Item Name</b>	<b>Unit</b>	<b>Base Price</b>
5010501	HMA, 3E1, High Stress	Ton	\$\$[REDACTED]
5010503	HMA, 3E3, High Stress	Ton	\$\$[REDACTED]
5010504	HMA, 3E10, High Stress	Ton	\$\$[REDACTED]
5010505	HMA, 3E30, High Stress	Ton	\$\$[REDACTED]
5010506	HMA, 3E50, High Stress	Ton	\$\$[REDACTED]
5010507	HMA, 4E03, High Stress	Ton	\$\$[REDACTED]
5010508	HMA, 4E1, High Stress	Ton	\$\$[REDACTED]
5010509	HMA, 4E3, High Stress	Ton	\$\$[REDACTED]
5010510	HMA, 4E10, High Stress	Ton	\$\$[REDACTED]
5010511	HMA, 4E30, High Stress	Ton	\$\$[REDACTED]
5010512	HMA, 4E50, High Stress	Ton	\$\$[REDACTED]
5010513	HMA, 5E03, High Stress	Ton	\$\$[REDACTED]
5010514	HMA, 5E1, High Stress	Ton	\$\$[REDACTED]
5010515	HMA, 5E3, High Stress	Ton	\$\$[REDACTED]
5010516	HMA, 5E10, High Stress	Ton	\$\$[REDACTED]
5010517	HMA, 5E30, High Stress	Ton	\$\$[REDACTED]
5010518	HMA, 5E50, High Stress	Ton	\$\$[REDACTED]
5010520	HMA Approach, High Stress	Ton	\$\$[REDACTED]
5010703	HMA, LVSP	Ton	\$\$[REDACTED]
6020015	Conc Base Cse, Nonreinf, 6 inch	Syd	\$\$[REDACTED]
6020016	Conc Base Cse, Nonreinf, 6 1/2 inch	Syd	\$\$[REDACTED]
6020017	Conc Base Cse, Nonreinf, 7 inch	Syd	\$\$[REDACTED]
6020018	Conc Base Cse, Nonreinf, 7 1/2 inch	Syd	\$\$[REDACTED]
6020019	Conc Base Cse, Nonreinf, 8 inch	Syd	\$\$[REDACTED]
6020020	Conc Base Cse, Nonreinf, 8 1/2 inch	Syd	\$\$[REDACTED]
6020021	Conc Base Cse, Nonreinf, 9 inch	Syd	\$\$[REDACTED]
6020022	Conc Base Cse, Nonreinf, 9 1/2 inch	Syd	\$\$[REDACTED]
6020023	Conc Base Cse, Nonreinf, 10 inch	Syd	\$\$[REDACTED]
6020050	Conc Pavt, Misc, Nonreinf, 6 inch	Syd	\$\$[REDACTED]
6020051	Conc Pavt, Misc, Nonreinf, 6 1/2 inch	Syd	\$\$[REDACTED]
6020052	Conc Pavt, Misc, Nonreinf, 7 inch	Syd	\$\$[REDACTED]
6020053	Conc Pavt, Misc, Nonreinf, 7 1/2 inch	Syd	\$\$[REDACTED]
6020054	Conc Pavt, Misc, Nonreinf, 8 inch	Syd	\$\$[REDACTED]
6020055	Conc Pavt, Misc, Nonreinf, 8 1/2 inch	Syd	\$\$[REDACTED]
6020056	Conc Pavt, Misc, Nonreinf, 9 inch	Syd	\$\$[REDACTED]
6020057	Conc Pavt, Misc, Nonreinf, 9 1/2 inch	Syd	\$\$[REDACTED]
6020058	Conc Pavt, Misc, Nonreinf, 10 inch	Syd	\$\$[REDACTED]
6020059	Conc Pavt, Misc, Nonreinf, 10 1/2 inch	Syd	\$\$[REDACTED]
6020060	Conc Pavt, Misc, Nonreinf, 11 inch	Syd	\$\$[REDACTED]
6020061	Conc Pavt, Misc, Nonreinf, 11 1/2 inch	Syd	\$\$[REDACTED]

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<b>Pay Item Code</b>	<b>Pay Item Name</b>	<b>Unit</b>	<b>Base Price</b>
6020062	Conc Pavt, Misc, Nonreinf, 12 inch	Syd	\$\$[REDACTED]
6020100	Conc Pavt, Nonreinf, 6 inch	Syd	\$\$[REDACTED]
6020101	Conc Pavt, Nonreinf, 6 1/2 inch	Syd	\$\$[REDACTED]
6020102	Conc Pavt, Nonreinf, 7 inch	Syd	\$\$[REDACTED]
6020103	Conc Pavt, Nonreinf, 7 1/2 inch	Syd	\$\$[REDACTED]
6020104	Conc Pavt, Nonreinf, 8 inch	Syd	\$\$[REDACTED]
6020105	Conc Pavt, Nonreinf, 8 1/2 inch	Syd	\$\$[REDACTED]
6020106	Conc Pavt, Nonreinf, 9 inch	Syd	\$\$[REDACTED]
6020107	Conc Pavt, Nonreinf, 9 1/2 inch	Syd	\$\$[REDACTED]
6020108	Conc Pavt, Nonreinf, 10 inch	Syd	\$\$[REDACTED]
6020109	Conc Pavt, Nonreinf, 10 1/2 inch	Syd	\$\$[REDACTED]
6020110	Conc Pavt, Nonreinf, 11 inch	Syd	\$\$[REDACTED]
6020111	Conc Pavt, Nonreinf, 11 1/2 inch	Syd	\$\$[REDACTED]
6020112	Conc Pavt, Nonreinf, 12 inch	Syd	\$\$[REDACTED]
6020115	Conc Pavt, Nonreinf, 8 inch, Temp	Syd	\$\$[REDACTED]
6020160	Conc Pavt with Integral Curb, Nonreinf, 6 inch	Syd	\$\$[REDACTED]
6020161	Conc Pavt with Integral Curb, Nonreinf, 6 1/2 inch	Syd	\$\$[REDACTED]
6020162	Conc Pavt with Integral Curb, Nonreinf, 7 inch	Syd	\$\$[REDACTED]
6020163	Conc Pavt with Integral Curb, Nonreinf, 7 1/2 inch	Syd	\$\$[REDACTED]
6020164	Conc Pavt with Integral Curb, Nonreinf, 8 inch	Syd	\$\$[REDACTED]
6020165	Conc Pavt with Integral Curb, Nonreinf, 8 1/2 inch	Syd	\$\$[REDACTED]
6020166	Conc Pavt with Integral Curb, Nonreinf, 9 inch	Syd	\$\$[REDACTED]
6020167	Conc Pavt with Integral Curb, Nonreinf, 9 1/2 inch	Syd	\$\$[REDACTED]
6020168	Conc Pavt with Integral Curb, Nonreinf, 10 inch	Syd	\$\$[REDACTED]
6020169	Conc Pavt with Integral Curb, Nonreinf, 10 1/2 inch	Syd	\$\$[REDACTED]
6020170	Conc Pavt with Integral Curb, Nonreinf, 11 inch	Syd	\$\$[REDACTED]
6020171	Conc Pavt with Integral Curb, Nonreinf, 11 1/2 inch	Syd	\$\$[REDACTED]
6020172	Conc Pavt with Integral Curb, Nonreinf, 12 inch	Syd	\$\$[REDACTED]
6020221	Shoulder, Freeway	Syd	\$\$[REDACTED]
6020222	Shoulder, Nonreinf Conc	Syd	\$\$[REDACTED]
6020500	Conc Pavt, Nonreinf, 8 inch, High Performance	Syd	\$\$[REDACTED]
6020501	Conc Pavt, Nonreinf, 8 1/2 inch, High Performance	Syd	\$\$[REDACTED]
6020502	Conc Pavt, Nonreinf, 9 inch, High Performance	Syd	\$\$[REDACTED]
6020503	Conc Pavt, Nonreinf, 9 1/2 inch, High Performance	Syd	\$\$[REDACTED]
6020504	Conc Pavt, Nonreinf, 10 inch, High Performance	Syd	\$\$[REDACTED]
6020505	Conc Pavt, Nonreinf, 10 1/2 inch, High Performance	Syd	\$\$[REDACTED]
6020506	Conc Pavt, Nonreinf, 11 inch, High Performance	Syd	\$\$[REDACTED]
6020507	Conc Pavt, Nonreinf, 11 1/2 inch, High Performance	Syd	\$\$[REDACTED]
6020508	Conc Pavt, Nonreinf, 12 inch, High Performance	Syd	\$\$[REDACTED]
6020509	Conc Pavt, Nonreinf, 12 1/2 inch, High Performance	Syd	\$\$[REDACTED]

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

<b>Pay Item Code</b>	<b>Pay Item Name</b>	<b>Unit</b>	<b>Base Price</b>
6020510	Conc Pavt, Nonreinf, 13 inch, High Performance	Syd	\$\$[REDACTED]
6020511	Conc Pavt, Nonreinf, 13 1/2 inch, High Performance	Syd	\$\$[REDACTED]
6020512	Conc Pavt, Misc, Nonreinf, 8 inch, High Performance	Syd	\$\$[REDACTED]
6020513	Conc Pavt, Misc, Nonreinf, 8 1/2 inch, High Performance	Syd	\$\$[REDACTED]
6020514	Conc Pavt, Misc, Nonreinf, 9 inch, High Performance	Syd	\$\$[REDACTED]
6020515	Conc Pavt, Misc, Nonreinf, 9 1/2 inch, High Performance	Syd	\$\$[REDACTED]
6020516	Conc Pavt, Misc, Nonreinf, 10 inch, High Performance	Syd	\$\$[REDACTED]
6020517	Conc Pavt, Misc, Nonreinf, 10 1/2 inch, High Performance	Syd	\$\$[REDACTED]
6020518	Conc Pavt, Misc, Nonreinf, 11 inch, High Performance	Syd	\$\$[REDACTED]
6020519	Conc Pavt, Misc, Nonreinf, 11 1/2 inch, High Performance	Syd	\$\$[REDACTED]
6020520	Conc Pavt, Misc, Nonreinf, 12 inch, High Performance	Syd	\$\$[REDACTED]
6020521	Conc Pavt, Misc, Nonreinf, 12 1/2 inch, High Performance	Syd	\$\$[REDACTED]
6020522	Conc Pavt, Misc, Nonreinf, 13 inch, High Performance	Syd	\$\$[REDACTED]
6020523	Conc Pavt, Misc, Nonreinf, 13 1/2 inch, High Performance	Syd	\$\$[REDACTED]
6020524	Shoulder, Nonreinf Conc, High Performance	Syd	\$\$[REDACTED]
6020525	Conc Pavt, Ovly, Furnishing and Placing, High Performance	Cyd	\$\$[REDACTED]
6020526	Conc Pavt, Ovly, Misc, Furnishing and Placing, High Performance	Cyd	\$\$[REDACTED]

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

**APPENDIX 26-11A  
BRIDGE HANDOVER APPLICATION**

*This template specifies the minimum scope and content for a Bridge Handover Application. It shall be used by Project Co and its Construction Contractor and Designer to attest the scope and status of the Bridge work, including any deficiencies. Sections 1 to 8 of the form, as well as Table 1 shall be completed by Project Co Persons.*

<p><b>TO:</b> Windsor Detroit Bridge Authority,</p> <p><b>AND TO:</b> [Independent Certifier]</p>	<p><b>BRIDGING NORTH AMERICA GENERAL PARTNERSHIP</b>, a general partnership constituted under the laws of Ontario. <b>(“Project Co”)</b></p>
<p><b>Scope:</b> the Bridge and all associated Infrastructure</p>	<p><b>Project:</b> GHIB <b>(“Project”)</b></p>
<p><b>Date:</b> [Date]</p>	<p><b>Project Agreement dated as of 28 September, 2018 (“Project Agreement”)</b></p>

**RE:** Project Agreement (**“Project Agreement”**) dated as of 28 September, 2018 between the Windsor-Detroit Bridge Authority (**“WDBA”**) and Bridging North America General Partnership, a general partnership constituted under the laws of Ontario. (**“Project Co”**).

**Part 1**

1. We certify that the design of the [Bridge] as described in Review Submittal Certificates RSC # [...] Rev# [...] ... has been satisfactorily translated into the construction of the [Bridge] (the **“Bridge Work”**) and including setting out materials, workmanship and testing used, are in compliance with the requirements of the Project Agreement, subject to the correction of the following deficiencies: [..... (list of deficiencies with full details) .....

Signed: ..... For Construction Contractor Name: ..... Date: .....
--

2. We confirm that we have used reasonable professional skill and care in the Design Work for the Bridge Work. We have seen Project Co’s documentation referring to the Bridge Work and have so far as we deemed it necessary witnessed the construction thereof and have found conformance between such documentation and the Bridge Work as designed for construction.

\* We have reviewed the deficiency list for the Bridge Work, and we are of the opinion that the deficiencies are minor in nature, and subject to the correction of the deficiency items being accepted by all parties, we are satisfied that the design intent will not be compromised.  
(\* delete if no deficiencies)

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

Signed: ..... For Designer Name: ..... Date: .....
---

3. We certify based on our audit of the quality control procedures that the Bridge Work has been carried out in accordance with the Project Agreement and that the Bridge is ready for safe access and occupancy by the WDBA. We certify that all of the documents, material and information required to be submitted or made available to the Independent Certifier by Section 4.5 of Schedule 21 [*Certification Procedure*] of the Project Agreement has been submitted or made available. We request that the Bridge Work be certified to be ready for handover.

Signed: ..... For Project Co Name: ..... Date: .....
---

**Part 2**

4. Project Co hereby makes application for the Bridge Capital Payment in the amount of [**insert amount in words**] Dollars (**[\$insert amount in numbers]**) to commence on first Business Day of the following calendar month pursuant to the terms of the Project Agreement and Schedule 26 [*Construction Period Payments*] to the Project Agreement.
5. Attached hereto as Table 1 is the information for the Bridge Capital Payment which is consistent with the information contained in Appendix 25-1 to Schedule 25 [*Payment Mechanism (OMR)*] of the Project Agreement.
6. Project Co has taken all steps required under the Senior Lending Agreements to draw and/or advance funds required to pay the Construction Contractor in respect of all sums due and owing to the Construction Contractor as of the date of this certificate, and knows of no reason why such funds to be provided under the Senior Lending Agreements would not be advanced as requested.
7. Project Co has complied with all requirements of Applicable Law in connection with the Project.
8. Unless defined specifically in this Bridge Handover Application or unless the context otherwise requires, capitalized but otherwise undefined terms in this Bridge Handover Application will have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of the Project Agreement.

The information and calculations contained herein and on the annexed Table are certified to be true, accurate and complete.

Dated at [**City**], [**Province**] this [**day**] day of [**month**], 20 [ ].

**BRIDGING NORTH AMERICA GENERAL PARTNERSHIP**

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

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

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

**TABLE 1**  
**INFORMATION FOR BRIDGE CAPITAL PAYMENT**

<b>(S)</b>	<b>(T)</b>
<b>Scheduled Bridge Handover Date</b>	<b>Bridge Capital Payment</b>
As per the Financial Model	As per Appendix 25-1 of Schedule 25 [ <i>Payment Mechanism (OMR)</i> ]

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

Schedule 26 [*Construction Period Payments*]

**Appendix 26-11B  
BRIDGE HANDOVER CERTIFICATE**

*This template shall be used by the Independent Certifier to certify, or not, whether the DB Work relevant to the Bridge and all associated Infrastructure, has been completed in a manner sufficient to provide safe access to and use by WDBA. Section 1 of the form shall be completed by the Independent Certifier.*

Certification by Independent Certifier that the Bridge is ready for safe access and occupancy by WDBA per the specifications outlined in the Project Agreement.

1. The Independent Certifier has certified to WDBA that all requirements for the Bridge Handover and all conditions for issuance of the Certificate for such Certification Event have been satisfied and that Project Co has performed all requirements and provided all assurances and documents set out in Section 4.5 of Schedule 21 [*Certification Procedure*] of the Project Agreement.

<b>a) CERTIFIED *</b>	
<b>b) CERTIFIED WITH LIST OF MINOR DEFICIENCIES *</b>	
<b>c) REJECTED *</b>	<i>* delete as appropriate</i>
Signed: .....	
For Independent Certifier	
Name: .....	Date: .....
<b>Rationale for Decision:</b>	

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*



**APPENDIX 26-12A  
MICHIGAN HANDOVER APPLICATION**

*This template specifies the minimum scope and content for a Michigan Handover Application. It shall be used by Project Co and its Construction Contractor and Designer to attest the scope and status of the Michigan Interchange work, including any deficiencies. Sections 1 to 8 of the form, as well as Table 1 shall be completed by Project Co Persons.*

<b>TO:</b> Windsor Detroit Bridge Authority,  <b>AND TO:</b> [Independent Certifier]	<b>BRIDGING NORTH AMERICA GENERAL PARTNERSHIP</b> , a general partnership constituted under the laws of Ontario. <b>(“Project Co”)</b>
<b>Scope:</b> the Michigan Interchange	<b>Project:</b> <b>GHIB</b> <b>(“Project”)</b>
<b>Date:</b> [Date]	<b>Project Agreement dated as of 28 September, 2018</b> <b>(“Project Agreement”)</b>

**RE:** Project Agreement (**“Project Agreement”**) dated as of 28 September, 2018 between the Windsor-Detroit Bridge Authority (**“WDBA”**) and Bridging North America General Partnership, a general partnership constituted under the laws of Ontario. (**“Project Co”**).

**Part 1**

1. We certify that the design of the [Michigan Interchange] as described in Review Submittal Certificates RSC # [...] Rev# [...] ... has been satisfactorily translated into the construction of the [Michigan Interchange], (the **“Michigan Work”**) and including setting out materials, workmanship and testing used, are in compliance with the requirements of the Project Agreement, subject to the correction of the following deficiencies: [..... (list of deficiencies with full details) .....]

Signed: ..... For Construction Contractor Name: ..... Date: .....
--

2. We confirm that we have used reasonable professional skill and care in the Design Work for the Michigan Work. We have seen Project Co’s documentation referring to the Michigan Work and have, so far as we deemed it necessary, witnessed the construction thereof and have found conformance between such documentation and the Michigan Work as designed for construction.

\* We have reviewed the deficiency list for the Michigan Work, and we are of the opinion that the deficiencies are minor in nature, and subject to the correction of the deficiency items being accepted by all parties, we are satisfied that the design intent will not be compromised.  
 (\* delete if no deficiencies)

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

Signed: ..... For Designer Name: ..... Date: .....
---

3. We certify based on our audit of the quality control procedures that the Michigan Work has been carried out in accordance with the Project Agreement and that the Michigan Interchange is ready for safe access by the WDBA. We certify that all of the documents, material and information required to be submitted or made available to the Independent Certifier by Section 4.5 of Schedule 21 [*Certification Procedure*] of the Project Agreement has been submitted or made available. We request that the Michigan Work be certified to be ready for handover.

Signed: ..... For Project Co Name: ..... Date: .....
---

**Part 2**

4. Project Co hereby makes application for the Michigan Capital Payment in the amount of **[insert amount in words]** Dollars (**[\$[insert amount in numbers]**) to commence on first Business Day of the following calendar month pursuant to the terms of the Project Agreement and Schedule 26 [*Construction Period Payments*] to the Project Agreement.
5. Attached hereto as Table 1 is the information for the Michigan Capital Payment which is consistent with the information contained in Appendix 25-1 to Schedule 25 [*Payment Mechanism (OMR)*] of the Project Agreement.
6. Project Co has taken all steps required under the Senior Lending Agreements to draw and/or advance funds required to pay the Construction Contractor in respect of all sums due and owing to the Construction Contractor as of the date of this certificate, and knows of no reason why such funds to be provided under the Senior Lending Agreements would not be advanced as requested.
7. Project Co has complied with all requirements of Applicable Law in connection with the Project.
8. Unless defined specifically in this Michigan Handover Application or unless the context otherwise requires, capitalized but otherwise undefined terms in this Michigan Handover Application will have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of the Project Agreement.

The information and calculations contained herein and on the annexed Table are certified to be true, accurate and complete.

Dated at **[City]**, **[Province]** this **[day]** day of **[month]**, 20 [ ].

**BRIDGING NORTH AMERICA GENERAL PARTNERSHIP**

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

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

*All information contained in this Record/Document is intended to be confidential and shall be held in confidence by the parties. The Record/Documents shall not be disclosed unless the information is subject to release pursuant to the Access to Information Act R.S.C. 1985, chapter A-1 or unless the parties are required or authorized by law to disclose the information or have otherwise agreed to permit such disclosure.*

**TABLE 1  
INFORMATION FOR MICHIGAN CAPITAL PAYMENT**

<b>(S)</b>	<b>(T)</b>
<b>Scheduled Michigan Handover Date</b>	<b>Michigan Capital Payment</b>
As per the Financial Model	As per Appendix 25-1 of Schedule 25 [ <i>Payment Mechanism (OMR)</i> ]

*The information contained in this Record/Document is confidential and may not be disclosed. It is subject to exemptions from disclosure relating to the Responsibilities of Government and Operations of Government under the Access to Information Act, R.S.C. 1985, chapter A-1. Without limitation, this Record/Document contains information that relates to the economic interests of Canada which, if disclosed, could reasonably be expected to be injurious to Canada and to interfere with the contractual or other negotiations of Canada.*

**Appendix 26-12B  
MICHIGAN HANDOVER CERTIFICATE**

*This template shall be used by the Independent Certifier to certify, or not, whether the DB Work relevant to the Michigan Interchange has been completed in a manner sufficient to provide safe access to and use by WDBA. Section 1 of the form shall be completed by the Independent Certifier.*

---

Certification by Independent Certifier that the Michigan Interchange is ready for safe access and occupancy by WDBA per the specifications outlined in the Project Agreement.

- 1. The Independent Certifier has certified to WDBA that all requirements for the Michigan Handover and all conditions for issuance of the Certificate for such Certification Event have been satisfied and that Project Co has performed all requirements and provided all assurances and documents set out in Section 4.5 of Schedule 21 [*Certification Procedure*] of the Project Agreement.

<b>a) CERTIFIED *</b>	
<b>b) CERTIFIED WITH LIST OF MINOR DEFICIENCIES *</b>	
<b>c) REJECTED *</b>	<i>* delete as appropriate</i>
Signed: .....	
For Independent Certifier	
Name: .....	Date: .....
<b>Rationale for Decision:</b>	

*The information contained in this Record/Document is confidential and may not be disclosed. It is subject to exemptions from disclosure relating to the Responsibilities of Government and Operations of Government under the Access to Information Act, R.S.C. 1985, chapter A-1. Without limitation, this Record/Document contains information that relates to the economic interests of Canada which, if disclosed, could reasonably be expected to be injurious to Canada and to interfere with the contractual or other negotiations of Canada.*

**APPENDIX 26-13A  
POE HANDOVER APPLICATION**

*This template specifies the minimum scope and content for a POE Handover Application. It shall be used by Project Co and its Construction Contractor and Designer to attest the scope and status of the relevant POE work, including any deficiencies. This application does not attest to the scope and status of the Canadian POE Agency Buildings, or the US POE Agency Buildings. Sections 1 to 8 of the form, as well as Table 1 shall be completed by Project Co Persons.*

<b>TO:</b> Windsor Detroit Bridge Authority,	<b>BY:</b> BRIDGING NORTH AMERICA GENERAL PARTNERSHIP, a general partnership constituted under the laws of Ontario. (“Project Co”)
<b>AND TO:</b> [Independent Certifier]	
<b>POE:</b> [Canadian POE /US POE]	<b>Project:</b> GHIB (“Project”)
<b>Date:</b> [Date]	<b>Project Agreement dated as of 28 September, 2018</b> (“Project Agreement”)

**RE:** Project Agreement (“**Project Agreement**”) dated as of 28 September, 2018 between the Windsor-Detroit Bridge Authority (“**WDBA**”) and Bridging North America General Partnership, a general partnership constituted under the laws of Ontario. (“**Project Co**”).

**Part 1**

1. We certify that the design of [\*POE] as described in Review Submittal Certificates RSC # [...] Rev# [...] ... has been satisfactorily translated into the construction of [\*] POE (the “**POE Work**”) and the POE Work including setting out materials, workmanship and testing used, are in compliance with the requirements of the Project Agreement, subject to the correction of the following deficiencies: [..... (list of deficiencies with full details) .....]

Signed: .....
For Construction Contractor
Name: .....
Date: .....

2. We confirm that we have used reasonable professional skill and care in the Design Work for the POE Work. We have seen Project Co’s documentation referring to the POE Work and have so far as we deemed it necessary witnessed the construction thereof and have found conformance between such documentation and the POE Work as designed for construction.

\* We have reviewed the deficiency list for the POE Work, and we are of the opinion that the deficiencies are minor in nature, and subject to the correction of the deficiency items being accepted by all parties, we are satisfied that the design intent will not be compromised.  
(\* delete if no deficiencies)

Signed: .....
For Designer
Name: .....
Date: .....

*The information contained in this Record of Construction Period Payments is disclosed pursuant to the Access to Information Act, R.S.C. 1985, chapter A-1. Without limiting the generality of the foregoing, this information is disclosed pursuant to the economic interests of Canada which, if disclosed, could reasonably be expected to result in the disclosure of information that is subject to the contractual or other negotiations of Canada.*

*subject to exemptions from the Access to Information Act, this information is disclosed pursuant to the economic interests of Canada which, if disclosed, could reasonably be expected to result in the disclosure of information that is subject to the contractual or other negotiations of Canada.*

3. We certify based on our audit of the quality control procedures that the POE Work has been carried out in accordance with the Project Agreement and that [*the Canadian POE and associated Infrastructure /US POE and associated Infrastructure*] are ready for safe access and occupancy by [CBSA/CFIACBP] for the installation of furniture, fixtures and equipment and for the purpose of training their personnel]. We certify that all of the documents, material and information required to be submitted or made available to the Independent Certifier by Section 4.5 of Schedule 21 [*Certification Procedure*] of the Project Agreement has been submitted or made available. We request that the POE Work be certified to be ready for Handover.

Signed: .....
For Project Co
Name: .....
Date: .....

**Part 2**

4. Project Co hereby makes application for the [*US POE Capital Payment/Canadian POE Capital Payment*] [**Note: select one of the two**] in the amount of [**insert amount in words**] Dollars (**[\$insert amount in numbers]**) pursuant to the terms of the Project Agreement and Schedule 26 [*Construction Period Payments*] to the Project Agreement.
5. Attached hereto as Table 1 is the information for the Handover Payment required by Appendix 26-5 to Schedule 26 [*Construction Period Payments*] of the Project Agreement.
6. Project Co has taken all steps required under the Senior Lending Agreements to draw and/or advance funds required (in addition to the amounts forming part of this Handover Payment Application) to pay the Construction Contractor in respect of all sums due and owing to the Construction Contractor as of the date of this certificate, and knows of no reason why such funds to be provided under the Senior Lending Agreements would not be advanced as requested.
7. Project Co has complied with all requirements of Applicable Law in connection with the Project.
8. Unless defined specifically in this POE Handover Application or unless the context otherwise requires, capitalized but otherwise undefined terms in this POE Handover Application will have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of the Project Agreement.

The information and calculations contained herein and on the annexed Table are certified to be true, accurate and complete.

Dated at [City], [Province] this [day] day of [month], 20 [ ].

*The information contained in this Record/Document is confidential and may not be disclosed. It is subject to exemptions from disclosure relating to the Responsibilities of Government and Operations of Government under the Access to Information Act, R.S.C. 1985, chapter A-1. Without limitation, this Record/Document contains information that relates to the economic interests of Canada which, if disclosed, could reasonably be expected to be injurious to Canada and to interfere with the contractual or other negotiations of Canada.*

**BRIDGING NORTH AMERICA GENERAL  
PARTNERSHIP**

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

*The information contained in this Record/Document is confidential and may not be disclosed. It is subject to exemptions from disclosure relating to the Responsibilities of Government and Operations of Government under the Access to Information Act, R.S.C. 1985, chapter A-1. Without limitation, this Record/Document contains information that relates to the economic interests of Canada which, if disclosed, could reasonably be expected to be injurious to Canada and to interfere with the contractual or other negotiations of Canada.*



**TABLE 1**  
**INFORMATION FOR HANDOVER PAYMENT**

<b>(S)</b>	<b>(T)</b>
<b>Scheduled Handover Date</b>	<b>Handover Payment</b>
As per the Financial Model	As per the Financial Model

*The information contained in this Record/Document is confidential and may not be disclosed. It is subject to exemptions from disclosure relating to the Responsibilities of Government and Operations of Government under the Access to Information Act, R.S.C. 1985, chapter A-1. Without limitation, this Record/Document contains information that relates to the economic interests of Canada which, if disclosed, could reasonably be expected to be injurious to Canada and to interfere with the contractual or other negotiations of Canada.*

**Appendix 26-13B  
POE HANDOVER CERTIFICATE**

*This template shall be used by the Independent Certifier to certify, or not, whether the DB Work relevant to the Canadian POE and associated Infrastructure or the US POE and associated Infrastructure, as applicable, has been completed in a manner sufficient to provide safe access to and use of such buildings and Infrastructure by the relevant Governmental Authorities and their employees and contractors for the installation of furniture, fixtures and equipment and the occupancy of such buildings for training purposes as necessary. Section 1 of the form shall be completed by the Independent Certifier. This template shall not be used to certify completion of the DB Work relevant to the Canadian POE Agency Buildings, or the US POE Agency Buildings.*

---

Certification by Independent Certifier that the [Canadian POE and associated Infrastructure /US POE and associated Infrastructure] are ready for safe access and occupancy by the relevant Governmental Authorities for the installation of furniture, fixtures and equipment and for the purpose of training their personnel.

1. The Independent Certifier has certified to WDBA that all requirements for [US POE Handover /Canadian POE Handover] and all conditions for issuance of the Certificate for such Certification Event have been satisfied and that Project Co has performed all requirements and provided all assurances and documents set out in Section 4.5 of Schedule 21 [Certification Procedure] of the Project Agreement.

<p><b>a) CERTIFIED *</b></p> <p><b>b) CERTIFIED WITH LIST OF MINOR DEFICIENCIES *</b></p> <p><b>c) REJECTED *</b></p>	<p><i>* delete as appropriate</i></p>
<p>Signed: .....</p> <p>For Independent Certifier</p>	
<p>Name: .....</p>	<p>Date: .....</p>
<p><b>Rationale for Decision:</b></p>	

*The information contained in this Record/Document is confidential and may not be disclosed. It is subject to exemptions from disclosure relating to the Responsibilities of Government and Operations of Government under the Access to Information Act, R.S.C. 1985, chapter A-1. Without limitation, this Record/Document contains information that relates to the economic interests of Canada which, if disclosed, could reasonably be expected to be injurious to Canada and to interfere with the contractual or other negotiations of Canada.*

**APPENDIX 26-14A  
SANDWICH STREET HANDOVER APPLICATION**

*This template specifies the minimum scope and content for a Sandwich Street Application. It shall be used by Project Co and its Construction Contractor and Designer to attest the scope and status of the Sandwich Street Corridor work, including any deficiencies, as set out in Schedule 43 Part 3. Sections 1 to 3 of the form, as well as Table 1 shall be completed by Project Co Persons.*

<p><b>TO:</b> Windsor Detroit Bridge Authority,</p> <p><b>AND TO:</b> [Independent Certifier]</p>	<p><b>BRIDGING NORTH AMERICA GENERAL PARTNERSHIP, a</b></p> <p><b>BY:</b> general partnership constituted under the laws of Ontario. (“Project Co”)</p>
<p><b>Scope:</b> Sandwich Street Corridor and associated infrastructure</p>	<p><b>Project:</b> GHIB (“Project”)</p>
<p><b>Date:</b> [Date]</p>	<p><b>Project Agreement dated as of 28 September, 2018</b> (“Project Agreement”)</p>

**RE:** Project Agreement (“**Project Agreement**”) dated as of 28 September, 2018 between the Windsor-Detroit Bridge Authority (“**WDBA**”) and Bridging North America General Partnership, a general partnership constituted under the laws of Ontario. (“**Project Co**”).

1. We certify that the design of [Sandwich Street Corridor] as described in Review Submittal Certificates RSC # [...] Rev# [...] ... has been satisfactorily translated into the construction of [Sandwich Street Corridor], (the “**Sandwich Street Work**”) and including setting out materials, workmanship and testing used, are in compliance with the requirements of the Project Agreement, as set out in Schedule 43 Part 3, subject to the correction of the following deficiencies: [..... (list of deficiencies with full details) .....]

<p>Signed: .....</p> <p align="center">For Construction Contractor</p> <p>Name: .....</p> <p>Date: .....</p>
--

2. We confirm that we have used reasonable professional skill and care in the Design Work for the Sandwich Street Work. We have seen Project Co’s documentation referring to the Sandwich Street Work and have, so far as we deemed it necessary, witnessed the construction thereof and have found conformance between such documentation and the Sandwich Street Work as designed for construction.

\* We have reviewed the deficiency list for the Sandwich Street Work, and we are of the opinion that the deficiencies are minor in nature, and subject to the correction of the deficiency items being accepted by all parties, we are satisfied that the design intent will not be compromised. (\* delete if no deficiencies)

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Signed: ..... For Designer Name: ..... Date: .....
---

3. We certify based on our audit of the quality control procedures that the Sandwich Street Work has been carried out in accordance with the Project Agreement and that Sandwich Street Corridor is ready for safe and unencumbered access by the WDBA and the public. We certify that all of the documents, material and information required to be submitted or made available to the Independent Certifier by Section 4.5 of Schedule 21 [*Certification Procedure*] of the Project Agreement has been submitted or made available. We request that the Sandwich Street Work be certified to be ready for handover.

Signed: ..... For Project Co Name: ..... Date: .....
---

The information and calculations contained herein are certified to be true, accurate and complete.

Dated at [City], [Province] this [day] day of [month], 20 [ ].

**BRIDGING NORTH AMERICA GENERAL PARTNERSHIP**

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

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**Appendix 26-14B  
SANDWICH STREET HANDOVER CERTIFICATE**

*This template shall be used by the Independent Certifier to certify, or not, whether the DB Work relevant to Sandwich Street Corridor has been completed in a manner sufficient to provide safe access to and use by the public. Section 1 of the form shall be completed by the Independent Certifier.*

---

A certification of the Sandwich Street Handover by the Independent Certifier shall certify that Bridging North America General Partnership, a general partnership constituted under the laws of Ontario. ("**Project Co**").has substantially completed the construction of Sandwich Street Corridor and associated infrastructure, as applicable, as set out in Part 3 [*Sandwich Street Improvements*] of Schedule 43 [*Canadian Roads*] and that Sandwich Street is ready for safe and unencumbered use by public pedestrian and vehicular traffic.

1. The Independent Certifier has certified to WDBA that all requirements for the Sandwich Street Handover and all conditions for issuance of the Certificate for such Certification Event have been satisfied and that Project Co has performed all requirements and provided all assurances and documents set out in Section 4.5 of Schedule 21 [*Certification Procedure*] of the Project Agreement.

<b>a) CERTIFIED *</b>	
<b>b) CERTIFIED WITH LIST OF MINOR DEFICIENCIES *</b>	
<b>c) REJECTED *</b>	<i>* delete as appropriate</i>
Signed: .....	
For Independent Certifier	
Name: .....	Date: .....
<b>Rationale for Decision:</b>	

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**APPENDIX 26-15A  
CONTAMINATED SOIL TREATMENT APPLICATION**

*This template specifies the minimum scope and content for a Contaminated Soil Treatment Application. It shall be used by Project Co to attest the treatment and quantities of Contaminated Soil on US Lands, as set out in Schedule 16 [Environmental]. Section 1 of the form shall be completed by Project Co Persons.*

<b>TO:</b> Windsor Detroit Bridge Authority,  <b>AND TO:</b> [Independent Certifier]	<b>BY:</b> BRIDGING NORTH AMERICA GENERAL PARTNERSHIP, a general partnership constituted under the laws of Ontario. (“Project Co”)
<b>Scope:</b> Soil Contamination Disposal on US Lands	<b>Project:</b> Ghib (“Project”)
<b>Date:</b> [Date]	<b>Project Agreement dated as of 28 September, 2018</b> (“Project Agreement”)

**RE:** Project Agreement (“Project Agreement”) dated as of 28 September, 2018 between the Windsor-Detroit Bridge Authority (“WDBA”) and Bridging North America General Partnership, a general partnership constituted under the laws of Ontario. (“Project Co”).

1. We certify that Project Co treated [<@>] cubic metres of Category I Soil & Category II Soil - On-Site, [<@>] cubic metres of Category II Soil – Off-Site Removal, and [<@>] cubic metres of Category III Soil – Off-Site Removal during this Progress Payment period. We certify that Project Co performed the treatment of these Contaminated Soil, in accordance with the provisions set out in Schedule 16 [Environmental].

Signed: ..... For Project Co
Name: .....
Date: .....

The information and calculations contained herein are certified to be true, accurate and complete.

Dated at [City], [Province] this [day] day of [month], 20 [ ].

**BRIDGING NORTH AMERICA GENERAL PARTNERSHIP**

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

**APPENDIX 26-15B  
CONTAMINATED SOIL TREATMENT CERTIFICATE**

*This template shall be used by the Independent Certifier to certify, or not, Project Co's treatment of Contaminated Soil on US Lands, as well as the quantities treated, in accordance with Schedule 16 [Environmental]. Section 1 of the form shall be completed by the Independent Certifier.*

- 1. The Independent Certifier has certified to WDBA that Project Co .treatment of the Contaminated Soil was performed in accordance with the provisions set out in Schedule 16 [Environmental]. The Independent Certifier has certified to WDBA that Project Co treated [] cubic metres of Category I Soil & Category II Soil – On-Site, [] cubic metres of Category II Soil – Off-Site Removal, and [] cubic metres of Category III Soil – Off-Site Removal for the applicable period.

<b>a) CERTIFIED *</b>	
<b>b) REJECTED *</b> * delete as appropriate	
Signed: .....	
For Independent Certifier	
Name: .....	Date: .....
<b>Rationale for Decision:</b>	

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**APPENDIX 26-16  
[NOT USED]**

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Schedule 26 [Construction Period Payments]



**APPENDIX 26-17A  
EARLY WORK PAYMENT APPLICATION**

*This template specifies the minimum scope and content for the Early Work Payment Application. It shall be used by Project Co to certify that the Project Work described in the application has been completed in accordance with the requirements in the Project Agreement and to make application for Early Work Payment.*

<p><b>TO: Windsor Detroit Bridge Authority,</b></p> <p><b>AND TO: [Owner’s Engineer/Independent Certifier]</b></p>	<p><b>BRIDGING NORTH AMERICA GENERAL PARTNERSHIP, a</b></p> <p><b>BY:</b> general partnership constituted under the laws of Ontario.  <b>(“Project Co”)</b></p> <p><b>(“Independent Certifier”)</b></p>
<p><b>Early Work No:</b></p>	<p><b>Project: GHIB</b></p>
<p><b>Date:</b> [Date]</p>	

1. We certify Project Co has performed the Project Work as set out in the Schedule of Values [*Describe work Performed*] having Progress of \$<@> during the preceding calendar month. The Project Work performed including setting out materials, workmanship and testing used, has been performed in compliance with the requirements of this Agreement, subject to the closure of the following Non-Compliances: [(list of Non-Compliances with full details).]

<p>Signed: .....</p> <p style="padding-left: 100px;">For Project Co</p> <p>Name: .....</p> <p>Date: .....</p>
---

2. We confirm that we have used reasonable professional skill and care in the Design Work for the Project Work Performed. We have seen Project Co’s documentation referring to the relevant Project Work and have so far as we deemed it necessary witnessed the construction thereof and have found conformance between such documentation and the Early Work Performed as designed for construction.

<p>Signed: .....</p> <p style="padding-left: 100px;">For Designer</p> <p>Name: .....</p> <p>Date: .....</p>
---

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- 3. We certify based on our audit of the quality control procedures that the Project Work performed has been carried out in accordance with the Project Agreement. We certify that all of the documents, material and information required to be submitted or made available to the Independent Certifier has been submitted or made available. Accordingly we request that the Independent Certifier certify the Project Work performed so that we may apply for an Early Work Payment.

Signed: .....
For Project Co
Name: .....
Date: .....

**Part 2**

- 4. Project Co hereby makes application for Early Work Payment No. \_\_\_\_ in the amount of **[insert amount in words]** Dollars (**[\$[insert amount in numbers]**) in respect of Project Work.
- 5. The period for which this Early Work Payment Application is made is: \_\_\_\_\_.
- 6. The total of all Early Work Payments previously paid by WDBA is: \$\_\_\_\_\_.
- 7. Project Co hereby certifies that the progress of the Project Work qualifies Project Co for the Early Work Payment being requested.
- 8. Unless defined specifically in this Early Work Payment Application or unless the context otherwise requires, capitalized but otherwise undefined terms in this Early Work Payment Application will have the respective meanings given to such terms in the Project Agreement.

Dated at **[City]**, **[Province]** this **[day]** day of **[month]**, 20 [ ].

**For BRIDGING NORTH AMERICA GENERAL PARTNERSHIP**

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

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**APPENDIX 26-18  
ESTIMATED QUANTITIES FOR SOIL CONTAMINATION**

Soil Contamination	Unit	Cumulative Quantities
<b>Category I Soil &amp; Category II Soil – On-Site (“Estimated Quantity<sub>1</sub>”)</b>	Cubic Yard	<b>[REDACTED]</b>
<b>Category II Soil – Off-Site Removal (“Estimated Quantity<sub>2</sub>”)</b>	Cubic Yard	<b>[REDACTED]</b>
<b>Category III Soil – Off-Site Removal (“Estimated Quantity<sub>3</sub>”)</b>	Cubic Yard	<b>[REDACTED]</b>

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**APPENDIX 26-19  
TARIFF TABLE**

Table 1-1: Estimates of the number of tons or tonnes of steel, iron and aluminium subject to Tariffs

Cost Item	Ton / Tonnes	Unit Price (\$000's)
Amount of Iron to purchase in Canada for use in the US without regards to Tariffs	[REDACTED]	[REDACTED]
Amount of Steel to purchase in Canada for use in the US without regards to Tariffs	[REDACTED]	[REDACTED]
Amount of Aluminum to purchase in Canada for Use in US without regards to Tariffs	[REDACTED]	[REDACTED]
Amount of Iron to purchase in the US for use in Canada without regards to Tariffs	[REDACTED]	[REDACTED]
Amount of Steel to purchase in the US for use in Canada without regards to Tariffs	[REDACTED]	[REDACTED]
Amount of Aluminum to purchase in the US for use in Canada without regards to Tariffs	[REDACTED]	[REDACTED]

Table 1-2: Additional cost impact of Tariffs

Cost Item	Unit Price (\$000's)
Additional Cost of Iron Tariffs Imposed By Canada	[REDACTED]
Additional Cost of Steel Tariffs Imposed By Canada	[REDACTED]
Additional Cost of Aluminum Tariffs Imposed By Canada	[REDACTED]
Additional Cost of Iron Tariffs Imposed By the US	[REDACTED]
Additional Cost of Steel Tariffs Imposed By the US	[REDACTED]
Additional Cost of Aluminum Tariffs Imposed by the US	[REDACTED]

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**SCHEDULE 27****COMPENSATION ON TERMINATION****1. DEFINITIONS**

Unless defined specifically in this Schedule or unless the context otherwise requires, capitalized but otherwise undefined terms in this Schedule will have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of this Project Agreement.

In this Schedule, the following terms have meanings set out in this Section 1.

**Adjusted Estimated Fair Value** means the Estimated Fair Value, adjusted as follows:

- (a) by deducting the aggregate, without duplication, of the following amounts from the Estimated Fair Value:
  - (i) the Selection Costs;
  - (ii) insurance proceeds of Project Co which are to be used, or Insurance Equivalent Amounts that would have been used, in the repair, replacement or rectification of all or any part of the Facility, or to pay any liability of WDBA to a third party, which have not been paid to WDBA on or before the Termination Payment Date; and
  - (iii) other amounts that WDBA is entitled to set off or deduct in accordance with this Project Agreement or any Prime Contractor Direct Agreement;
- (b) by adding the aggregate, without duplication, of the following amounts (to the extent that WDBA has received such amounts in accordance with this Project Agreement free and clear of Encumbrances), to the Estimated Fair Value:
  - (i) all credit balances of any bank accounts held by or on behalf of Project Co on the date that the Estimated Fair Value is calculated; and
  - (ii) any insurance proceeds not described in clause (a)(iii) of this definition and other amounts owing to Project Co and which Project Co is entitled to retain, to the extent not included in clause (i) of this subparagraph (b),  
  
to the extent that the amounts referred to in clauses (i) and (ii) of this subparagraph (b) have not been directly taken into account in calculating the Estimated Fair Value;
- (c) where, in respect of the final Payment Period or partial Payment Period during the period beginning on the Termination Date and ending on the Compensation Date, the Post Termination Service Amount is a negative number, the aggregate amount by which all such negative Post Termination Service Amounts are negative shall be set off against and shall reduce the Estimated Fair Value.

**Adjusted Highest Qualifying Bid Price** means the Highest Qualifying Bid Price, adjusted as follows:

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- (a) by deducting the aggregate, without duplication, of the following amounts from the Highest Qualifying Bid Price:
  - (i) the Selection Costs;
  - (ii) insurance proceeds of Project Co which are to be used, or Insurance Equivalent Amounts that would have been used, in the repair, replacement or rectification of all or any part of the Facility, or to pay any liability of WDBA to a third party, which have not been paid to WDBA on or before the Termination Payment Date; and
  - (iii) other amounts that WDBA is entitled to set off or deduct in accordance with this Project Agreement or any Prime Contractor Direct Agreement;
- (b) by adding the aggregate, without duplication of the following amounts (to the extent that WDBA has received such amounts) to the Highest Qualifying Bid Price:
  - (i) all credit balances in any bank accounts held by or on behalf of Project Co on the date that the highest Qualifying Bid is received; and
  - (ii) any insurance proceeds not described in clause (a)(ii) of subparagraph (a) of this definition and other amounts owing to Project Co and which Project Co is entitled to retain, to the extent not included in clause (i) of this subparagraph (b),  
  
to the extent that the amounts referred to in clauses (i) and (ii) of this subparagraph (b) have not been directly taken into account in that Qualifying Bid; and
- (c) where, in respect of the final Payment Period or partial Payment Period during the period beginning on the Termination Date and ending on the Compensation Date, the Post Termination Service Amount is a negative number, the aggregate amount by which all such negative Post Termination Service Amounts are negative and have not previously been deducted from the Post Termination Service Amount in accordance with paragraph (c) of the definition of Post Termination Service Amount shall be set off against and shall reduce such Highest Qualifying Bid Price.

**Assets** has the meaning set out in Section 2.3.

**Average Rate** means the weighted average of the interest rates payable by Project Co under the Senior Lending Agreements.

**Compensation Date** means:

- (a) if Section 3.3 of this Schedule applies, the earlier of:
  - (i) the date that the New Project Agreement is entered into; and
  - (ii) the date on which WDBA pays the Adjusted Highest Qualifying Bid Price to Project Co; and

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- (b) if Section 3.5 of this Schedule applies, the date that the Adjusted Estimated Fair Value of this Project Agreement has been agreed or determined as provided for in this Schedule.

**Contingent Funding Obligations** means contingent liabilities of the Equity Members, if any, in respect of financial obligations owed to Project Co or to the Lenders under the Lending Agreements which are triggered as a result of or in relation to the termination of this Project Agreement, such as, for example, guarantees or letters of credit in respect of deferred equity investment in Project Co.

**Employee Termination Payments** means termination payments which are required under Applicable Law or lawful contracts of employment to be made to employees of Project Co, a Prime Contractor or any Subcontractor, are reasonably and properly incurred by Project Co, such Prime Contractor or such Subcontractor and arise as a direct result of the termination of this Project Agreement, provided that Project Co, the Prime Contractor or Subcontractor, as applicable must endeavour to mitigate such termination payments and provided that in calculating such amount no account will be taken of any liabilities and obligations arising out of:

- (a) contracts of employment or other agreements or arrangements entered into by Project Co, a Prime Contractor or a Subcontractor, as applicable to the extent that they were not entered into exclusively in connection with the Project; and
- (b) contracts of employment or other agreements or arrangements entered into by Project Co, a Prime Contractor or a Subcontractor to the extent that they were not entered into in the ordinary course of business and on commercial arm's length terms, save to the extent that amounts would have arisen if such contracts or other agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms.

**Estimated Fair Value** means the amount determined in accordance with Section 3.5.

**Fair Value Process** means the process for determining the Adjusted Estimated Fair Value described in Section 3.5.

**Foreign Exchange Contract** means a cross-currency hedging agreement during the Construction Period between Project Co and the Senior Lenders.

**FX Hedge During Construction** means the cross-currency hedging or derivative products used in the Foreign Exchange Contract between Project Co and the Senior Lenders.

**Hedge Termination Amounts** means the net amount, if any, payable or receivable under the Hedging Agreements in force on the termination of the hedging transactions, based on the interest rate or foreign currency rate indicated with respect to each such agreement including an amount payable for termination of the FX Hedge During Construction.

**Highest Qualifying Bid Price** means the highest price offered by the Qualifying Respondent, and, if no Qualifying Bids are received, zero, as determined by Section 3.4.

**Independent Expert** means a person who is independent of WDBA and Project Co, is professionally qualified to undertake the determination contemplated in Section 3.5 and has at least 10 years' experience in financial valuation.

**Insurance Equivalent Amounts** means any amounts that Project Co would have recovered if any insurance policy required to be taken out by Project Co pursuant to this Project Agreement, had been taken out and maintained in accordance with this Project Agreement, whether or not

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any such policy has in fact been effected or, if effected, has been vitiated as a result of any act or omission of Project Co or any Project Co Person (including for non-disclosure or under-insurance).

**Liquid Market** means that there are 2 or more willing parties, (each of whom is capable of being or constituting a New Project Co, each of whom deals with WDBA at arm's length, and each of whom is capable of being a Qualifying Respondent) in the market for agreements in Canada or the US for the provision of operation, maintenance, rehabilitation and tolling services (and if the Termination Date occurs prior to the Final Completion, design and construction services) for international customs and immigration plazas, highway interchanges and bridges and international toll bridges under a public-private partnership or similar model (where such agreements are the same as or similar to this Project Agreement) such that the Selection Process can reasonably be expected to result in a Highest Qualifying Bid Price broadly in the range of values that would reasonably be expected to be achieved in calculating the Estimated Fair Value under Section 3.5, provided that any entity controlled and established by the Senior Lenders specifically for the purposes of the Project and to which this Project Agreement may be assigned will be disregarded in assessing whether there are sufficient willing respondents in the market for such purposes.

**New Project Agreement** means an agreement between WDBA and a New Project Co substantially on the same terms and conditions as this Project Agreement as at the termination Date but with the following amendments:

- (a) if this Project Agreement is terminated prior to the Substantial Completion, then the Scheduled POE Handover Dates and Scheduled Substantial Completion Date will be extended by a period sufficient to enable a New Project Co to achieve Substantial Completion;
- (b) any accrued Service Failure Deductions and Availability Failure Deductions that arose prior to that time will not be taken into account after the transfer for the purpose of Sections 32.4(b), 32.5(a) and 46.1(j) of this Project Agreement;
- (c) the agreement will be for a term from the effective date of termination until the Expiry Date; and
- (d) any other amendments which do not adversely affect the New Project Co.

**New Project Co** means the person who has entered or who will enter into the New Project Agreement with WDBA as provided in this Schedule.

**Non-Default Termination Sum** has the meaning set out in Section 4.2.

**Post Termination Service Amount** means for the whole or any part of a Payment Period during the period from the Termination Date to the Compensation Date, an amount equal to the Monthly Payment, less any Deductions, which would have been payable in that period under this Project Agreement had this Project Agreement not been terminated, less an amount equal to the aggregate of:

- (a) the Deductions that were made from the Monthly Payment in the Payment Period immediately preceding the Termination Date;
- (b) the Rectification Costs incurred by WDBA in that Payment Period; and
- (c) where relevant, the amount by which the Post Termination Service Amount for the previous Payment Period was less than zero.

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**Project Co Default Termination Sum** has the meaning set out in Section 3.1.

**Project Internal Rate of Return** means the projected blended rate of return of all capital payment instruments over the Term, having regard to Distributions made or projected to be made.

**Qualifying Bid** means a bid proposal that meets all of the qualification criteria described in Section 3.4.

**Qualifying Respondent** means a person who submits a Qualifying Bid and who, to the satisfaction of WDBA:

- (a) has the legal capacity, power and authority to become a party to and perform the obligations of Project Co under this Project Agreement or to perform the obligations of a New Project Co under a New Project Agreement;
- (b) has confirmed that the terms of the New Project Agreement are acceptable to it;
- (c) has the expertise, technical competence and experience to enable it to perform the obligations of Project Co under this Project Agreement including if they are embodied in a New Project Agreement and has technical and financial resources that are sufficient to enable it to perform such obligations;
- (d) meets the criteria described in Section 7.3 of the Lenders' Direct Agreement; and
- (e) submits a Qualifying Bid;

but does not include Project Co or any of its Affiliates, unless WDBA agrees.

**Rectification Costs** has the meaning set out in Section 3.5(a)(ii).

**Schedule** means this Schedule 27 [*Compensation on Termination*] unless such term clearly refers to another schedule of this Project Agreement.

**Selection Costs** means the reasonable costs incurred by WDBA in carrying out the Selection Process or in calculating the Estimated Fair Value.

**Selection Process** means the process by which WDBA requests bid proposals from interested parties who wish to enter into a New Project Agreement and evaluates the responses from these interested parties with a view to entering into a New Project Agreement with a New Project Co in accordance with Section 3.3 and Section 3.4 of this Schedule.

**Selection Process Monitor** has the meaning set out in Section 3.4(h).

**Special Project Co Default Termination Sum** has the meaning set out in Section 5.2.

**Subcontractor Breakage Costs** means, without duplication, amounts reasonably and properly payable by Project Co to a Prime Contractor under the terms of the relevant Prime Contract, including for any costs associated with any currency hedging agreements which Project Co or a Prime Contractor has entered into, to compensate it for Losses sustained as a direct result of the early termination of this Project Agreement, but only to the extent that the following conditions have been met:

- (a) the Losses are incurred in connection with the performance of the Project Work for:

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- (i) costs of materials or goods ordered or subcontracts entered into that cannot be cancelled without such Losses being incurred;
  - (ii) expenditures reasonably incurred in anticipation of the performance of the Project Work in the future;
  - (iii) demobilisation costs, including the cost of any relocation of equipment used in connection with the Project Work;
  - (iv) Employee Termination Payments; and
  - (v) compensating a Prime Contractor through a commercially reasonable breakage fee;
- (b) the Losses are incurred under arrangements and/or agreements entered into in the ordinary course of business and on reasonable commercial terms, save to the extent that amounts would have arisen if such contracts or other agreements or arrangements had been entered into other than in the ordinary course of business and on commercial arm's length terms;
- (c) Project Co or any Prime Contractor, as the case may be, has each made reasonable efforts to mitigate the Losses; and
- (d) Project Co is not otherwise able or entitled (for default or otherwise) to terminate the Prime Contract without payment of a reduced payment,

provided however, that such costs shall not include any Indirect Losses (save to the extent expressly set out in (a) to (d) of this definition).

**Termination Payment** means any payment to be made by WDBA to Project Co pursuant to Sections 2.4, 4.5 or 5.5.

**Termination Payment Date** has the meaning set out in Section 7.1(a).

**WDBA Default Termination Sum** has the meaning set out in Section 2.1.

All references to a Section number in this Schedule means a Section number of this Schedule, unless such Section number clearly refers to a Section of the body of this Project Agreement or to another schedule or part of a schedule of this Project Agreement.

## **2. COMPENSATION ON TERMINATION FOR WDBA DEFAULT OR FOR CONVENIENCE**

### **2.1 Calculation of WDBA Default Termination Sum**

If Project Co terminates this Project Agreement pursuant to Section 47.2 (*Remedies of Project Co for WDBA Default*), or Section 31.5(b) (*Termination for Reinstatement Funds Deficiency*) of this Project Agreement or if WDBA terminates this Project Agreement pursuant to Section 48.5 (*Termination for Convenience*) or after the Scheduled Substantial Completion Date pursuant to Section 48.6 [REDACTED] of this Project Agreement, WDBA shall pay to Project Co an amount (the "**WDBA Default Termination Sum**") equal to the aggregate (without double counting) of:

- (a) the Senior Debt Amount and the Senior Debt Makewhole;
- (b) the Junior Debt Amount and the Junior Debt Makewhole;

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- (c) Employee Termination Payments and any Subcontractor Breakage Costs;
- (d) reasonable costs properly incurred by Project Co to wind up its operations;
- (e) Construction Period Payments payable by WDBA in accordance with Schedule 26 [*Construction Period Payments*] which are outstanding and unpaid on the Termination Date;
- (f) any amount payable by WDBA to Project Co in accordance with Sections 43.4, 43.6 or 43.8 of this Project Agreement; and
- (g) an amount which, if paid on the Termination Date and when taken together with all Distributions paid on or made in respect of Equity Interests in Project Co on or before the Termination Date, taking account of the actual timing of all such Distributions, but in any event, excluding all amounts (whether for costs, overhead, profit or otherwise), after the Termination Date, gives to the Equity Members, a nominal rate of return to the Termination Date equal to the Projected Equity Internal Rate of Return on the amount paid for their Equity Interests in Project Co (to the extent that such amount has been applied by Project Co for the purposes of the Project);

LESS, the aggregate (without double counting) of the following as of the Termination Date, to the extent it is a positive amount:

- (h) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date (whether held in cash, in the form of investments, letters of credit or other instruments);
- (i) (i) any amount which Project Co recovers or is entitled to recover under any Insurance Policy required to be taken out and maintained by Project Co in accordance with Section 40 (*Insurance*) of this Project Agreement and Schedule 29 [*Insurance Requirements*], and (ii) Insurance Equivalent Amounts and (iii) any amount which Project Co recovers or is entitled to recover under any other insurance policies that have been specifically procured in connection with the Project (excluding loss of profits insurance), in each case, save where such insurance proceeds are to be (or in the case of Insurance Equivalent Amounts would have been) applied in restoration or rehabilitation of all or any part of the Facility, or in the case of third party liability, applied in satisfaction of a Claim;
- (j) the value of any amounts due and payable from third parties (but only when received from third parties) but excluding the value of any Claims under a Prime Contract or the value of Claims against other third parties which have not been determined or have been determined but not yet paid, provided that in such case Project Co will assign any such rights and Claims under the Prime Contracts or Claims against other third parties to WDBA and give WDBA reasonable assistance in prosecuting such Claims;
- (k) all amounts claimable on or after the Termination Date in respect of Contingent Funding Obligations;
- (l) all amounts, including Hedge Termination Amounts and other breakage costs, payable by the Senior Lenders to Project Co directly as a result of prepayment under the Senior Lending Agreements of Senior Debt owing in respect of Permitted Borrowing or as a result of earlier termination of Hedging Agreements, caused by early termination of this Project Agreement;
- (m) to the extent not already applied against the amounts payable pursuant to Section 2.1(a), all other amounts received by the Senior Lenders, the Lenders' Agent, on its behalf and

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Schedule 27 [*Compensation on Termination*]

on behalf of the Senior Lenders, on or after the Termination Date and before the last date on which any compensation is payable by WDBA to Project Co, as a result of enforcing any other rights or security the Senior Lenders may have under the Senior Lending Agreements in respect of Senior Debt, net of any enforcement costs incurred by the Senior Lenders;

- (n) all amounts received and amounts payable as of the Termination Date but not yet paid in respect of the exercise, in whole or in part, prior to the assignment or transfer of the Performance and Payment Support pursuant to Section 39 (*Performance and Payment Support*) of this Project Agreement by the Senior Lenders, the Lenders' Agent or Project Co of the Performance and Payment Support, to the extent such amounts were not or are not used to repay the Senior Debt Amount or to pay for the execution of the Project Work; and
- (o) the market value of any other assets and rights of Project Co (other than those transferred to WDBA pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, to the extent realized before the Termination Date or such later date as the assets can be realized, provided that no account will be taken of any liabilities and obligations of Project Co arising out of:
  - (i) agreements or arrangements entered into by Project Co where such agreements or arrangements were not entered into solely in connection with Project Co obligations in relation to the Project; or
  - (ii) agreements or arrangements entered into by Project Co where such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms.

## 2.2 Minimum Amount

The WDBA Default Termination Sum shall never be less than sum of the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, minus the amounts described in Section 2.1(m) and Section 2.1(n).

## 2.3 Transfer of Assets

On payment of the WDBA Default Termination Sum, WDBA shall have the option to require Project Co to transfer to WDBA or as directed by WDBA, at WDBA's expense, without any further compensation, on an "as is, where is" basis without representation or warranty, express or implied, statutory or otherwise and free from any Encumbrance created by Project Co or the creation of which was authorized by Project Co, all of its right, title and interest in and to all or any assets and rights pertaining to the performance of the Project Work, including all lands and buildings, equipment, spare parts, tools and other assets and any other contractual rights (in this Schedule, the "**Assets**"). If the value of any Asset transferred has previously been deducted in calculating the WDBA Default Termination Sum in accordance with Section 2.1, such amount shall be credited to Project Co to the extent required to avoid a double deduction.

## 2.4 Payment

WDBA shall pay the WDBA Default Termination Sum in accordance with Section 7.1.

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### **3. COMPENSATION ON TERMINATION FOR PROJECT CO DEFAULT**

#### **3.1 Project Co Default Termination Sum**

Except where Section 5 applies, if WDBA terminates this Project Agreement pursuant to Section 46.3 of this Project Agreement or pursuant to Section 31.5(a) of this Project Agreement, WDBA shall pay to Project Co an amount (the “**Project Co Default Termination Sum**”) equal to either (i) the Adjusted Highest Qualifying Bid Price according to the new Selection Process described in Section 3.4 or (ii) the Adjusted Estimated Fair Value in accordance with the Fair Value Process described in Section 3.5.

#### **3.2 Transfer of Assets on Termination**

WDBA may elect by notice to Project Co given on or prior to the Termination Date, to require Project Co to transfer to WDBA or as directed by WDBA, on the Compensation Date, at Project Co's expense (such expense being deductible from the Project Co Default Termination Sum), without any further compensation, on an “as is, where is” basis without representation or warranty, express or implied, statutory or otherwise and free from any Encumbrance created by Project Co or whose creation was authorized by Project Co, all of its rights in and to all or any part of the Assets.

#### **3.3 New Selection Process**

WDBA may elect to start a new Selection Process regarding the provision of the Project Work by another person in accordance with Section 3.4 if:

- (a) WDBA notifies Project Co of such election on or before the date falling 60 days after the Termination Date; and
- (b) there is a Liquid Market, and either:
  - (i) the Lenders' Agent has not sent an Indicative Step-In Notice with respect to a named representative or a Step-In Notice pursuant to Section 4.3 or 5.1 of the Lenders' Direct Agreement or, if it has, it has subsequently exercised its right to step-out under the Lenders' Direct Agreement without first transferring Project Co's rights and obligations under this Project Agreement to a New Project Co in accordance with, and within the time periods permitted under, the provisions of the Lenders' Direct Agreement; or
  - (ii) the Lenders' Agent has not transferred Project Co's rights and obligations under this Project Agreement to a New Project Co in accordance with, and within the time periods permitted under, the provisions of the Lenders' Direct Agreement.

If such conditions are not satisfied, WDBA shall require a determination in accordance with the Fair Value Process pursuant to Section 3.5 and the provisions of such Section shall apply.

#### **3.4 Rules for New Selection Process**

If WDBA elects to start a new Selection Process regarding the provision of the Project Work under Section 3.3, then the following provisions shall apply.

- (a) The new Selection Process shall make it possible to establish the Adjusted Highest Qualifying Bid Price as a result of the Selection Process.

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- (b) WDBA shall (subject to any Applicable Laws) endeavour to complete the new Selection Process as soon as reasonably practicable.
- (c) WDBA shall as soon as reasonably practicable notify Project Co of the qualification criteria and the other requirements and terms of the Selection Process, including the timing of the Selection Process, and shall act reasonably in setting such requirements and terms.
- (d) Project Co shall authorize the release of any information by WDBA under the Selection Process which would otherwise be prevented by Section 53 of this Project Agreement, that is required as part of the Selection Process.
- (e) Project Co shall continue to perform, if so requested by WDBA, the Interim OM Work and, for all or any part of a Payment Period falling within the period from the Termination Date to the earlier of the Substantial Completion Date and the Compensation Date, WDBA shall pay to Project Co the Interim OM Payment for each completed Payment Period plus any applicable Pass-Through Costs During Construction.
- (f) Project Co shall continue to perform, if so requested by WDBA, the OMR Work, and, for all or any part of a Payment Period falling within the period from the Termination Date to the Compensation Date, WDBA shall pay to Project Co:
  - (i) the Post Termination Service Amount for each completed Payment Period, on or before the date falling 30 days after the end of that Payment Period; and
  - (ii) the Post Termination Service Amount for the period from the end of the last completed Payment Period until the Compensation Date, on or before the date falling 30 days after the Compensation Date.
- (g) If any Post Termination Service Amount is negative, then the amount by which the Post Termination Service Amount is negative shall be carried forward and may be set off against any future positive Post Termination Service Amounts.
- (h) Project Co may, at its expense, appoint a person (the “**Selection Process Monitor**”) to monitor the Selection Process for the purpose of monitoring and reporting to Project Co and the Senior Lenders on WDBA’s compliance with the Selection Process and making representations to WDBA. The Selection Process Monitor shall not disclose any Confidential Information to Project Co or any other person (and shall provide an undertaking to WDBA to such effect as a condition of its appointment). However the Selection Process Monitor may notify Project Co and the Senior Lenders as to whether or not it considers that WDBA is in compliance with the Selection Process and has adequately determined the Adjusted Highest Qualifying Bid Price.
- (i) The Selection Process Monitor shall enter into a confidentiality undertaking with WDBA in a form acceptable to WDBA and shall be entitled to attend all meetings relating to the Selection Process and to receive reasonable notice of such meetings, inspect copies of all bid documentation and bids and make written representations to WDBA regarding compliance with the Selection Process. All such representations shall be made by the Selection Process Monitor in a timely manner as the Selection Process proceeds. WDBA shall not be bound to consider or act upon any such representations, but acknowledges that such representations may be referred to by Project Co in the event that Project Co refers a Dispute relating to the Adjusted Highest Qualifying Bid Price to the Dispute Resolution Procedure in accordance with the Dispute Resolution Procedure.

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- (j) WDBA shall require bidders to bid on the basis that proceeds payable as a result of any outstanding Claims under material property damage Insurance Policies shall be dealt with in accordance with the relevant provisions of this Project Agreement.
- (k) As soon as practicable after bids have been received, WDBA shall determine the Qualifying Bids and shall notify Project Co of the Adjusted Highest Qualifying Bid Price. If WDBA only receives one Qualifying Bid or if no Qualifying Bid is received, the procedure set out in Section 3.5 shall apply, unless, if WDBA only receives one Qualifying Bid, WDBA and Project Co both agree to complete the Selection Process based on that one bid.
- (l) Subject to Sections 3.4(m), 3.4(p), 8 and 10, WDBA shall pay to Project Co an amount equal to the Adjusted Highest Qualifying Bid Price no later than the date falling 30 days after the date of the New Project Agreement.
- (m) If Project Co refers a Dispute relating to the Adjusted Highest Qualifying Bid Price to the Dispute Resolution Procedure, WDBA shall, irrespective of such Dispute, be entitled to enter into a New Project Agreement. WDBA shall pay the non disputed portions of the Project Co Default Termination Sum, if any, by the date contemplated in Section 3.4(l), and shall pay the disputed balance, if applicable, on or before the date falling 30 days after it has been finally determined in accordance with the Dispute Resolution Procedure. To the extent that the Dispute has been resolved in favour of Project Co, WDBA shall pay interest to Project Co at a rate equal to the rate prescribed by Section 7.4 (subject to subparagraph (d) of such Section 7.4) on any portion of the Project Co Default Termination Sum which has been withheld, from the date specified in Section 3.4(l) until the date specified in this Section 3.4(m).
- (n) The discharge by WDBA of its payment obligation in Sections 3.4(m) and/or 3.4(l) shall be in full and final settlement of all Project Co's Claims and all rights or remedies of contractual or extra-contractual nature against WDBA for breaches and/or termination of this Project Agreement and any of the Project Documents, save for any liability of WDBA to Project Co which arose prior to the Termination Date (but not from the termination itself) that has not already been taken into account in the determination of the Project Co Default Termination Sum.
- (o) Subject to Sections 3.4(p) and 3.4(s), if WDBA has not paid an amount equal to the Adjusted Highest Qualifying Bid Price to Project Co on or before the date falling 18 months after the Termination Date, unless payment has not been made as a result of delays caused by Project Co or as a result of a Dispute, then this Section 3.4 shall not apply to that termination and WDBA shall pay to Project Co the amount provided for in Section 5.
- (p) If the amount equal to the Project Co Default Termination Sum is zero or a negative number, then WDBA shall have no obligation to make any payment to Project Co and with effect from the time that WDBA gives notice of that event to Project Co, WDBA shall be released from all liability to Project Co for breaches and/or termination of this Project Agreement and any of the Project Documents whether contractually or otherwise, save for any liability of WDBA which arose prior to the Termination Date (but not from the termination itself) that has not already been taken into account in determining the amount equal to the Project Co Default Termination Sum.
- (q) If the Project Co Default Termination Sum is a negative number, the negative portion of the number shall be due and payable to WDBA by Project Co within 30 days of the date

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the Adjusted Highest Qualifying Bid Price is agreed upon or determined in accordance with the provisions of this Project Agreement.

- (r) WDBA may elect at any time prior to the receipt of a Qualifying Bid to follow the Fair Value Process by notice to Project Co.
- (s) If WDBA has received a minimum of two Qualifying Bids but decides not to complete the Selection Process, it shall notify Project Co of this decision and pay to Project Co an amount equal to the Project Co Default Termination Sum. In such event, for the purposes of Section 3.1, the Adjusted Highest Qualifying Bid Price shall be determined taking into account the Highest Qualifying Bid Price amongst the Qualifying Bids received.
- (t) Notwithstanding anything contained in this Section 3.4, WDBA may deduct from the Adjusted Highest Qualifying Bid Price an amount equal to the value of any liquidated damages payable by Project Co in accordance with this Project Agreement to the extent such liquidated damages have not been paid as of the Termination Date.

### 3.5 Fair Value Process

If WDBA is not entitled to start a new Selection Process for the provision of the Project Work under Section 3.3, abandons the Selection Process in accordance with Section 3.4(r) or elects by notice to Project Co to have a determination of the Estimated Fair Value in accordance with this Section 3.5, then the following provisions of this Section shall apply ("**Fair Value Process**").

- (a) In determining the Estimated Fair Value, the parties or, if WDBA so elects, an Independent Expert appointed by WDBA, shall follow the principles set out in this Section.
  - (i) All forecast amounts shall be calculated in nominal terms as at the Termination Date. Where relevant, adjustments for forecast inflation between the date of calculation and the forecast payment dates, as set out in this Project Agreement, will be made and, if made, will use CPI-1.
  - (ii) The Estimated Fair Value shall be calculated using the following formula (without double counting):

$$(A - B - C) - D$$

Where:

A = the present value of future Monthly Payments and future Construction Period Payments to the extent that, as at the Termination Date, such payments have not yet been paid and are forecast to be made from the Termination Date to the Expiry Date, (taking into account Project Co's performance under the Project Agreement and projecting that the average annual amount of Deductions incurred by Project Co during the period prior to the Termination Date would continue at the same annual amount for the period between the Termination Date and the Expiry Date), discounted at the Project Internal Rate of Return;

B = a contingency amount based on a reasonable risk assessment of any cost overruns that may reasonably arise whether or not forecast in the relevant base case and represented in the Financial Model as at the date hereof, discounted at the Project Internal Rate of Return;

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C = the present value of the costs to be incurred to perform or to cause to be performed the Project Work reasonably forecast to be incurred by WDBA from the Termination Date to the Expiry Date to the standard required in this Project Agreement, discounted at the Project Internal Rate of Return; and

D = any rectification costs reasonably required to deliver the Project Work to the standard required by this Project Agreement, (including, in the case of termination prior to Substantial Completion, the reasonable costs required to be expended to achieve Substantial Completion) ("**Rectification Costs**"), including securing the required Certificates to be issued pursuant to the Certification Procedure, including meeting the levels of performance set out in this Project Agreement less (to the extent such sums are included in the calculation of Rectification Costs) any amount actually recovered by WDBA under any Insurance Policy required to be taken out and maintained by Project Co in accordance with Section 40 of this Project Agreement and Schedule 29 [*Insurance Requirements*], or any other insurance policy that has been specifically procured in connection with the Project, discounted at the Project Internal Rate of Return.

- (b) If the parties cannot agree on the Estimated Fair Value on or before the date falling 60 days after the date on which WDBA elected to require a determination in accordance with this Section 3.5, then the Estimated Fair Value shall be determined in accordance with the Dispute Resolution Procedure.
- (c) Subject to Sections 3.5(e), 3.5(i) and 8, WDBA shall pay to Project Co an amount equal to the Adjusted Estimated Fair Value in accordance with Section 7.3.
- (d) The discharge by WDBA of its payment obligation in Section 3.5(c) is in full and final settlement of all Project Co's Claims and rights and remedies of contractual or extra-contractual nature against WDBA for breaches and/or termination of this Project Agreement and any of the Project Documents, save for any liability of WDBA which arose prior to the Termination Date (but not from the termination itself) that has not already been taken into account in determining the Project Co Default Termination Sum.
- (e) If the Project Co Default Termination Sum is zero or a negative number, then WDBA shall have no obligation to make any payment to Project Co and with effect from the time that WDBA gives notice of that event to Project Co WDBA shall be released from all liability of contractual or extra-contractual nature to Project Co for breaches and/or termination of this Project Agreement and any of the Project Documents, save for any liability of WDBA which arose prior to the Termination Date (but not from the termination itself) that has not already been taken into account in determining the Project Co Default Termination Sum.
- (f) If the Project Co Default Termination Sum is a negative number, the negative portion of the number shall be due and payable to WDBA by Project Co within [60] days of the date the Adjusted Estimated Fair Value is agreed upon or determined in accordance with the provisions of this Project Agreement.
- (g) Subject to Section 3.5(h), if the provisions of this Section apply, Project Co shall not be required to perform any Post Termination Services and shall not be entitled to receive any Post Termination Service Amount.
- (h) If WDBA elects to require a determination in accordance with this Section 3.5 after it has elected to follow the procedure set out in Section 3.4, then WDBA shall continue to pay to

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Project Co each Post Termination Service Amount until the Compensation Date in accordance with Section 3.4.

- (i) Notwithstanding anything contained in this Section 3.5, WDBA may deduct from the Adjusted Estimated Fair Value an amount equal to the value of any liquidated damages payable by Project Co in accordance with this Project Agreement to the extent such liquidated damages have not been paid as of the Termination Date.

### 3.6 Payment

WDBA shall pay the Project Co Default Termination Sum in accordance with Section 7.

## 4. COMPENSATION ON TERMINATION FOR FORCE MAJEURE EVENT, RELIEF EVENT, REINSTATEMENT FUNDS DEFICIENCY, UNINSURABLE RISK OR UNAVAILABILITY OF LANDS

### 4.1 No Fault Termination

If Project Co or WDBA terminates this Project Agreement pursuant to Section 31.5(c) (*Termination for Reinstatement Funds Deficiency*), Section 48.2 (*Termination for Force Majeure or Relief Event*), Section 48.3 (*Termination for Uninsurable Risk*), Section 48.4 (*Termination for Damage or Destruction*) or before the Scheduled Substantial Completion Date pursuant to Section 48.6 [REDACTED] of this Project Agreement, WDBA shall pay to Project Co the Non-Default Termination Sum calculated in accordance with Section 4.2.

### 4.2 Calculation of Non- Default Termination Sum

Subject to Section 4.3, the “**Non-Default Termination Sum**” shall be an amount equal to the aggregate of (without double counting):

- (a) the Senior Debt Amount and the Senior Debt Makewhole;
- (b) the Junior Debt Amount;
- (c) the Junior Debt Makewhole, but only if the termination arises because of Force Majeure or an Uninsurable Event;
- (d) Employee Termination Payments and Subcontractor Breakage Costs;
- (e) Construction Period Payments payable by WDBA in accordance with Schedule 26 [*Construction Period Payments*] which are outstanding and unpaid on the Termination Date;
- (f) reasonable costs properly incurred by Project Co to wind up its operations; and
- (g) an amount equal to the amount paid by the Equity Members for their Equity Interests on or prior to the Termination Date (but not, any amounts committed by the Equity Members but not yet paid), less all Distributions paid on or made in respect of such amounts on or before the Termination Date, provided that where such amount is negative, it shall be deemed instead to be zero.

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

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- (h) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date (whether held in cash, in the form of investments, letters of credit or other instruments);
- (i) (i) any amount which Project Co recovers or is entitled to recover under any Insurance Policy required to be taken out and maintained by Project Co in accordance with Section 40 (*Insurance*) of this Project Agreement and Schedule 29 [*Insurance Requirements*], (ii) Insurance Equivalent Amounts, (iii) any amount which Project Co recovers or is entitled to recover under any other insurance policies that have been specifically procured in connection with the Project (excluding loss of profits insurance), and (iv) any amount in respect of deductibles for which Project Co is responsible under this Project Agreement, in each case, save where such insurance proceeds are to be (or in the case of Insurance Equivalent Amounts would have been) applied in restoration, or in the case of third party liability, applied in satisfaction of a Claim;
- (j) the value of any amounts due and payable from third parties (but only when received from third parties) but excluding any Claims under a Prime Contract or Claims against other third parties which have not been determined or have been determined but not yet paid, provided that in such case Project Co will assign any such rights and Claims under the Prime Contracts or Claims against other third parties to WDBA and give WDBA reasonable assistance in prosecuting such Claims;
- (k) all amounts, including Hedge Termination Amounts and other breakage costs, payable by the Senior Lenders to Project Co directly as a result of prepayment under the Senior Lending Agreements of Senior Debt owing in respect of Permitted Borrowing or as a result of earlier termination of Hedging Agreements, caused by early termination of this Project Agreement;
- (l) to the extent not already applied against the amounts payable pursuant to Section 4.2(a), all other amounts received by the Senior Lenders, the Lenders' Agent, on or after the Termination Date and before the last date on which any compensation is payable by WDBA to Project Co, as a result of enforcing any other rights or security the Senior Lenders may have under the Senior Lending Agreements in respect of Senior Debt, net of any enforcement costs incurred by the Senior Lenders;
- (m) all amounts received and amounts payable as of the Termination Date but not yet paid in respect of the exercise, in whole or in part, prior to the assignment or transfer of the Performance and Payment Support pursuant to Section 39 (*Performance and Payment Support*) of this Project Agreement by the Senior Lenders, the Lenders' Agent, or Project Co of the Performance and Payment Support, to the extent such amounts were not or are not used to repay the Senior Debt Amount or to pay for the execution of the Project Work; and
- (n) the market value of any other assets and rights of Project Co (other than those transferred to WDBA pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date to the extent realized before the Termination Payment Date or such later date as the assets can be realized provided that no account will be taken of any liabilities and obligations of Project Co arising out of:
  - (i) agreements or arrangements entered into by Project Co where such agreements or arrangements were not entered into solely in connection with Project Co obligations in relation to the Project; or

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- (ii) agreements or arrangements entered into by Project Co where such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms.

#### 4.3 Minimum Amount

The Non Default Termination Sum shall:

- (a) not be more than the WDBA Default Termination Sum; and
- (b) not be less than:
  - (i) the sum of the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and, in the case where Section 4.2(c) applies, the Junior Debt Makewhole; minus,
  - (ii) the amounts described in Section 4.2(l) and Section 4.2(m).

#### 4.4 Transfer of Assets

On payment of the Non Default Termination Sum, WDBA shall have the option, to require Project Co to transfer to WDBA or as directed by WDBA, at Project Co's expense (such expenses being deductible from the Non Default Termination Sum provided that such deduction may not result in the Non Default Termination Sum being less than the amount required pursuant to Section 4.2, without any further compensation, on an "as is, where is" basis without representation or warranty, express or implied, statutory or otherwise and free from any Encumbrance created by Project Co or whose creation was authorized by Project Co, all of Project Co's right, title and interest in and to all or any part of the Assets and to the extent the value of any such Asset transferred has previously been deducted in calculating the Non Default Termination Sum in accordance with Section 4.3 above, such amount shall be credited to Project Co to the extent required to avoid a double deduction.

#### 4.5 Payment

WDBA shall pay the Non-Default Termination Sum in accordance with Section 7.1.

### 5. COMPENSATION ON TERMINATION FOR BREACH OF REFINANCING PROVISIONS, FOR PROHIBITED ACTS OR FOR BREACH OF INTEGRITY PROVISIONS

#### 5.1 Special Project Co Default Termination Sum

If WDBA terminates this Project Agreement pursuant to Section 46.3 (*Remedies of WDBA for Project Co Event of Default*) of this Project Agreement as a result of the occurrence of the Project Co Event of Default referred to in Section 46.1(l), Section 46.1(r) or Section 46.1(s) (*Project Co Events of Default*) of this Project Agreement, WDBA shall pay to Project Co the Special Project Co Default Termination Sum as set out in Section 5.2.

#### 5.2 Calculation of Special Project Co Default Termination Sum

The "**Special Project Co Default Termination Sum**" shall be an amount equal to the aggregate of (without double counting):

- (a) the Senior Debt Amount and the Senior Debt Makewhole;

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- (b) unless WDBA has exercised its step in rights under Section 3.2 of the applicable Prime Contractor Direct Agreement, the following amounts calculated in respect of the Construction Contractor, if the Construction Contractor is not responsible for a Prohibited Act, and/or, if applicable, the OMR Contractor, if the OMR Contractor is not responsible for a Prohibited Act, and provided that Project Co can demonstrate that such amounts will be paid directly to such persons:
- (i) amounts contemplated in clause (a)(iv) of the definition of Subcontractor Breakage Costs as applicable to the Construction Contractor; and
  - (ii) as applicable, the Construction Contractor's and OMR Contractor's out-of-pocket costs incurred as a direct result of termination of this Project Agreement (excluding without limiting the foregoing, any breakage fees and overhead and profit of the Construction Contractor, and OMR Contractor, as applicable);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (c) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date (whether held in cash, in the form of investments, letters of credit or other instruments);
- (d) (i) any amount which Project Co recovers, is entitled to recover under any Insurance Policy required to be taken out and maintained by Project Co in accordance with Section 40 (*Insurance*) of this Project Agreement and Schedule 29 [*Insurance Requirements*] (ii) Insurance Equivalent Amounts (iii) any amount which Project Co recovers or is entitled to recover under any other insurance policies that have been specifically procured in connection with the Project (excluding loss of profits insurance), and (iv) any amount in respect of deductibles for which Project Co is responsible under this Project Agreement, in each case, save where such insurance proceeds are to be (or in the case of Insurance Equivalent Amounts would have been) applied in restoration, or in the case of third party liability, applied in satisfaction of a Claim;
- (e) the value of any amounts due and payable from third parties (but only when received from third parties) but excluding any Claims under a Prime Contract or Claims against other third parties which have not been determined or have been determined but not yet paid provided that in such case Project Co will assign any such rights and Claims under the Prime Contracts or Claims against other third parties to WDBA and give WDBA reasonable assistance in prosecuting such Claims;
- (f) all amounts, including Hedge Termination Amounts and other breakage costs, payable by the Senior Lenders to Project Co directly as a result of prepayment under the Senior Lending Agreements of Senior Debt owing in respect of Permitted Borrowing or as a result of earlier termination of Hedging Agreements, caused by early termination of this Project Agreement;
- (g) to the extent not already applied against the amounts payable pursuant to Section 5.2(a), all other amounts received by the Senior Lenders, Lenders' Agent, on or after the Termination Date and before the last date on which any compensation is payable by WDBA to Project Co, as a result of enforcing any other rights or security the Senior Lenders may have under the Senior Lending Agreements in respect of Senior Debt net of any enforcement costs incurred by the Senior Lenders;

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- (h) all amounts received and amounts payable as of the Termination Date but not yet paid in respect of the exercise, in whole or in part, prior to the assignment or transfer of the Performance and Payment Support pursuant to Section 39 (*Performance and Payment Support*) of this Project Agreement by the Senior Lenders, the Lenders' Agent or Project Co of the Performance and Payment Support to the extent such amounts were not or are not used to repay the Senior Debt Amount or to pay for the execution of the Project Work; and
- (i) the market value of any other assets and rights of Project Co (other than those transferred to WDBA pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date to the extent realized before the Termination Payment Date or such later date as the assets can be realized provided that no account will be taken of any liabilities and obligations of Project Co arising out of:
  - (i) agreements or arrangements entered into by Project Co where such agreements or arrangements were not entered into solely in connection with Project Co obligations in relation to the Project; or
  - (ii) agreements or arrangements entered into by Project Co where such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms.

### **5.3 Minimum Amount**

The Special Project Co Default Termination Sum shall not be less than the sum of the aggregate of the Senior Debt Amount and the Senior Debt Makewhole, minus the amounts described in Section 5.2(g) and Section 5.2(h).

### **5.4 Transfer of Assets**

On payment of the Special Project Co Default Termination Sum, WDBA shall have the option to require Project Co to transfer to WDBA or as directed by WDBA, at Project Co's expense (such expenses being deductible from the Special Project Co Default Termination Sum), without any further compensation, on an "as is, where is" basis without representation or warranty, express or implied, legal or conventional and free from Encumbrances created by Project Co or whose creation was authorized by Project Co, all of its right, title and interest in and to all or any part of the Assets, and, in such case, to the extent the value of any such Asset transferred as aforesaid has previously been deducted in calculating the Special Project Co Default Termination Sum in accordance with Section 5.2 above, such amount shall be credited to Project Co to the extent required to avoid a double deduction.

### **5.5 Payment**

WDBA shall pay the Special Project Co Default Termination Sum in accordance with Section 7.1.

## **6. CALCULATION OF TERMINATION PAYMENTS**

### **6.1 Project Co Obligation**

Promptly after the issuance by WDBA or Project Co, as the case may be, of any notice of termination in respect of a termination of this Project Agreement to which any of Sections 2, 4 or 5 apply, Project Co shall determine in accordance with the provisions of this Schedule, the amount of compensation payable as of the actual Termination Date if known and as of an

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estimated Termination Date otherwise, and shall provide to WDBA notice of such amount and details of the calculation of each component thereof.

## 6.2 Information and Documentation to be Provided

The information and documentation to be provided and calculations to be made by Project Co include:

- (a) the methodology and calculation underlying the determination of such amount, which shall reflect and be aligned with the methodology and calculation used in the Financial Model;
- (b) the most current Financial Model in accordance with Section 33 of this Project Agreement;
- (c) certificates of the Lenders' Agent as to the amount of the Senior Debt Amount and Senior Debt Makewhole, including particulars of the calculation of the various components thereof;
- (d) where applicable, certificates of senior officers of the Junior Lenders as to the amounts of the Junior Debt Amount and Junior Debt Makewhole, including particulars of the calculation of the various components thereof;
- (e) certificates of senior officers of each Prime Contractor as to the amount and calculation of the components of any Subcontractor Breakage Costs incurred by such Prime Contractor where Subcontractor Breakage Costs are payable and being claimed as a component of the compensation on termination, including particulars of the calculation of the various components thereof;
- (f) certificates from senior officers or directors of each Equity Member as to the amount of capital paid in respect of then issued and outstanding Equity Interests and the amount of all Distributions paid in respect of Equity Interests, including particulars of the calculation of the various components thereof;
- (g) certificates from senior officers or directors of Project Co and, as may be requested by WDBA, from Project Co's third party auditors, as to:
  - (i) the amount and calculation of the components of any Employee Termination Payments where Employee Termination Payments are payable and being claimed as a component of the compensation on termination;
  - (ii) the amount of all Distributions;
  - (iii) the matters referred to in Sections 6.2(a), 6.2(d), 6.2(e) and 6.2(f);
  - (iv) the matters referred to in Sections 2.1(c) to 2.1(n), inclusive, 4.2(d) to 4.2(n) inclusive and 5.2(b) to 5.2(i)(ii) inclusive,

together with all such documents and information that WDBA may from time to time in a timely manner reasonably request for the purposes of calculating, confirming the calculation of, or verifying, the amount of compensation payable.

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### 6.3 Update of Estimate

If a Termination Payment calculated pursuant to Section 6.1 was determined as of an estimated Termination Date, promptly after the actual Termination Date Project Co shall provide to WDBA the calculation, information and documents referred to in Sections 6.1 and 6.2 as of the actual Termination Date, together with an explanation (with supporting calculations, certificates and documents) of the difference between the Termination Payment calculated as of the estimated Termination Date and the Termination Payment calculated as of the actual Termination Date.

### 6.4 Confirmation by WDBA

Within 60 days after the latest of:

- (a) the date of receipt by WDBA of a notice of a compensation amount with supporting details of the calculation of each component thereof, certificates and other documents as provided in Section 6.2 to WDBA's satisfaction, acting reasonably;
- (b) if applicable, the date of receipt by WDBA of the additional explanation, calculations, information, certificates and documents referred to in Section 6.3; and
- (c) the date of receipt by WDBA of any other documents and information reasonably requested by WDBA in a timely manner for the purposes of calculating, confirming the calculation of, or verifying, the amount of compensation payable;

WDBA shall by notice to Project Co either:

- (d) confirm its agreement with the calculation of amount of compensation payable; or
- (e) confirm its disagreement with the calculation of the amount of compensation payable and provide an explanation and reasonable particulars as to the basis for such disagreement.

If there is a Dispute with respect to the calculation of any Termination Payment or any component thereof, the Dispute shall be resolved pursuant to the Dispute Resolution Procedure.

Any amount which is contemplated to be deducted from any termination payment to be made by WDBA to Project Co in accordance with this Schedule which has previously or is contemporaneously allocated to reduce the Senior Debt Amount shall not be deducted from such termination payment.

## 7. PAYMENTS

### 7.1 Termination Payment Date

- (a) Subject to Sections 7.2 and 7.3, WDBA shall pay to Project Co any Termination Payment, within 60 days after the date such Termination Payment is calculated and agreed between the parties pursuant to Section 6 or failing agreement, within 30 days after any Dispute with respect to the amount of a Termination Payment is finally determined pursuant to the Dispute Resolution Procedure (the "**Termination Payment Date**").
- (b) If the calculation of any Termination Payment results in Project Co owing a net amount to WDBA rather than WDBA owing an amount to Project Co, Project Co shall pay such amount on the Termination Payment Date.

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## 7.2 Payment Re Adjusted Highest Qualifying Bid Price

If Section 3.3 applies, WDBA shall pay to Project Co the Adjusted Highest Qualifying Bid Price within 30 days after the later of:

- (a) the date on which WDBA enters into the New Project Agreement with the New Project Co; and
- (b) if there is a Dispute as to the Adjusted Highest Qualifying Bid Price, the date on which the Dispute is finally determined pursuant to the Dispute Resolution Procedure.

If the calculation of the Adjusted Highest Qualifying Bid Price results in Project Co owing a net amount to WDBA rather than WDBA owing an amount to Project Co, Project Co shall pay such amount on the date the New Project Agreement is entered into by WDBA and the New Project Co.

## 7.3 Payment of Adjusted Estimated Fair Value

- (a) If Section 3.5 applies, WDBA shall pay to Project Co the Adjusted Estimated Fair Value within 60 days after the date on which the Adjusted Estimated Fair Value has been agreed or determined in accordance with Section 3.5.
- (b) If the calculation of the Adjusted Estimated Fair Value results in Project Co owing a net amount to WDBA, Project Co shall pay such amount to WDBA on the Compensation Date.

## 7.4 Interest

Interest shall accrue on any unpaid amount of compensation payable to Project Co in accordance with this Section 7.4.

- (a) In the event of a termination to which Section 2 or Section 4 applies, interest shall accrue at the non-default interest rate payable on the Senior Debt at the time of termination (or if the Senior Debt has more than one interest rate, at the weighted average of such non-default interest rates) from and including the date on which Project Co has provided the notice described in Section 6.1 together with the information required by Section 6.1, to but excluding the date payment is made.
- (b) In the event of a termination to which Section 5 applies, interest shall accrue at the lowest non-default interest rate payable by Project Co on the Senior Debt, from and including the date on which Project Co has provided the notice described in Section 6.1 together with the information required by Section 6.1, to but excluding the date payment is made.

## 8. RIGHTS OF SET-OFF

Subject to Sections 2.2, 4.3 and 5.3, WDBA's obligations to make any payment of compensation to Project Co pursuant to this Schedule are without prejudice to WDBA's right of set-off under Section 37.8 (*Set-Off*) of this Project Agreement.

## 9. COSTS

The costs and expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule shall only be such direct costs and expenses to the extent that they are reasonable and proper in quantum and have been or shall be reasonably and properly incurred.

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**10. UNDISPUTED AMOUNTS**

If the calculation of any termination amount is disputed, then any undisputed amount shall be paid in accordance with this Schedule and the disputed amount shall be dealt with in accordance with the Dispute Resolution Procedure.

**11. OUTSTANDING SENIOR DEBT AMOUNTS**

- (a) WDBA is entitled to rely on a certificate of the Lenders' Agent as conclusively establishing the amount of the Senior Debt Amount and the Senior Debt Makewhole outstanding at any relevant time.
- (b) If a receipt or other acknowledgement is given to WDBA by the Lenders' Agent acknowledging or otherwise confirming full or partial receipt of payment or payments in respect of the Senior Debt Amount and the Senior Debt Makewhole (as applicable), such receipt or other acknowledgement shall discharge WDBA's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.

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**SCHEDULE 28****REFINANCING****1. DEFINITIONS**

Unless defined specifically in this Schedule 28 or unless the context otherwise requires, capitalized but other undefined terms in this Schedule shall have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of this Project Agreement. The following definitions contained in such Schedule 1 are repeated in this Schedule 28 for ease of reference.

**Contingent Funding Obligations** means contingent liabilities of the Equity Members, if any, in respect of financial obligations owed to Project Co or the lenders under the Lending Agreements which are triggered as a result of or in relation to the termination of the Project Agreement, such as, for example, guarantees or letters of credit in respect of deferred equity.

**Distribution** means:

- (a) any of the following:
  - (i) payment or declaration of any dividend, return of principal, deduction or the making of any distribution, of any kind or nature whatsoever (in cash or in property) for the benefit of the Equity Members or any other distribution in respect of the Equity Interests in Project Co;
  - (ii) purchase or redemption or other acquisition or cancellation for value of an Equity Interest in Project Co or any option or warrant or right to acquire an Equity Interest in Project Co, or any other reorganization or conversion of or variation to the share or unit capital of Project Co having an effect similar to the ones described in this clause (ii);
  - (iii) repayment of capital or payment of interest or the payment of any other amounts in respect of Junior Debt (whether of fees, principal, interest, breakage costs or otherwise and whether or not such payments are included in or excluded from the definition of Junior Debt), as the case may be;
  - (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 it is made or put in place or entered into or undertaken by Project Co or an Equity Member after the Commencement Date and that was not in the ordinary course of business and on reasonable terms, including to or with any Equity Member or any of its Affiliates;
  - (v) any other payment, of any nature whatsoever, to any Equity Member or any of its Affiliates howsoever arising and whether made pursuant to the terms of an agreement or otherwise or in respect of any class of Equity Interest in Project Co or other securities of or interests in Project Co if, in any such case, such payment would not have been made were it not for the occurrence of a Refinancing, or any Change in Control of Project Co; or

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- (vi) the giving or conferring by Project Co or an Equity Member of any other benefit that is not given or conferred in the ordinary course of business or is not given or conferred on reasonable commercial terms,
- (b) the early release of any Contingent Funding Obligations, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain,

and where any such Distribution is not in cash, the equivalent cash value of such Distribution will be calculated.

**Exempt Refinancing** means any of the following:

- (a) any Refinancing that was approved by WDBA prior to the execution of this Agreement and fully taken into account in the calculation of the Construction Period Payments and Monthly Payments, which occurs within six months prior to or six months after the date set out in the initial Financial Model (as at the Commencement Date) and which does not increase the liability or the obligations of WDBA to an extent greater than contemplated in the initial Financial Model (as at the Commencement Date) nor result in the financial position, liquidity or solvency of Project Co being worse than contemplated in the initial Financial Model (as at the Commencement Date);
- (b) a change in taxation or change in accounting treatment pursuant to a Change in Law or a change in Accounting Principles;
- (c) the exercise under Senior Lending Agreements of rights, waivers, consents and similar actions which relate to day-to-day administrative and supervisory matters (including conditions to advances) under Senior Lending Agreements, that do not provide a financial benefit to Project Co under those agreements;
- (d) any sale of an Equity Interest or securitization of the existing rights or interests attaching to such Equity Interest, unless such sale or securitization increases any liability of WDBA, whether actual or potential, or involves increasing the Senior Debt Amount or the Junior Debt Amount, as applicable, or amending the Senior Debt Makewhole or the Junior Debt Makewhole, as applicable, on terms more favourable to Project Co than those contained in the original Lending Agreements;
- (e) any amendment or supplement to any Senior Lending Agreement approved by WDBA as part of any Supervening Event or Change under this Agreement;
- (f) any Rescue Refinancing;
- (g) any Qualifying Financial Institution Transaction; or
- (h) a disposition on the secondary market by a Senior Lender of its rights or participation in the Senior Lending Agreements where such disposition is a trade of bonds issued as provided for under a book based/book entry system of a depository pursuant to a trust indenture that comprises a portion of the financing of the Senior Debt;

provided that

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- (i) a Refinancing mentioned in clauses (a), (d) and (f) must not involve an Ineligible Person; and
- (j) in the case of a Rescue Refinancing that involves new performance and payment guarantees, such guarantees comply with the same requirements that the initial Performance and Payment Guarantees complied with in accordance with this Agreement.

**Financial Institution** means:

- (a) a bank listed in Schedule I, II or III of the Bank Act (Canada);
- (b) a corporation, association and federation incorporated or organized as a credit union or co-operative credit society that conforms to the requirements of a credit union which are more particularly described in Section 137(6) of the Income Tax Act;
- (c) a Canadian trust company, insurance company, investment company, pension fund or other institution which manages funds in excess of one billion dollars, including persons wholly owned by any of the foregoing and which are regulated by a Canadian or provincial financial or capital markets regulator including Canadian public pension funds which for this purposes are deemed to be regulated by a Canadian or provincial financial or capital markets regulator;
- (d) an investment fund managed by a professional fund manager that directly manages funds in excess of one billion dollars and which fund, and its professional manager, are regulated by a financial or capital markets regulator in the European Economic Area or the Organization for Economic Cooperation and Development;
- (e) a bank regulated by the Board of Governors of the Federal Reserve System of the United States, US bank, saving and loan institution, insurance company, investment company, employee benefit plan or other institution that, in any such case, manages at least one billion dollars in assets and would be a "qualified institutional buyer" under U.S. securities legislation, including entities wholly owned by any of the foregoing;
- (f) an institution which is recognised or permitted under the law of any member state of the European Economic Area or the Organization for Economic Cooperation and Development to carry on the business of a credit institution within Organization for Economic Cooperation and Development member states or, in the case of the European Economic Area, to carry on the business of a credit institution pursuant to Council Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other European Economic Area member state; or
- (g) any other institution consented to in writing by WDBA as a "Financial Institution" for the purposes of this definition;

provided that any such entity previously mentioned in this definition, is not an Ineligible Person.

**Net Present Value** means, in the context of a Refinancing, the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Projected Equity Internal Rate of Return.

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**Qualifying Financial Institution Transaction** means:

- (a) the assignment, transfer or syndication by a Senior Lender, of any of its rights, obligations or interests in the Senior Lending Agreements to a Financial Institution;
- (b) the grant by a Senior Lender to a Financial Institution of any participation rights in respect of the Senior Lending Agreements; or
- (c) the grant by a Lender to a Financial Institution of any other form of benefit or interest in either the Lending Agreements or the revenues or assets of Project Co, whether by way of security or otherwise.

**Qualifying Refinancing** means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing.

**Projected Equity Internal Rate of Return** means the nominal projected blended rate of return of the Equity Interest in Project Co, held by the Equity Members over the full term of this Agreement, having regard to Distributions projected to be made and taking into account income taxes of Project Co, calculated according to the Financial Model as at the Commencement Date, as [REDACTED].

**Refinancing** means any of the following:

- (a) any amendment, variation, assignment, novation, supplement or replacement of any Lending Agreement, other than the Junior Lending Agreements;
- (b) the exercise of any right, or the grant of any waiver, consent or approval, under any Lending Agreement, other than the Junior Lending Agreements;
- (c) the disposition of any rights in, or the granting of any participation in respect of, the Lending Agreements, other than the Junior Lending Agreements, or the creation or granting of any other form of benefit or interest in the Lending Agreements, other than the Junior Lending Agreements, or the contracts, revenues or assets of Project Co, whether by way of security or otherwise; or
- (d) any other arrangement put in place by Project Co or another person which has an effect which is similar to any of the foregoing sub-paragraphs or which has the effect of limiting Project Co's ability to carry out any of the foregoing provisions.

**Refinancing Gain** means an amount equal to the greater of zero and  $(A - B - C)$  where:

A = the Net Present Value of the Distributions projected immediately prior to the Refinancing taking into account the effect of the Refinancing and using the revised Financial Model, including updates reflecting the performance to date of Project Co, to be made to each Equity Member over the remaining term of this Agreement following the Refinancing;

B = the Net Present Value of the Distributions projected immediately prior to the Refinancing but without taking into account the effect of the Refinancing and using the revised Financial Model, including updates reflecting the performance to date of Project Co, to be made to each Equity Member over the remaining term of this Agreement following the Refinancing; and

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C = reasonable costs and expenses in relation to the Qualifying Refinancing, as per Section 4.6 of this Schedule.

**Rescue Refinancing** means any Refinancing which takes place due to the failure or prospective failure of Project Co to comply with any material financial obligation under the Senior Lending Agreements, or any of them and which does not increase any liability or obligation of WDBA, whether actual or potential.

The term “**Schedule**” means this Schedule 28 [*Refinancing*] unless such term clearly refers to another schedule of this Project Agreement.

## 2. REFINANCING

Subject to Sections 3 and 4 of this Schedule, Project Co shall not carry out any Refinancing without WDBA's consent and upon such conditions as WDBA may impose.

## 3. EXEMPT REFINANCING

### 3.1 Notice

Subject to Sections 3.1(c) and 3.4 of this Schedule, Project Co shall not carry out any Exempt Refinancing unless it has delivered notice of such Exempt Refinancing to WDBA not less than 5 Business Days prior to such Exempt Refinancing, except that such notice shall not be required:

- (a) for a disposition by a Senior Lender of its rights or participation in the Senior Lending Agreements pursuant to a Qualifying Financial Institution Transaction;
- (b) for the exercise of any right, or the grant of any waiver or consent and similar actions, which relate to day to day administrative and supervisory matters (including conditions to advances) under Senior Lending Agreements, that does not provide for a financial benefit to Project Co under the Senior Lending Agreements, unless such amendment, variation, novation, supplement or replacement or the exercise of any right, or the grant of any waiver or consent and similar action requires authorization or approval by a formal resolution of the Senior Lenders at a meeting of the Senior Lenders or by written resolution of all or a required percentage of Senior Lenders;
- (c) for an Exempt Refinancing described in paragraph (h) of the definition of “Exempt Refinancing” in Schedule 1 [*Definitions and Interpretation*].

### 3.2 Change in Taxation

In the event of an Exempt Refinancing arising from a change in taxation or change in accounting treatment pursuant to a Change in Law or change in Accounting Principles, the notice provided for in Section 3.1 shall be delivered by Project Co within 5 Business Days following the date on which Project Co becomes aware that such Change in Law or change in Accounting Principles has resulted in an Exempt Refinancing.

### 3.3 Information and Documents

If so requested by WDBA, Project Co shall submit forthwith to WDBA full particulars and the relevant documents (to the extent available to Project Co) relating to a given Exempt Refinancing, including all particulars necessary to confirm that the action or transaction constitutes an Exempt Refinancing.

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### 3.4 Changes to Financial Model

In the case referred to in paragraph (a) of the definition of “Exempt Refinancing”, Project Co shall, not less than 30 days prior to such proposed Refinancing, submit to WDBA full particulars of the relevant documents and course of action comprising the Exempt Refinancing, including a copy of the current Financial Model and the proposed revised Financial Model, which shall include all the information identified in Section 33.4(b) (*Update of Financial Model*) of the Project Agreement, and all other particulars necessary to confirm that the action or transaction constitutes an Exempt Refinancing. Project Co shall not carry out such proposed Refinancing if it cannot demonstrate, to the satisfaction of WDBA, that the proposed Refinancing constitutes an Exempt Refinancing.

## 4. QUALIFYING REFINANCING

### 4.1 Consent of WDBA

Project Co shall not carry out any Qualifying Refinancing, unless (i) Project Co has obtained the prior written consent of WDBA, which consent, subject to Section 4.2 of this Schedule, shall not be unreasonably withheld or delayed, and (ii) all of the requirements pertaining to a Qualifying Refinancing set out in this Schedule have been complied with to the satisfaction of WDBA.

### 4.2 Consent May Be Withheld

WDBA may withhold its consent to any Qualifying Refinancing if, at the time the Qualifying Refinancing is proposed to be effected, the Qualifying Refinancing would:

- (a) materially adversely affect the ability of Project Co to perform its obligations under the Project Agreement or any Project Document; or
- (b) have the effect of increasing any liability or obligation of WDBA, whether actual or contingent, present or future, known or unknown.

### 4.3 Gain Share

WDBA shall be entitled to receive a [REDACTED]% share of any Refinancing Gain arising from a Qualifying Refinancing.

### 4.4 Gain Share Payments

Subject to Section 4.5 of this Schedule, WDBA shall have the right to elect to receive its share of any Refinancing Gain from a Qualifying Refinancing:

- (a) as payments in the same amounts and at the same time or times as the benefit of the Refinancing Gain is received by Project Co, the Equity Members or any of their Affiliates;
- (b) as a single payment at the date of the Qualifying Refinancing;
- (c) periodically over the remainder of the Term in the form of reduction in the Construction Period Payments or the Monthly Payments, as applicable; or
- (d) as a combination of the methods contemplated in this Section.

### 4.5 Dispute Resolution

WDBA and Project Co shall negotiate in good faith in order to determine the basis and method of calculation of the Refinancing Gain from a Qualifying Refinancing. If the parties fail to agree upon

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the basis and method of calculation of the Refinancing Gain, the Dispute shall be determined in accordance with Schedule 23 [*Dispute Resolution Procedure*].

#### **4.6 Costs and Expenses**

The Refinancing Gain shall be calculated after taking into account the reasonable costs and expenses that each party directly incurs in relation to the Qualifying Refinancing and on the basis that, within 15 Business Days of any Qualifying Refinancing, Project Co shall reimburse WDBA for all such costs and expenses incurred by WDBA in accordance with Section 5.

#### **5. PAYMENT OF WDBA'S COSTS**

If particulars of any proposed documents or course of action are submitted for review to WDBA or if Project Co requests WDBA's consent in connection with a Refinancing, Project Co shall pay to WDBA all reasonable costs and expenses incurred by WDBA in connection with such review or determination, whether or not any objection is made or any consent is given and whether or not the proposed course of action takes place. Such costs and expenses shall include professional and legal costs and expenses, advisor fees and other out of pocket expenses, fees, costs and expenses and WDBA's reasonable internal administrative and personnel costs.

#### **6. WDBA'S RIGHTS TO AUDIT**

WDBA shall at all times have full and unrestricted rights of audit over the Financial Model, the proposed revised Financial Model or to any other financial model (including any updates thereto), and to all documentation (including any aspect of the calculation of any Refinancing Gain), used in connection with, or relevant to, any Refinancing. Project Co shall ensure that WDBA is not in any way hindered while it exercises its audit rights.

#### **7. INFORMATION**

Project Co shall promptly, and, in any event, within 5 Business Days of receiving a written request from WDBA, provide full information in relation to a proposed Refinancing (excluding an Exempt Refinancing). Project Co shall keep WDBA informed as to any changes to the terms of the Refinancing. Without limiting the foregoing, Project Co shall provide full particulars of the proposed Refinancing, including:

- (a) a copy of the current Financial Model and the proposed revised Financial Model, which shall include all the information identified in Section 33.4(b) (*Update of Financial Model*) of the Project Agreement;
- (b) an executive summary and an analysis, with supporting assumptions, calculations and documentation, as to whether, in Project Co's opinion, the proposed Refinancing would or would not result in a Refinancing Gain;
- (c) an assessment of WDBA's estimated share of the Refinancing Gain that would result from the proposed Qualifying Refinancing expressed in terms of payment under each of Sections 4.4(a) to 4.4(d) of this Schedule, including the estimated timing for receipt of WDBA's share of the Refinancing Gain under Section 4.4(a); and
- (d) all such other information as WDBA may request to verify any of the matters referred to in this Section 7.

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**SCHEDULE 29****INSURANCE REQUIREMENTS****1. DEFINITIONS**

Unless defined specifically in this Schedule or unless the context otherwise requires, capitalized but other undefined terms in this Schedule 29 shall have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of this Project Agreement. Appendix 29-1 and Appendix 29-2 form an integral part of this Schedule.

In this Schedule and Appendix 29-1 and Appendix 29-2, the following terms have the meanings set out in this Section 1:

**Account Trustee** means BNY Trust Company of Canada, acting as account trustee, or any successor or replacement made in accordance with the terms of the Insurance Trust Agreement.

**Actual Premium Cost** has the meaning set out in Section 17(a)(i).

**Adjusted Actual Premium Cost** has the meaning set out in Section 17(b)(ii).

**All Risk Policies** has the meaning set out in Section 2(a) of Appendix 29-1.

**Eligible Insurer** means an insurer must have the capacity to provide the particular insurance and shall have current ratings from time to time of either:

- (a) a Financial Strength Rating of not lower than "A-" for three out of the previous five years but not lower than "B" at any time during those five years, and a Financial Size Category not lower than VII, such ratings being those established by A.M. Best Company (Best); or
- (b) a Long-Term Financial Strength Rating of not lower than "A-" for three out of the past five years but not less than "BBB" at any time during those five years, a Short-Term Financial Strength Rating of not lower than "A-3" for three out of the previous five years and a Financial Enhancement Rating of not lower than "A-" for three out of the previous five years but not less than "BB+" at any time during those five years, such ratings being those established by Standard and Poor's (S&P); or
- (c) if the insurer is not rated by Best or S&P, an insurer that is acceptable to WDBA and Lenders, acting reasonably, with respect to the insurances required by this Schedule 29.

**Endorsement** means an amendment to an existing insurance contract.

**Environmental Policies** has the meaning set out in Section 3(a) Appendix 29-1.

**General Liability Policies** has the meaning set out in Section 15(a) Appendix 29-1.

**Independent Third Party** has the meaning set out in Section 17(d).

**Insurance Adjustment Date** means the end of each policy period for Project Co Insurance Policies issued during the Term of the Project Agreement.

**Insurance Policy** means any of the Project Co Insurance Policies or the WDBA Insurance Policies.

**Insurance Report** has the meaning set out in Section 17(d).

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**Maximum Foreseeable Loss** means an estimate of the largest loss to be expected under adverse circumstances including a catastrophic condition, but with protection equipment not functioning, with damage limited only by spacing of the structures, by a good blank fire wall or by lack of continuity of combustibles.

**Notification of Claim** has the meaning set out in Section 15(b).

**OMR Environmental Liability Policies** has the meaning set out in Section 16(a) of Appendix 29-1.

**OMR Insurance Coverage** means the insurance coverage and aggregate limits of insurance outlined in Appendix 29-1, Part 3 and Part 4 to this Schedule during the OMR Period.

**Project Co Insurance Policies** mean those policies identified in Appendix 29-1, Part 2 and Part 4.

**Professional Duties** shall mean the performance in connection with the Project of any professional duties undertaken by or under the supervision of:

- (a) persons or personnel who are professionally qualified; or
- (b) technical persons or personnel having not less than 5 years relevant experience;

in the carrying out of duties for which they are so qualified or technically experienced.

Professionally qualified persons or personnel shall be deemed to mean those persons who have attained an appropriate professional qualification related to the particular activity they are undertaking from a recognised body. Professional Duties do not include the day to day supervision of manual operatives, labour and physical construction work usually undertaken by building contractors, lawyers, accountants, engineering contractors or business support services providers.

**Property Policies** has the meaning set out in Section 14(a) of Appendix 29-1.

[REDACTED]

**Schedule** means this Schedule 29 [*Insurance Requirements*] unless such term clearly refers to another schedule of this Project Agreement.

**10% Threshold Amount** has the meaning set out in Section 17(i).

**WDBA Insurance Policies** mean those policies identified in Appendix 29-1, Part 1 and Part 3.

**Wrap-up Liability Policies** has the meaning set out in Section 1(a) of Appendix 29-1.

All references to a Section number in this Schedule means a Section number of this Schedule, unless such Section number clearly refers to a Section of the body of this Project Agreement or another schedule or part of a schedule of this Project Agreement.

## 2. INSURANCE COVERAGE

WDBA shall take out, pay for, maintain in full force and effect, and renew WDBA Insurance Policies for the Project as set out in Appendix 29-1 to this Schedule and in accordance with this Schedule. All such insurance must be obtained from Eligible Insurers. Project Co shall take out, pay for, maintain in full force and effect, and renew Project Co Insurance Policies for the Project as set out in Appendix 29-1 to this

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Schedule and in accordance with this Schedule. All such insurance must be obtained from Eligible Insurers.

### **3. NO LIMIT ON RECOVERY**

Notwithstanding any other provision of this Project Agreement and of this Schedule, the parties agree that the limits of liability specified in this Schedule for insurance requirements shall in no way limit Project Co's or WDBA's liability or obligations.

### **4. ADDITIONAL COVERAGE AND AMENDMENT TO INSURANCE COVERAGE**

- (a) Without prejudice to the other provisions of this Schedule, WDBA shall, at all relevant times and at its own expense, obtain and maintain, or cause to be obtained and maintained, the WDBA Insurance Policies which it is required to obtain and maintain, or cause to be obtained and maintained, by Applicable Law, pursuant to the Material Agreements, or that it considers necessary.
- (b) Without prejudice to the other provisions of this Schedule, Project Co shall, at all relevant times and at its own expense, obtain and maintain, or cause to be obtained and maintained, the Project Co Insurance Policies which it is required to obtain and maintain, or cause to be obtained and maintained, by Applicable Law, pursuant to the Material Agreements, or that it considers necessary.
- (c) WDBA may from time to time, acting reasonably, and on written notice to Project Co, amend or vary the insurance set out in Appendix 29-1, including by adjusting the policy limits, terms and conditions and by changing the scope of coverage. Any such amendment will be considered a WDBA Change unless the amendment or change is contemplated by the other provisions of this Schedule.

### **5. DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Except to the extent that the matter giving rise to a particular claim arises from a Non-Excusable Event of WDBA, Project Co shall bear sole financial responsibility for any deductibles and/or self-insured retentions (i) under any Insurance Policy required by Appendix 29-1, Part 2 and Part 4, and (ii) up to the maximum deductibles and/or self-insured retentions under any Insurance Policy under Appendix 29-1 Part 1 and Part 3. In furtherance of this obligation, WDBA shall be entitled to set off any amounts that WDBA incurs pursuant to a deductible and/or self-insured retention under a WDBA Insurance Policy from any amount due to Project Co by WDBA pursuant to this Agreement. WDBA is entitled to obtain deductibles and/or self-insured retentions in excess of the maximum deductibles and/or self-insured retentions under any Insurance Policy under Appendix 29-1, Part 1 and Part 3, but WDBA shall be solely responsible for any amounts above the listed maximums. The maximum deductibles in respect of the insurances to be procured pursuant to Part 3 of Appendix 29-1 (*Insurance during the OMR Period*) shall be Index Linked in accordance with the Canadian Escalation Factor.

### **6. EFFECT OF WARRANTIES AND REPRESENTATIONS IN INSURANCE POLICIES**

In addition to the requirements of this Schedule and without limiting the generality of the other provisions of this Schedule, the Insurance Policies must contain an Endorsement to the effect that the policies will not be invalidated and coverage thereunder will not be denied for any insured by reason of any other party's breach or violation of the Insurance Policy's warranties, representations, declarations or conditions.

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## 7. POLICIES AND COPIES

- (a) Project Co and WDBA shall provide each other evidence of each insurance coverage required in accordance with this Schedule in the form of a binder duly signed by the insurers or licensed insurance agents or brokers duly authorized to conduct business in the Province of Ontario and/or Michigan within at least 60 days prior to the date the Insurance Policy comes into effect. Thereafter, Project Co and WDBA shall provide each other in replacement of such binder, with the Insurance Policy and any Endorsements within 60 days of the effective date of the final signed Insurance Policy or other acceptable evidence of cover documentation and all Endorsements.
- (b) All insurance provided by WDBA under Part 1 and Project Co under Part 2 shall contain Endorsements confirming that the policies will be non-cancellable except for non-payment of premium. In the event of cancellation for non-payment of premium, the insurers will give at least 15 days prior written notice by registered mail, at the addresses specified, to WDBA, Project Co, the Lenders and the Lenders' Agent.
- (c) Project Co and WDBA shall furnish evidence, at the request of the other party, that the premiums payable under such Insurance Policies have been paid and that the Insurance Policies are in full force and effect. Project Co and WDBA shall provide such additional evidence of compliance with this Schedule as may be reasonably requested by the other party.

## 8. INSURERS

On the Commencement Date and at any time during the Term, all the Insurance Policies shall be issued and maintained in effect by Eligible Insurers. If any of the insurers ceases to be an Eligible Insurer including by reason of the deterioration of its financial situation, Insurance Policies to replace all the Insurance Policies taken out with such insurer and referred to in this Schedule, shall be negotiated, taken out, paid out and maintained in effect throughout the Term or the periods referred to herein by Project Co or WDBA as indicated, in accordance with the provisions of this Schedule.

## 9. PRIMARY INSURANCE

All Project Co Insurance Policies and WDBA Insurance Policies required to be obtained and maintained in accordance with this Schedule shall be primary, other than as excepted in Section 9 of Appendix 29-1.

## 10. COMPLIANCE WITH POLICIES

Project Co and WDBA shall comply with the terms, conditions and requirements of all Insurance Policies, shall not do or omit to do, or permit to be done or omit to be done by any WDBA Person and/or Project Co Persons, anything that could result in or could reasonably be expected to result in the cancellation of any Insurance Policy or that would entitle any insurer to refuse to pay any claim under the Insurance Policies or that would diminish the value of any claim under the Insurance Policies.

## 11. RENEWAL

- (a) At least 30 days before the expiration or termination of any Project Co Insurance Policy, unless such policy is no longer required by the terms of this Schedule, Project Co shall provide WDBA with a binder and/or a certificate of insurance for the renewal or replacement of such Project Co Insurance Policy. Each binder and certificate of insurance must be in a form satisfactory to WDBA and be signed by an authorized signatory of the insurers or broker.

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- (b) At least 30 days before the expiration or termination of any WDBA Insurance Policy, unless such policy is no longer required by the terms of this Schedule, WDBA shall provide Project Co with a binder and/or a certificate of insurance for the renewal or replacement of such WDBA Insurance Policy. Each binder and certificate of insurance must be in a form satisfactory to WDBA and be signed by an authorized signatory of the insurers or broker.
- (c) Not later than 60 days after the effective date of such renewal or replacement by Project Co or WDBA, the policyholder shall provide the other party the final signed Insurance Policy or other acceptable evidence of cover documentation and all Endorsements.

## 12. REVIEW OF INSURANCE BY WDBA AND PROJECT CO

WDBA has the right to review, approve, inspect and audit any Project Co Insurance Policy or any draft or certified copy of a Project Co Insurance Policy or any related certificate of insurance, binder or other evidence of compliance with this Schedule. This shall only apply to insurance specifically required under this Project Agreement and shall not apply to Other Insurance as referenced in Section 13 and Section 21 of Appendix 29-1, unless the insurance is required by law or WDBA is paying for such insurance through a Change Order. The exercise or non-exercise of such rights by WDBA shall not:

- (a) imply any acceptance by WDBA that the extent of the insurance coverage is sufficient or that the terms and conditions thereof are satisfactory, in either case for the purposes of the Project or this Schedule; or
- (b) relieve or exempt or be deemed to relieve or exempt Project Co from any of its obligations and liabilities under this Project Agreement or any of the other Project Documents or at Law, including its obligations to insure as provided in this Schedule; or
- (c) derogate from, limit or prejudice any rights of WDBA under this Project Agreement or any of the other Project Documents.

Project Co has the right to review, inspect and audit any WDBA Insurance Policy or any draft or certified copy of a WDBA Insurance Policy or any related certificate of insurance, binder or other evidence of compliance with this Schedule. This shall only apply to insurance specifically required under this Project Agreement.

## 13. REVISIONS OF PROJECT CO INSURANCE POLICIES

- (a) No later than 30 days before the date of the commencement of the Construction Work and before each Insurance Adjustment Date, Project Co shall submit to WDBA a written report outlining the proposed amendments with respect to the minimum amounts, the limits and sub-limits, deductibles, coverage, policy forms and administrative requirements, as well as the proposed effective date of such amendments, for all Project Co Insurance Policies. Such written report shall include all supporting documents which may certify such proposed amendments.
- (b) Within 15 days of receipt of the amendments proposed by Project Co in accordance with Section 14(a), WDBA shall inform Project Co in writing whether or not WDBA accepts the proposed amendments and the effective date of such amendments, where applicable, and specify, in the event of a refusal, substantive grounds for such refusal.
- (c) If WDBA does not accept the proposed amendments, Project Co shall obtain alternate insurance that meets the applicable requirements of this Schedule and Appendix 29-1 for Project Co Insurance Policies.

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**14. WDBA'S RIGHT TO TAKE OUT INSURANCE POLICIES**

- (a) Project Co shall inform WDBA in writing, within 15 days, of any termination, material change, reduction of coverage or obsolescence of a Project Co Insurance Policy.
- (b) If Project Co fails to advise WDBA in accordance with Section 14(a) or does not take out or maintain in force, or refuses to take out or maintain in force any Project Co Insurance Policy in accordance with the requirements of this Schedule or provide evidence of such Insurance Policy and renewal in relation thereto as and when required or takes out an Insurance Policy for an amount of coverage less than the requirements of this Schedule, WDBA shall have the right, but not the obligation, to take out such Project Co Insurance Policies. WDBA shall inform Project Co in writing, as soon as possible, of the taking out of such Project Co Insurance Policy and shall provide Project Co with a copy of such policy. WDBA shall terminate the Project Co Insurance Policy, at the expense of Project Co, as soon as Project Co complies with the provisions of this Schedule.
- (c) The costs, expenses and other fees which WDBA incurs with respect to the taking out or the termination of a Project Co Insurance Policy in accordance with Section 14(b), to which shall be added interest at the Interest Rate, shall become immediately due and payable to WDBA by Project Co and shall be paid on demand, without prejudice to the other rights and recourses of WDBA, including the right to set off any amount due to Project Co by WDBA pursuant to this Agreement.
- (d) No Project Co Insurance Policy taken out by WDBA in accordance with Section 14(b) shall release Project Co or the Project Co Persons from their obligations to take out insurance required by this Schedule, and WDBA shall not be liable for Losses, Indirect Losses or Claims incurred by Project Co or any Project Co Persons should they fail to take out such insurance.

**15. CLAIMS**

- (a) Project Co shall maintain a written register of all Claims or incidents which may result in a notification of claim under any of the Project Co Insurance Policies and shall allow WDBA to inspect such register at any time.
- (b) Project Co shall notify and coordinate with WDBA in advance of Project Co or any Project Co Persons providing insurers notice of any claims they might have ("**Notification of Claim**") under any of the WDBA Insurance Policies, where the value of the Claim exceeds **[REDACTED]**% of the deductible or retention or, if any potential delay in start up is involved, or regardless of the value in the Notification of Claim, if the Claim involves personal injury including bodily injury. Such notification from Project Co to WDBA shall include full particulars of the incident giving rise to the Notification of the Claim. Upon such notification, WDBA and Project Co or any Project Co Person shall provide the Notification of Claim to the applicable insurers.
- (c) In the event of any Claim or Loss to which any Project Co Insurance Policy may apply, Project Co shall, and shall ensure that the relevant insured (other than WDBA) shall, promptly and diligently notify all applicable insurers, file all required proofs of claim, supply to the insurers and adjusters all required documents and information, and generally execute and deliver all documents and do all acts and things that may be reasonably required to obtain the benefit of the insurance for the insured thereunder including the additional named insured and additional insured.
- (d) At the request of WDBA, Project Co shall be a party to and shall participate in any Claims settlement under any policy of insurance insuring the Project Infrastructure or any part

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thereof required by the Project Agreement. Each of Project Co, and Senior Lenders, Project Co Persons or Contracting Affiliates shall have the right to make and submit its own claim with respect to any loss or damage under any such policy of insurance separately from any other party.

- (e) WDBA and Project Co agree to take all reasonable and necessary actions to pursue proceeds available under any of the Insurance Policies.

## 16. UNINSURABLE RISKS

- (a) Either Project Co or WDBA shall promptly notify the other party if it learns that any risk required to be insured against under this Schedule has become an Uninsurable Risk or if a risk is likely to become an Uninsurable Risk. Any Dispute concerning whether such a risk has become or is likely to become Uninsurable shall be submitted for resolution under the Dispute Resolution Procedure. Project Co shall also inform WDBA if a risk that has become or is expected to become an Uninsurable Risk may constitute a default under any Lending Agreement and allows or may allow the Lenders or the Lenders' Agent to take any enforcement measure with respect to Project Co, including a notice of forfeiture and any acceleration of maturity of amounts due and owing under any of the Lending Agreements, any other realization proceedings, any enforcement measure taken by the Lenders' Agent under any security (including the exercise of step-in rights under the Lenders' Direct Agreement or other agreements, if applicable, and any withdrawal, by the Lenders' Agent, or one of the Senior Lenders of the authorization granted to Project Co to collect its receivables or any enforcement measure taken under any of the Performance and Payment Support), as well as any provisional measure relating to any such recourse or measure.
- (b) If the parties agree, acting reasonably, or if it is established in accordance with the Dispute Resolution Procedure, that a risk required to be insured by WDBA or Project Co under this Schedule has become or is likely to become an Uninsurable Risk, and the risk being Uninsurable is not caused by a Non-Excusable Event of Project Co, then the parties shall attempt to reach a written agreement as to how to manage that Uninsurable Risk for the period during which the adverse insurance market conditions persist and the insurance is not available.
- (c) If the parties agree, or if it is established in accordance with the Dispute Resolution Procedure, that a risk has become or is likely to become an Uninsurable Risk, and Project Co cannot reach a written agreement with WDBA as to how to manage that Uninsurable Risk, and the risk is or becomes Uninsurable, WDBA may either:
  - (i) elect to terminate the Project Agreement. If WDBA elects to terminate the Project Agreement, it shall issue a notice with immediate effect and pay Project Co an amount calculated pursuant to Section 4 of Schedule 27 [*Compensation on Termination*]. However, WDBA may, acting reasonably, elect not to terminate the Project Agreement pursuant to this Section 16(c)(ii) if Project Co releases WDBA from all obligations under Section 16(c)(ii) and deposits with WDBA or an escrow agent an amount equal, in the opinion of WDBA, to the insurance proceeds that would have been paid by the insurers to WDBA, or to others pursuant to this Schedule had the relevant insurance continued to be available. Such amount shall be held by WDBA or, as applicable, the Account Trustee, as instructed by the parties; or
  - (ii) elect not to terminate the Project Agreement and excuse Project Co from the requirements of this Schedule only with respect to such Uninsurable Risk for the

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period during which the adverse insurance market conditions persist and the insurance is not available. For an Uninsurable Risk covered by an insurance policy taken out by Project Co according to this Schedule, WDBA may withhold from the payment or payments otherwise due to Project Co an amount equal to the annual premium (Index Linked) relating to the Uninsurable Risk. Where the risk is Uninsurable for part of a year only, the reduction in payments shall be pro-rated to the number of months for which the risk is Uninsurable. During this period and on the occurrence of such Uninsurable Risk, WDBA shall:

- (A) pay to Project Co an amount equal to the insurance proceeds that would have been payable by insurers directly to parties other than Project Co, net of any Project Co liability for deductibles, had the relevant insurance continued to be available; and
  - (B) be responsible for an amount equal to the insurance proceeds that would have been payable by insurers directly to parties other than Project Co, including to WDBA, other named insured parties, third parties and/or the Account Trustee, had the relevant insurance continued to be available.
- (d) Where there is an Uninsurable Risk, WDBA and/or Project Co shall continue to approach the insurance market on a regular basis, at intervals of not less than 120 days and use reasonable efforts to obtain or cause to be obtained insurance coverage for as much or all of the Uninsurable Risk as can be insured in the available insurance market from time to time.
- (e) Where a risk that was previously an Uninsurable Risk ceases to be so and either WDBA or Project Co becomes aware or is informed by the other party that this is the case, the party that was previously required to maintain the insurance requirements under this Schedule for such Uninsurable Risk shall forthwith take out and maintain an Insurance Policy in accordance with the requirements of this Project Agreement in respect of the risk, and the provisions of this Section 16 shall no longer apply.
- (f) Nothing in this Schedule requires:
- (i) WDBA to take out an insurance Policy in respect of a risk that is Uninsurable; or
  - (ii) Project Co to take out an Insurance Policy in respect of a risk that is Uninsurable.
- (g) WDBA shall notify Project Co if the premiums to be charged for any WDBA Insurance Policy will increase more than **[REDACTED]**% over the prior year's premium for such insurance, and such premium increase is attributable to the acts or omissions of Project Co or Project Co Persons. WDBA shall be entitled to deduct an amount equal to that increased premium from any payments otherwise owed by WDBA to Project Co. Any Dispute concerning whether such an increased premium is attributable to a Non-Excusable Event of Project Co shall be submitted for resolution under the Dispute Resolution Procedure.

## 17. BENCHMARKING OF PROJECT CO INSURANCE

- (a) Project Co shall provide to WDBA by no later than 30 days prior to:
  - (i) the date of the commencement of the Project Work, an estimate of the actual premium cost (the "**Actual Premium Cost**") which Project Co intends to pay throughout the duration of the Project Work for insurance coverage to be taken out by Project Co as outlined in Appendix 29-1; and

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- (ii) the Substantial Completion Date, an estimate of the Actual Premium Cost which Project Co intends to pay during the first Contract Year of the OMR Period,

and the sums making up the estimate of the Actual Premium Cost shall be provided in the aggregate and broken down with the amounts for each insurance component separately identified.

- (b) Project Co shall deliver to WDBA not later than 30 days before each Insurance Adjustment Date:

- (i) the written verification issued by Project Co's insurers of the Actual Premium Cost, including premium calculations and other supporting documentation to the satisfaction of WDBA for the next succeeding Contract Year; and

- (ii) the Adjusted Actual Premium Cost incurred by Project Co during the course of the preceding Contract Year.

The amounts comprising the Actual Premium Cost and the Adjusted Actual Premium Cost shall be provided in the aggregate and broken down with the amounts for each insurance component separately identified.

- (c) On request of WDBA, and in any event, not later than 30 days before each Insurance Adjustment Date, Project Co shall, and shall cause Project Co's insurers to, fully inform WDBA, including by providing supporting documentation (that shall include particulars as to the Claims referenced in this Section, and the Actual Premium Cost and the Adjusted Actual Premium Cost for each of the intervening Contract Years since the previous Insurance Adjustment Date) to the satisfaction of WDBA, as to whether or not any component of the Actual Premium Cost or the Adjusted Actual Premium Cost is due solely or in part to Claims relating to Project Co or Project Co Persons, and if so, its estimate as to any portion of the Actual Premium Cost or the Adjusted Actual Premium Cost changes that reflects Claims relating to Project Co or Project Co Persons.
- (d) At either WDBA's or Project Co's option, within 14 days of receiving the information described in Section 17(c), WDBA shall retain a person (who shall be subject to Project Co's approval) who is not a "related person" as that term is defined in the *Income Tax Act* (Canada) on the date hereof of either WDBA or Project Co (an "**Independent Third Party**") to prepare in a professional manner impartial to WDBA and to Project Co, and to deliver contemporaneously to WDBA and to Project Co, the report described in Section 17(f) (the "**Insurance Report**"), within 45 days or such other reasonable period of time after the Insurance Adjustment Date, but in any event not later than 75 days after the Insurance Adjustment Date, unless such time period is further extended to reflect the additional time period, if any, required to resolve any Dispute under Section 17(e), and in any event, not later than such extended time period.
- (e) In the event Project Co fails to approve the person proposed by WDBA to act as the Independent Third Party, the reasons for such failure, including any substitute person proposed by either or both of WDBA and Project Co, shall be submitted to the Dispute Resolution Procedure, and the time limitations for retaining an Independent Third Party and for delivering the Insurance Report by the Independent Third Party and the calculations by WDBA pursuant to Section 17(h), shall each be extended by the number of days equal to the period of time required to obtain a decision on the Dispute.
- (f) The Insurance Report to be delivered by the Independent Third Party shall:

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- (i) examine the reasons as to why Project Co's Actual Premium Costs and Adjusted Actual Premium Costs have changed since the previous Insurance Adjustment Date (or since the Substantial Completion Date), including an estimate as to the portion, if any, of the Actual Premium Cost or the Adjusted Actual Premium Cost changes that reflects Claims relating to Project Co; and
  - (ii) review and consider relevant market factors, including industry standard premium costs for businesses without a history of Claims for insurance coverage equivalent to the relevant Project Co Insurance Policies over the three year period since the previous Insurance Adjustment Date.
- (g) WDBA and Project Co shall share equally the fees and costs of the Independent Third Party, and Project Co hereby irrevocably authorizes and directs WDBA to pay Project Co's portion of such fees and costs, on behalf of Project Co, to the Independent Third Party by way of a deduction from any payment owed to Project Co.
- (h) Not later than 90 days, or if such time period is extended to reflect the additional time period required to resolve any Dispute under Section 17(e), then not later than such extended time period, after each Insurance Adjustment Date, WDBA shall complete the calculations required to make the determinations and arrive at the payment adjustments set out in Sections 17(i) to 17(k) inclusive of this Schedule, and shall deliver a copy of the calculations to Project Co.
- (i) If on review of the information delivered under Sections 17(a) and 17(c), WDBA determines that there is a decrease or an increase in the amount of the Actual Premium Cost delivered pursuant to Section 17(a) over the amount of the Actual Premium Cost applicable as at the immediately preceding Insurance Adjustment Date, and the decrease or increase, as the case may be, exceeds 10% (the "**10% Threshold Amount**") then in respect of any adjustment applicable to the first Insurance Adjustment Date, the process set out in Section 17(j) shall be followed, and in respect of any adjustment applicable to any subsequent Insurance Adjustment Date, the process set out in Section 17(k) shall be followed.
- (j) In the event of:
  - (i) an increase in the Actual Premium Cost under Section 17(i) applicable to the first Insurance Adjustment Date, WDBA shall increase the Monthly Payment payable for each Payment Period in the Contract Year commencing on the Insurance Adjustment Date, and for each succeeding Payment Period in the Contract Year until the next Insurance Adjustment Date, by an amount that is equal to the net increase in the Actual Premium Cost (excluding the portion, if any, of the Actual Premium Cost that reflects Claims relating to Project Co and/or Project Co Persons); or
  - (ii) a decrease in the Actual Premium Cost under Section 17(i) applicable to the first Insurance Adjustment Date, WDBA shall reduce the Monthly Payment payable for each Payment Period in the Contract Year commencing on the Insurance Adjustment Date, and for each succeeding Payment Period in the Contract Year until the next Insurance Adjustment Date, by an amount that is equal to the net decrease in the Actual Premium Cost (excluding the portion, if any, of the Actual Premium Cost that reflects Claims relating to Project Co and/or Project Co Persons).

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- (k) In the event of an increase or a decrease in the Actual Premium Cost exceeding the 10% Threshold Amount under Section 17(i) applicable to an Insurance Adjustment Date other than the first Insurance Adjustment Date, WDBA shall adjust the Monthly Payment payable for each Payment Period in the Contract Year commencing on the applicable Insurance Adjustment Date, and for each succeeding Payment Period in the Contract Year until the next Insurance Adjustment Date, by an amount that is equal to the aggregate of:
- (i) that portion of the net increase or decrease in the Actual Premium Cost (excluding the portion, if any of the Actual Premium Cost that reflects Claims relating to Project Co and/or Project Co Persons); and
  - (ii) each of the sums, positive or negative, by which the Monthly Payment was adjusted on each of the preceding Insurance Adjustment Dates.
- (l) For the purpose of the calculations made under Section 17(j) and Section 17(k), WDBA shall use the information provided by Project Co's insurers pursuant to Section 17(c) (unless an Insurance Report has been prepared, in which case WDBA shall use the information provided in the Insurance Report) to determine the portion, if any, of the Actual Premium Cost changes that reflects Claims matters relating to Project Co and/or Project Co Persons.
- (m) If Project Co disagrees with any of the calculations delivered by WDBA under Section 17(h), Project Co shall notify WDBA within 30 days of receipt of the calculations and, if WDBA and Project Co have not resolved the disagreement within 30 days of receipt of the notification of disagreement, the matter shall be considered a Dispute and shall be submitted for resolution pursuant to the Dispute Resolution Procedure.
- (n) Any adjustment to the Monthly Payment, whether determined by WDBA and agreed to by Project Co or determined pursuant to the Dispute Resolution Procedure, shall have effect from the relevant Insurance Adjustment Date referenced in Section 17(c).
- (o) Any increase to or reduction in the Monthly Payment to be made pursuant to this Section 17 shall be made, in the case of an increase payable by WDBA and in the case of a reduction deducted by WDBA, on the fifth Business Day immediately following the last day of the month within which the adjustment is determined by WDBA and agreed to by Project Co or determined pursuant to the Dispute Resolution Procedure.
- (p) WDBA shall review the Adjusted Actual Premium Cost at each Insurance Adjustment Date and if the difference in amounts between the Actual Premium Cost and the corresponding Adjusted Actual Premium Cost applicable to the last 12 month period is in WDBA's determination and after consultation with Project Co, substantial, then WDBA shall base the determination of the percentage increase or decrease in the Actual Premium Cost described in Sections 17(i), 17(j) and 17(k) of this Schedule on the Adjusted Actual Premium Cost.

## 18. ALTERNATIVE RISK FINANCING

- (a) Project Co agrees not to use an insurance subsidiary it owns or a captive company, or reciprocal or pooling arrangements, or to set up a controlled or closed entity or any other form of financing mechanism concerning any insurance covered by this Schedule without obtaining the prior written approval of WDBA.
- (b) If Project Co expects to use such a controlled or closed entity or subsidiary or an alternative risk financing mechanism at any time during the Term to provide any element

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of such insurance, Project Co shall provide WDBA with prior written notice not later than 120 days before the expected effective date of such alternative financing mechanism. The notice shall contain sufficient information with respect to the organization, structure, participants, risks and covered exposures and any other information requested by WDBA to allow WDBA to evaluate the alternative risk financing mechanism and determine whether it accepts such alternative in replacement of the Insurance Policies which meet the requirements set out in this Schedule. WDBA may accept or refuse any such alternative risk financing as it sees fit.

#### **19. COOPERATION WITH INSURERS**

If an insurer of a WDBA Insurance Policy or Project Co Insurance Policy, or an insurer's appointed consultant for underwriting purposes or as a term of an insurance policy, needs to review any part of the performance of Project Agreement, then WDBA and Project Co shall, and shall require Project Co Persons, respectively, to:

- (a) cooperate with the insurer or its consultant, including providing them with such information and documentation as they may reasonably require; and
- (b) allow the insurer and its consultant to attend meetings between Project Co and WDBA for, as applicable, and if reasonably required by the insurer, between Project Co and those engaged by or through Project Co.

#### **20. CURRENCY CLAUSE**

All limits, deductibles, retentions or other amounts stated in the Insurance Policies are to be denominated in Canadian dollars, except where noted otherwise or specifically agreed in writing by WDBA and Project Co. The Insurance Policies shall provide that Loss, if any, shall be paid in the currency in which the Loss is being claimed.

#### **21. INSURANCE BROKER**

In the event that WDBA decides to change its insurance broker in relation to WDBA procured insurances it shall consult with Project Co in setting the qualification criteria before such opportunity is made available.

**APPENDIX 29-1****PART 1****INSURANCE DURING THE DB PERIOD**

The following insurance outlined in Part 1 shall be taken out and maintained by WDBA. WDBA may comply with the requirements by taking out one or more insurances for each class of insurance, including primary and excess policies.

**1. WRAP-UP LIABILITY INSURANCE**

- (a) WDBA shall take out and maintain in full force and effect or, as the case may be, cause to be taken out and maintained in force, wrap-up liability insurance, including both primary and excess policies, issued to WDBA, as first named insured and WDBA Persons, MDOT, Michigan Parties, Project Co, Project Co Persons, and the Senior Lenders, the suppliers and manufacturers involved in the Project Work and present on Site, or any off site premises connected to the Project, as named insured and any other person reasonably required to be named by WDBA or Project Co, who is added as an insured or additional insured, according to the circumstances (the “**Wrap-up Liability Policies**”).
- (b) The Wrap-up Liability Policies shall remain in force for the entire duration of the DB Period (and with respect to the Michigan Interchange until the Michigan Interchange Handover Date, if such duration is longer) with an additional minimum period of 72 months for the completed operations hazard (from the later of the end of the DB Period and the Michigan Interchange Handover Date), subject to a total term of no more than 15 years. The coverage under such Wrap-up Liability Policies shall however be maintained continuously during execution of all aspects of the Project Work. Territory to be worldwide.
- (c) The Wrap-up Liability Policies shall contain terms and conditions acceptable to WDBA, MDOT and Project Co. For purposes of description only, the anticipated terms and conditions of the Wrap-up Liability Policies are intended to be consistent with the terms and conditions detailed in Part 1.1 of Appendix 29-2, including coverage that will provide third party liability insurance covering, on an occurrence basis, legal obligations for personal injury, including bodily injury or property damage including loss of use, non-owned automobile and contingent employers’ liability. Coverage will include all insurable liabilities arising out of the Project Work, the control and use of the Project Infrastructure, the Existing Infrastructure and the Site by the named insureds or additional insureds. It is anticipated that this coverage will be subject to the following principal exclusions: (i) injury to employees to the extent insured by workers compensation; (ii) all aircraft, watercraft (over 500 tons GWT); (iii) automobile liability except for non-owned automobile liability; (iv) discharge, dispersal, release or escape of pollutants; (v) liability which results from a deliberate act or omission committed by or with the full knowledge of the insured’s management which could, in the view of a prudent person, have been likely to result in a claim – but this does not apply to any insured who neither sanctioned nor had knowledge of, nor was a party to, causing the claim; (vi) nuclear reaction or nuclear radiation or radioactive contamination; (vii) punitive or exemplary damages; (viii) terrorism; (ix) asbestos; (x) mould, fungus, wet and dry rot and bacteria; (xi) cyber/data; and (xii) other standard exclusions.
- (d) The total combined limit of the Wrap-up Liability Policies is not less than **\$(REDACTED)** per occurrence and in the aggregate, and which may include a combination of primary

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and excess policies. If structured in layers, policies will contain “drop-down” provisions for impaired or exhausted aggregates (an automatic reinstatement of aggregate limits is an acceptable alternative). The deductible per occurrence or per claim shall be determined upon final negotiation of the insurance coverage, but shall not exceed a maximum of **[\$[REDACTED]]** for personal injury including bodily injury and property damage any one occurrence.

- (e) The Wrap-up Liability Policies will provide primary coverage for liability arising out of the Project Work, without right of contribution from any other insurance carried by WDBA, MDOT, Project Co or the Senior Lenders.

## 2. ALL RISKS COURSE OF CONSTRUCTION INSURANCE

- (a) WDBA shall take out and maintain in full force and effect or, as the case may be, cause to be taken out and maintained in force, an all risks course of construction insurance, including both primary and excess policies, if required, issued to WDBA as first named insured and WDBA Persons, MDOT, Michigan Parties, Project Co, Project Co Persons, and the Senior Lenders, the suppliers and manufacturers involved in the Project Work and present on Site, or any off site premises connected to the Project, as named insured and any other person reasonably required to be named by WDBA or Project Co, who is added as an insured or additional insured but only as their interest may appear, according to the circumstances (the “**All Risk Policies**”). The All Risk Policies shall name the Account Trustee as loss payee.
- (b) Such All Risk Policies shall be maintained in force continuously from the Commencement Date to the Substantial Completion Date or to such date after the Substantial Completion Date to be determined by WDBA, on a replacement cost basis, and shall cover the Project Work including but not limited to the Project Infrastructure, the Existing Infrastructure and the Site for as long as WDBA assumes the risk of loss or damage for such Project Infrastructure and Existing Infrastructure.
- (c) The All Risk Policies shall contain terms and conditions acceptable to WDBA, MDOT and Project Co. For purposes of description only, the anticipated terms and conditions of the All Risk Policies are intended to be consistent with the terms and conditions detailed in Part 1.2 of Appendix 29-2, including coverage for all risks of direct physical loss or damage to the property of the insureds or additional insureds, or property, materials or components for which the insureds or additional insureds assume the risk and which is incorporated in, or is to be incorporated into the Project Infrastructure whether it is on the Site or in transit, regardless of the mode of ground transport, and includes materials and supplies necessary to complete the Project Infrastructure. This coverage shall exclude property covered by the all risks contractor’s equipment & machinery coverage required by Section 8 of this Appendix 29-1. It is anticipated that this coverage will be subject to the following principal exclusions: (i) defect in design or workmanship using LEG3 or LEG2 at the discretion of the insured; (ii) wear and tear, excepting the cost of resultant damage; (iii) unexplained shortages; (iv) licensed vehicles; (v) vessels/aircrafts; (vi) loss or damage to cash, bank notes, treasury notes, cheques, postal orders, money orders, stamps, or securities; (vii) war, civil war, invasion, act of foreign enemy, terrorism; (viii) pollution except destruction of or damage to the property insured caused by: (a) pollution which results from an insured peril or (b) an insured peril which results from pollution; (ix) nuclear reaction or nuclear radiation or radioactive contamination but direct loss by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured; (x) mould, fungus, wet and dry rot and bacteria; (xi) cyber/data; and (xii) other standard exclusions.

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- (d) The total combined limit of the All Risk Policies shall not be less than the full replacement cost of the Project, with the exception of certain coverages, anticipated to include those more fully detailed in Part 1.2 of Appendix 29-2.
- (e) In the event such coverages are included and there are sub-limits for such coverages, WDBA will consult with Project Co about sub-limits for such coverages, and such sub-limits will be no less than those limits associated with the respective coverages in Part 1.2 of Appendix 29-2. Separate and dedicated aggregate limits for flood and earth movement may be required. The deductible per occurrence for physical loss or damage to be determined upon final negotiation of the insurance coverage, but shall not exceed a maximum of \$[REDACTED] for each and every loss.
- (f) The All Risk Policies will provide primary coverage for the Project Work including but not limited to the Project Infrastructure, the Existing Infrastructure and the Site, without right of contribution from any other insurance carried by WDBA, MDOT, Project Co or the Senior Lenders.
- (g) WDBA will at its sole cost and expense, subscribe and maintain certain delay in start-up insurances. To the extent such insurances have notification obligations that would require notifications from Project Co, WDBA will notify Project Co of those obligations upon the placement of the insurances, and Project Co agrees to fulfill those obligations.

### 3. ENVIRONMENTAL IMPAIRMENT LIABILITY

- (a) WDBA shall take out and maintain in full force and effect or, as the case may be, cause to be taken out and maintained in force, project-specific environmental impairment liability insurance, including both primary and excess policies, issued to WDBA as first named insured and WDBA Persons, MDOT, Michigan Parties, Project Co, Project Co Persons, and the Senior Lenders as named insured and any other person reasonably required to be named by WDBA, who is added as an insured or additional insured, according to the circumstances. WDBA reserves the right to carry separate policies for the US and Canada. (the “**Environmental Policies**”). The Environmental Policies shall name the Account Trustee as loss payee only for first party remediation claims.
- (b) The Environmental Policies shall contain terms and conditions acceptable to WDBA, MDOT and Project Co. For purposes of description only, the anticipated terms and conditions of the Environmental Policies are intended to be consistent with the terms and conditions detailed in Part 1.3 of Appendix 29-2, including coverage for third party bodily injury, property damage, including clean-up and restoration costs related hazardous substances occurring at or emanating from the Project. It is anticipated that the Environmental Policies will contain extensions for microbial matter, underground/above-ground storage tanks, as well as a disposal site extension including transportation. It is also anticipated that this coverage will be subject to the following principal exclusions: (i) terrorism; (ii) war; (iii) intentional non-compliance; (iv) prior knowledge; (v) workers’ compensation; (vi) employers’ liability; (vii) professional liability; (viii) nuclear liability; (ix) property damage to motor vehicles during Transportation and (xii) other standard exclusions.
- (c) The coverage under the Environmental Policies shall be maintained in force continuously throughout the entire duration of the DB Period, period during which the Project Infrastructure, Existing Infrastructure and the Site will be used by or under the supervision of any of the insureds or additional insureds. The Environmental Policies shall be written on a claims made basis and shall include coverage for completed operations for 36 months following the Substantial Completion Date.

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- (d) The total combined limits of the Environmental Policies shall not be less than \$[REDACTED] per claim and in the aggregate for the DB Period. The deductible will be determined upon final negotiation of the insurance coverage, but shall not exceed a maximum of \$[REDACTED] per claim.

#### 4. [REDACTED]

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]
- (f) [REDACTED]
- (g) [REDACTED]

### PART 2

The following insurance outlined in this Part 2 and detailed in Part 2 of Appendix 29-2 shall be taken out and maintained by Project Co and Project Co Persons. The policies described in this Part 2 shall provide that disputes regarding coverage for MDOT, or Michigan Parties where such parties are required to be insured shall be adjudicated in the state or federal courts of Michigan, pursuant to Michigan law. The policies described in this Part 2 shall also provide that disputes regarding coverage for WDBA or WDBA Persons where such parties are required to be insured shall be adjudicated in the provincial or federal courts of Ontario, pursuant to Ontario law.

The insurance requirements may be met by Project Co providing one or more policies for each class of insurance, including primary and excess policies.

#### 5. WORKERS' COMPENSATION

- (a) REQUIREMENTS OUTSIDE OF US AND MICHIGAN
  - (i) Project Co shall take out and maintain in full force and effect or, as the case may be, cause to be taken out and maintained in force, workers' compensation, employers' liability and other social insurances as may be required to be effected by an employer under the laws of Ontario, Canada or other Applicable Laws issued jointly in the name of the applicable Project Co Persons. As to employers' liability coverage only, limit for such insurance shall not be less than \$[REDACTED] for each accident or disease for each employee.
  - (ii) Project Co shall confirm that Subcontractor and vendors effect and keep in force similar insurances to the extent required by Applicable Law.
- (b) REQUIREMENTS WITHIN US AND MICHIGAN
  - (i) Project Co shall take out and maintain in full force and effect or, as the case may be, cause to be taken out and maintained in force, workers' compensation, employers' liability and other social insurances as may be required to be effected by an employer under the laws of Michigan, US or other Applicable Laws. As to

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employers' liability coverage only, limit for such insurance shall not be less than \$[REDACTED] for each accident or disease for each employee.

- (ii) Project Co shall confirm that Subcontractor and vendors effect and keep in force similar insurances to the extent required by Applicable Law.
- (iii) The workers' compensation insurance should be inclusive of the following coverages/Endorsements:
  - (A) Waiver of Subrogation in favour of WDBA, WDBA Persons, MDOT, Michigan Parties and the Senior Lenders;
  - (B) 60 Days' Notice of Cancellation provided to WDBA, MDOT and Senior Lenders;
  - (C) Longshore and Harbor Workers' Compensation Act Endorsement;
  - (D) Maritime Coverage Endorsement;
  - (E) Voluntary Compensation Maritime Coverage Endorsement;
  - (F) Any and all coverages required by the State of Michigan; and
  - (G) Should Project Co and Project Co Persons elect to utilize temporary or leased employees, the Labor Contractor Endorsement shall be required.

## 6. MARINE CARGO

- (a) If marine cargo is used to transport any of the materials, equipment or property supplied under or used during the Project, Project Co shall take out and maintain in full force and effect or, as the case may be, cause to be taken out and maintained in force, adequate marine cargo insurance issued jointly in the names of WDBA, Project Co, Project Co Persons, MDOT, Michigan Parties, and Senior Lenders.
- (b) Such marine cargo insurance shall be maintained through the final shipment of construction materials and supplies, excluding any contractor's equipment shipped by any party, including Project Co or their sub-contractors to the Project site. The policy will cover all materials or components sourced overseas that will be used for incorporation into the contract works or temporary works against the risks of loss, damage or destruction (including war only while on vessel or aircraft and strike) from suppliers' premises in the course of transit from anywhere in the world by any means of conveyance until they are delivered and unpacked at the site (subject to any requirements that shipments be unpacked within a certain time period following arrival), including loading or unloading to the site. It will also cover all trans-shipment and temporary storage up to a maximum number of days. For purposes of description only, the anticipated terms and conditions of this coverage are intended to be consistent with the terms and conditions detailed in 2.2 of Appendix 29-2. It is anticipated that this coverage will be subject to the following principal exclusions: (i) radioactive contamination; (ii) wilful act; (iii) known insolvency of carrier; (iv) known unseaworthiness or lack of fitness of conveyance; (v) pollution; and (vi) other standard exclusions.
- (c) The limit for such insurance shall not be less than the replacement value of the items shipped. The deductible will be determined upon final negotiation of the insurance coverage, [REDACTED]

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**7. AUTO LIABILITY**

Project Co and Project Co Persons shall take out and maintain in full force and effect or, as the case may be, cause to be taken out and maintained in force, auto liability insurance in respect of the ownership, maintenance, use or operation of motor vehicles in connection with the performance of the Project Work hereunder and in accordance with the statutory laws of Ontario, Canada and Michigan, US or other Applicable Laws. The limit for such insurance shall not be less than \$[REDACTED] for each accident.

**8. "ALL RISK" CONTRACTOR'S EQUIPMENT & MACHINERY**

- (a) Project Co and Project Co Persons shall take out and maintain in full force and effect or, as the case may be, cause to be taken out and maintained in force, all risks contractor's equipment & machinery insurance in regards to the use and operation of equipment and machinery with the performance of the Project Work hereunder. This all risks contractor's equipment insurance shall contain terms and conditions acceptable to WDBA, MDOT and Project Co.
- (b) Coverage for items owned, hired, used or provided to full replacement cost. If Project Co and Project Co Persons elects not to insure the machinery and equipment, Project Co and Project Co Persons agree to hold WDBA and MDOT harmless from and against any risk which should have been covered by such insurance.

**9. PROJECT SPECIFIC PROFESSIONAL LIABILITY**

- (a) Project Co shall take out and maintain in full force and effect or, as the case may be, cause to be taken out and maintained in force, a professional liability policy issued jointly in the names of the engineers, architects and the Independent Certifier, and contractors and subcontractors undertaking professional activities that have any responsibilities related to or arising out of the Professional Duties. In no event shall such insurance limit coverage for claims by WDBA and/or MDOT against Project Co or any other parties that have any responsibilities related to or arising out of Professional Duties. This professional liability insurance policy shall contain terms and conditions acceptable to WDBA, MDOT and Project Co.
- (b) This Insurance Policy shall remain in force from the Commencement Date to the Substantial Completion Date. It shall also include an extended reporting period of not less than 36 months.
- (c) This Insurance Policy shall cover losses resulting from any error or omission in the Professional Duties.
- (d) The liability limit under this Insurance Policy shall not be less than \$[REDACTED] for each claim and in the aggregate for the DB Period. The deductible will be determined upon final negotiation of the insurance coverage.
- (e) This Insurance Policy shall provide primary coverage, except where more specific insurance is provided under an Insurance Policy procured under Part 1 of Appendix 29-1, without right of contribution from any other insurance carried by WDBA, MDOT, or the Senior Lenders.
- (f) Maximum deductible to apply is \$[REDACTED] for each and every claim.

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**10. MARINE LIABILITY**

- (a) Project Co and Project Co Persons shall take out and maintain in full force and effect or, as the case may be, cause to be taken out and maintained in force, adequate waterborne liability insurance for craft owned, hired, used or provided by them covering liabilities arising from the use or operation of waterborne craft including floating construction equipment including liability for damage due to collision or upset issued to Project Co as first named insured and Project Co Persons, MDOT, Michigan Parties, WDBA, WDBA Persons, and the Senior Lenders as named insureds and any other person reasonably required to be named by Project Co or WDBA, who is added as an insured or additional insured, according to the circumstances.
- (b) The policy includes a waiver of subrogation in favour of WDBA and MDOT. The limit for such insurance shall not be less than **[\$[REDACTED]]** for each incident. Such marine liability insurance shall contain terms and conditions acceptable to WDBA, MDOT and Project Co.
- (c) The liability under this Insurance Policy, as well as exclusions and deductibles will be determined within 30 days following the Commencement Date.

**11. AIRCRAFT LIABILITY**

- (a) Should Project Co and Project Co Persons use aircraft, owned or non-owned, including unmanned aerial vehicles, in connection of the Project and except to the extent covered under the Wrap-up Liability Policies, Project Co and Project Co Persons shall take out and maintain in full force and effect or, as the case may be, cause to be taken out and maintained in force aircraft (including owned and non-owned) liability insurance for bodily injury or property damage including loss of use thereof and including aircraft passenger hazard if applicable issued to Project Co as first named insured and Project Co Persons, MDOT, Michigan Parties, WDBA, WDBA Persons, and the Senior Lenders as named insureds and any other person reasonably required to be named by Project Co or WDBA, who is added as an insured or additional insured, according to the circumstances.
- (b) The policy includes a waiver of subrogation in favour of WDBA and MDOT. The limit for such insurance shall not be less than **[\$[REDACTED]]** for each incident. Such aircraft liability insurance shall contain, terms and conditions acceptable to WDBA, MDOT and Project Co.
- (c) The liability under this Insurance Policy, as well as exclusions and deductibles will be determined within 30 days following the Commencement Date.

**12. NETWORK INTERRUPTION AND DATA LOSS**

Project Co and Project Co Persons shall take out and maintain in full force and effect or, as the case may be, cause to be taken out and maintained in force, first-party insurance protecting against disruptions to, or data loss from, computer networks required for the Project Work., including business interruption losses, incorporating income loss and extra expense; digital asset restoration costs; cyber extortion costs; liability, including regulatory, for breaches of personal and commercially sensitive data along with incident response costs; and network security liability. Such network interruption and data loss insurance shall contain terms and conditions acceptable to WDBA, MDOT and Project Co. The limit for such insurance shall not be less than **[\$[REDACTED]]** for each incident and in the aggregate. Maximum deductible to apply is **[\$[REDACTED]]** for each and every claim.

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### 13. OTHER INSURANCE

Project Co shall take out and maintain in full force and effect or, as the case may be, cause to be taken out and maintained in force any other type, form or amount of insurance that may be reasonably requested by WDBA or the Senior Lenders. Any insurance requested by WDBA shall be obtained at WDBA's sole cost and expense. Any insurance requested by the Senior Lenders shall be obtained at Project Co's sole cost and expense. Project Co may also obtain any other insurance, at its sole cost and expense, in addition to the insurance specified herein.

## PART 3

### INSURANCE DURING THE OMR PERIOD

The following insurance outlined in Part 3 shall be taken out and maintained by WDBA. WDBA may comply with the requirements by taking out one or more insurances for each class of insurance, including primary and excess policies.

### 14. PROPERTY & EQUIPMENT BREAKDOWN INSURANCE

- (a) WDBA shall take out and maintain in full force and effect or, as the case may be, cause to be taken out and maintained in force, an all risks property insurance, including both primary and excess policies, if required, issued to WDBA as the first named insured and WDBA Persons, MDOT, Michigan Parties, Project Co, Project Co Persons, and the Senior Lenders as the named insured and any other person reasonably required to be named by WDBA and the Senior Lenders or by Project Co, who shall be added to the list of insureds or additional insureds as their interest may appear (the "**Property Policies**"). The Property Policies shall name the Account Trustee as loss payee.
- (b) The Property Policies shall be maintained in force continuously from the Substantial Completion Date to the Expiry Date.
- (c) The Property Policies shall contain terms and conditions acceptable to WDBA, MDOT and Project Co. For purposes of description only, the anticipated terms and conditions of the Property Policies are intended to be consistent with the terms and conditions detailed in Part 3.1 of Appendix 29-2, including coverage for risks of direct physical loss or damage to the property of the insureds or additional insureds, or property, machinery, equipment, materials or components for which the insureds or additional insureds assume the risk and which forms part of or is associated with the OM Infrastructure or the Site, whether or not the property is on the premises of the OM Infrastructure or the Site or in transit and regardless of the mode of ground transport, including materials and supplies destined for the OM Infrastructure or the Site. This coverage shall exclude property covered by the All Risks Contractor's Equipment & Machinery Coverage required in Section 20 of this Appendix 29-1. It is anticipated that this coverage will be subject to the following principal exclusions: (i) wear and tear, excepting the cost of resultant damage; (ii) unexplained shortages; (iii) licensed vehicles; (iv) vessels/aircrafts; (v) loss or damage to cash, bank notes, treasury notes, cheques, postal orders, money orders, stamps, or securities; (vi) war, civil war, invasion, act of foreign enemy, terrorism; (vii) pollution except destruction of or damage to the property insured caused by: (a) pollution which results from an insured peril or (b) an insured peril which results from pollution; (viii) nuclear reaction or nuclear radiation or radioactive contamination but direct loss by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured; (ix) mould, fungus, wet and dry rot and bacteria; (x) cyber/data; and (xi) other standard exclusions.

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- (d) This Insurance Policy's limit of loss shall not be less than: (i) the full replacement cost of the Project or (ii) **[REDACTED]**% of the Maximum Foreseeable Loss as determined by WDBA pursuant to the Project Agreement, with the exception of certain coverages, anticipated to include those more fully detailed in Appendix 29-2, Part 3.1.
- (e) In the event such coverages are included and there are sub-limits for such coverages, WDBA will consult with Project Co about sub-limits for such coverages, and such sub-limits will be no less than those limits associated with the respective coverages in the above list. Separate and dedicated aggregate limits for flood and earth movement are permitted. The deductible per occurrence for physical loss or damage to be determined upon final negotiation of the insurance coverage but shall not exceed a maximum of **[\$REDACTED]** for each and every loss, except with respect to natural catastrophe perils/hazards, including earthquake, flood, cyclone, hurricane, tsunami. The maximum deductible for these types of natural catastrophe perils/hazards shall be equivalent to the actual deductible obtained for these type of perils. WDBA shall endeavor to obtain a Policy with an initial **[\$REDACTED]** deductible for these types of natural catastrophe perils/hazards. If at the time of the initial placement of this coverage, the **[\$REDACTED]** deductible for these types of natural catastrophe perils/hazards is not available, then WDBA will consult with Project Co to determine the amount of the deductible and any cost increase, above the premium charged for the highest deductible that is available for these type natural catastrophe perils/hazards, will be borne by Project Co. Upon the expiration of initial policy period for such coverage during the OMR Period, the parties agree that the same process will be followed in setting deductibles for such subsequent Policies..
- (f) The Property Policies shall provide primary coverage for the Infrastructure and the Existing Infrastructure, without right of contribution from other insurance carried to by WDBA, MDOT, or the Senior Lenders. The Property Policies shall contain a waiver of the rights of subrogation of the insurer against the insureds.
- (g) During the OMR Period, WDBA will at its sole cost and expense, subscribe and maintain certain business interruption coverage and extra expense coverage. WDBA will purchase business interruption cover in relation to Proponents loss of revenue with an indemnity period of 24 months, or such period as may be commercially available in the market.

## 15. GENERAL LIABILITY INSURANCE

- (a) WDBA shall take out and maintain in full force and effect or, as the case may be, cause to be taken out and maintained in force, general liability insurance, including both primary and excess policies, issued to WDBA as first named insured and WDBA Persons, MDOT, Michigan Parties, Project Co, Project Co Persons, and the Senior Lenders as the named insureds and any other person reasonably required to be named by WDBA or Project Co, who is added as an insured or additional insured, according to the circumstances. (the "**General Liability Policies**").
- (b) The General Liability Policies shall be maintained continuously during the OMR Period.
- (c) The General Liability Policies shall contain terms and conditions acceptable to WDBA, MDOT and Project Co. For purposes of description only, the anticipated terms of the General Liability Policies are intended to be consistent with the terms and conditions detailed in Appendix 29-2, Part 3.2, including third party liability insurance covering, on an occurrence basis, legal obligations for personal injury, including bodily injury or property damage including loss of use, non-owned automobile and contingent employers' liability. Coverage will include all insurable liabilities arising out of the OMR Work by the insureds

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or additional insureds, including control and use of the OM Infrastructure by the insureds or additional insureds, as set out in the Project Agreement. It is anticipated that this coverage will be subject to the following principal exclusions: (i) injury to employees to the extent insured by workers compensation; (ii) all aircraft, watercraft (more than 75 feet in length); (iii) automobile liability except for non-owned automobile liability; (iv) discharge, dispersal, release or escape of pollutants; (v) liability which results from a deliberate act or omission committed by or with the full knowledge of the insured's management which could, in the view of a prudent person, have been likely to result in a claim – but this does not apply to any insured who neither sanctioned nor had knowledge of, nor was a party to, causing the claim; (vi) nuclear reaction or nuclear radiation or radioactive contamination; (vii) punitive or exemplary damages; (viii) terrorism, with the agreement that WDBA will endeavor to obtain a Policy without this exclusion provided it is standard in the market, however, if a Policy without this exclusion is not standard or, if the deletion of such exclusion comes at an increased cost, WDBA will consult with Project Co to determine if the elimination of the exclusion should be pursued and with the agreement that any cost increase associated with the elimination of the exclusion will be borne by Project Co; (ix) asbestos; (x) mould, fungus, wet and dry rot and bacteria; (xi) cyber/data; (xii) property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations; and (xiii) other standard exclusions.

- (d) The General Liability Policies shall include a waiver of the rights of subrogation of the insurer against the insureds and additional insureds.
- (e) The combined total coverage limit of the General Liability Policies shall not be less than **[\$REDACTED]** per occurrence and in the aggregate pursuant to any combination of primary insurance, excess liability insurance or umbrella liability insurance. If structured in layers, policies will contain “drop-down” provisions for impaired or exhausted aggregates (an automatic reinstatement of aggregate limits is an acceptable alternative). The deductible shall be determined upon final negotiation of the insurance coverage, but shall not exceed a maximum of **[\$REDACTED]** for personal injury including bodily injury and property damage for any one occurrence.
- (f) The General Liability Policies shall provide primary coverage for the OMR Work, the control, use and occupation of the OM Infrastructure and the Site by the insureds, and for all the other obligations set out in the Project Agreement, without right of contribution from other insurance carried to by WDBA, MDOT, and the Senior Lenders.

## 16. ENVIRONMENTAL IMPAIRMENT LIABILITY

- (a) WDBA will take out and maintain in full force and effect or, as the case may be, cause to be taken out and maintained in force, environmental impairment liability insurance (“**OMR Environmental Liability Policies**”), including both primary and excess policies, issued to WDBA as first named insured, and WDBA Persons, MDOT, Michigan Parties, Project Co, Project Co Persons, and the Senior Lenders as the named insured and any other person reasonably required to be named by WDBA or Project Co, who is added as an insured or additional insured, according to the circumstances.
- (b) The coverage shall be maintained in force continuously over the course of the OMR Period.
- (c) For description purposes only, the OMR Environmental Policies are intended to be consistent with the terms and conditions detailed in Appendix 29-2, Part 3.3, including coverage for polluting discharges emanating from the OM Infrastructure or Site that may

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result in bodily injury or property damage or that may require clean-up, corrective measures or restoration of property other than the Infrastructure or the Site and must be maintained during the entire duration of the Insurance Policy.

- (d) The combined total limit of the OMR Environmental Policies shall not be less than \$[REDACTED] per claim and in the aggregate. The maximum deductible to be determined upon final negotiation of the insurance coverage but shall not exceed a maximum of \$[REDACTED] per claim.

#### 17. TERRORISM

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]
- (f) [REDACTED]
- (g) [REDACTED]

#### PART 4

The following insurance outlined in Part 4 and detailed in Appendix 29-2, Part 4 shall be taken out and maintained by Project Co and Project Co Persons. The policies described in Part 4 shall provide that disputes regarding coverage for MDOT or Michigan Parties where such parties are required to be insured shall be adjudicated in the state or federal courts of Michigan, pursuant to Michigan law. The policies described in Part 4 shall also provide that disputes regarding coverage for WDBA or WDBA Persons where such parties are required to be insured shall be adjudicated in the provincial or federal courts of Ontario, pursuant to Ontario law.

The insurance requirements may be met by Project Co providing one or more policies for each class of insurance.

#### 18. WORKERS' COMPENSATION

- (a) REQUIREMENTS OUTSIDE OF US AND MICHIGAN
  - (i) Project Co shall take out and maintain in full force and effect or, as the case may be, cause to be taken out and maintained in force, workers' compensation, employers' liability and other social insurances as may be required to be effected by an employer under the laws of Ontario, Canada or other Applicable Laws issued jointly in the name of the applicable Project Co Persons. As to employers' liability coverage only, limit for such insurance shall not be less than \$[REDACTED] for each accident or disease for each employee.
  - (ii) Project Co shall confirm that Subcontractor and vendors effect and keep in force similar insurances to the extent required by Applicable Law.

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**(b) REQUIREMENTS WITHIN US AND MICHIGAN**

- (i) Project Co shall take out and maintain in full force and effect or, as the case may be, cause to be taken out and maintained in force, workers' compensation, employers' liability and other social insurances as may be required to be effected by an employer under the laws of Michigan, US or other Applicable Laws. As to employers' liability coverage only, limit for such insurance shall not be less than **[\$REDACTED]** for each accident or disease for each employee.
- (ii) Project Co shall confirm that Subcontractor and vendors effect and keep in force similar insurances to the extent required by Law.
- (iii) The workers' compensation insurance should be inclusive of the following coverages/Endorsements:
  - (A) Waiver of Subrogation in favour of WDBA, WDBA Persons, MDOT, Michigan Parties, and the Senior Lenders;
  - (B) 60 Days' Notice of Cancellation provided to WDBA, MDOT and Senior Lenders;
  - (C) Longshore and Harbor Workers' Compensation Act Endorsement;
  - (D) Maritime Coverage Endorsement;
  - (E) Voluntary Compensation Maritime Coverage Endorsement;
  - (F) Any and all coverages required by the State of Michigan; and
  - (G) Should Project Co and Project Co Persons elect to utilize temporary or leased employees, the Labor Contractor Endorsement shall be required.

**19. AUTO LIABILITY**

Project Co shall take out and maintain in full force and effect or, as the case may be, cause to be taken out and maintained in force, auto liability insurance in respect of the ownership, maintenance, use or operation of motor vehicles in connection with the performance of the Project Work hereunder and in accordance with the statutory laws of the Ontario, Canada and Michigan, US or other Applicable Laws. The limit for such insurance shall not be less than **[\$REDACTED]** for each accident.

**20. "ALL RISK" CONTRACTOR'S EQUIPMENT & MACHINERY**

- (a) Project Co and Project Co Persons shall take out and maintain in full force and effect or, as the case may be, cause to be taken out and maintained in force, all risks contractor's equipment & machinery insurance in regards to the use and operation of equipment and machinery with the performance of the Project Work hereunder. This all risks contractor's equipment & machinery insurance shall contain terms and conditions acceptable to WDBA, MDOT and Project Co.
- (b) Coverage for items owned, hired, used or provided to full replacement cost. If Project Co and Project Co Persons elects to self-insure the machinery and equipment, Project Co and Project Co Persons agree to hold WDBA and MDOT harmless from and against any risk which should have been covered by the said insurance.

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**21. OTHER INSURANCE**

Project Co shall take out and maintain in full force and effect or, as the case may be, cause to be taken out and maintained in force any other type, form or amount of insurance that may be reasonably requested by WDBA. Any insurance requested by WDBA shall be obtained at WDBA's sole cost and expense. Any insurance requested by the Senior Lenders shall be obtained at Project Co's sole costs and expense. Project Co may also obtain any other insurance, at its sole cost and expense, in addition to the insurance specified herein.

WDBA will require Project Co to obtain first and third party cyber liability coverage for the OMR Period, subject to market availability, and WDBA shall be responsible for payment of the premiums for such coverage. Project Co shall bear sole financial responsibility for any deductibles and/or self-insured retentions up to the maximum deductible and/or self-insured retention set by WDBA for such cyber liability coverage. The parties agree that the initial maximum deductible set by WDBA for such cyber liability insurance must be reasonable in consideration of the project size/risk, the coverage terms offered, as well as the amount of the coverage and deductible obtained for such coverage during the DB Period. The parties will consult on the terms prior to the placement of the coverage. Upon the expiration of initial policy period for such coverage during the OMR Period, future maximum deductibles for such coverage shall be Index Linked in accordance with the Canadian Escalation Factor.

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**APPENDIX 29-2**

**PART 1**

**INSURANCE DURING THE DB PERIOD**

**1.1**

Type	Limits	Maximum Deductible
Wrap-Up Liability Insurance	<p>The total combined limit of the Wrap-up Liability Policies is not less than <b>[\$[REDACTED]]</b> per occurrence and in the aggregate, and which may include a combination of primary and excess policies. If structured in layers, policies will contain “drop-down” provisions for impaired or exhausted aggregates (an automatic reinstatement of aggregate limits is an acceptable alternative).</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> <li>(a) <b>[\$[REDACTED]]</b> Non-Owned Automobile Liability;</li> <li>(b) <b>[\$[REDACTED]]</b> Tenants’ Legal Liability;</li> <li>(c) <b>[\$[REDACTED]]</b> Employee Benefits Administrative Errors and Omissions;</li> <li>(d) <b>[\$[REDACTED]]</b></li> <li>(e) <b>[\$[REDACTED]]</b> Legal Liability for Damages to Non-Owned Automobiles (SEF94); and</li> <li>(f) <b>[\$[REDACTED]]/\$ [REDACTED]</b> Medical Expenses.</li> </ul> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>(a) Owners’ and Contractors’ Protective liability;</li> <li>(b) Blanket Contractual (written and oral);</li> <li>(c) Contingent Employers Liability;</li> <li>(d) Personal Injury including bodily injury;</li> <li>(e) Cross Liability and Severability of Interest with respect to each insured party;</li> <li>(f) Blasting/demolition/excavation/underpinning/pile driving/shoring/caisson work/work below ground surface/tunnelling/grading and similar operations associated with the works, as applicable;</li> <li>(g) Elevator and Hoist Collision Liability;</li> <li>(h) Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when</li> </ul>	<p><b>[\$[REDACTED]]</b> per occurrence for personal injury including bodily injury and property damage</p> <p><b>[\$[REDACTED]]</b> per occurrence with respect to each of SEF94 and Tenants Legal Liability</p>

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Type	Limits	Maximum Deductible
	<p>knowledge is held by a designated project person(s)- to be identified by WDBA;</p> <ul style="list-style-type: none"> <li>(i) Non -Owned Automobile Liability;</li> <li>(j) Tenants' Legal Liability (All Risks);</li> <li>(k) Medical Expenses;</li> <li>(l) Prairie or Forest Fire Fighting Expenses;</li> <li>(m) Hostile Fire Pollution Liability;</li> <li>(n) Employee Benefits Administrative Errors and Omissions;</li> <li>(o) Non-vitiation;</li> <li>(p) Permission for Unlicensed Motorized Equipment (partial road use);</li> <li>(q) Unlicensed Equipment;</li> <li>(r) Loss of Use Without Property Damage;</li> <li>(s) Loading and Unloading of Automobiles;</li> <li>(t) Broad Form Property Damage;</li> <li>(u) Broad Form Completed Operations;</li> <li>(v) Intentional Injury, committed to Protect Persons or Property;</li> <li>(w) Worldwide Territory;</li> <li>(x) Professional Services exclusion ISO 22 80;</li> <li>(y) "Pay on behalf of" cover;</li> <li>(z) Additional Insured and waiver of subrogation afforded to any person or entity agreed to in writing by WDBA or Project Co; and</li> <li>(aa) Project Rework.</li> </ul> <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>(a) Injury to employees to the extent insured by workers compensation;</li> <li>(b) All aircraft (not applicable to drones), watercraft vessels over 500 tons GWT;</li> <li>(c) Automobile liability except for non-owned</li> </ul>	

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Type	Limits	Maximum Deductible
	<p>automobile liability;</p> <p>(d) Discharge, dispersal, release or escape of pollutants;</p> <p>(e) Liability which results from a deliberate act or omission committed by or with the full knowledge of the insured's management which could, in the view of a prudent person, have been likely to result in a claim – but this does not apply to any insured who neither sanctioned nor had knowledge of, nor was a party to, causing the claim;</p> <p>(f) Nuclear reaction or nuclear radiation or radioactive contamination;</p> <p>(g) Punitive or exemplary damages;</p> <p>(h) Terrorism;</p> <p>(i) Asbestos;</p> <p>(j) Mould, fungus, wet and dry rot and bacteria;</p> <p>(k) Cyber/data; and</p> <p>(l) Other standard exclusions.</p> <p>Policy to include other standard conditions.</p>	

## 1.2

Type	Limits	Maximum Deductible
All Risks Course of Construction Insurance	<p>The total combined limit of the All Risk Policies shall not be less than the full replacement cost of the Project, with the exception of certain coverages, anticipated to include those identified below:</p> <p>Delayed Opening (Period of Indemnity – <b>[REDACTED]</b> \$ To Be Advised.</p> <p>Inland Transit <b>[\$REDACTED]</b></p> <p>Temporary and Off-site Storage Locations <b>[\$REDACTED]</b></p> <p>Extra Expense and Expediting Expense <b>[\$REDACTED]</b></p> <p>Bylaws (with respect to Existing or Renovated Buildings) <b>[\$REDACTED]</b></p> <p>Debris Removal <b>[\$REDACTED]</b></p> <p>Off Premises Services Interruption <b>[\$REDACTED]</b></p>	<b>[\$REDACTED]</b> for each and every loss

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Type	Limits	Maximum Deductible
	Professional Fees <b>[\$[REDACTED]]</b> Fire Fighting Expenses <b>[\$[REDACTED]]</b> Plans and Documents <b>[\$[REDACTED]]</b> Accounts Receivable <b>[\$[REDACTED]]</b> Radioactive Contamination <b>[\$[REDACTED]]</b> Defense Costs <b>[\$[REDACTED]]</b> Contamination/Clean-Up and Removal <b>[\$[REDACTED]]</b> Ammonia Contamination <b>[\$[REDACTED]]</b> LEED® Clauses <b>[\$[REDACTED]]</b> Ingress/Egress 8 weeks Claims Preparation <b>[\$[REDACTED]]</b> Escalation    115% Immediate Repairs <b>[\$[REDACTED]]</b> Increased Cost of By-laws <b>[\$[REDACTED]]</b> Loss Minimization <b>[\$[REDACTED]]</b> Trees, Shrubs, Plantings and Landscaping <b>[\$[REDACTED]]</b> Errors and Omissions <b>[\$[REDACTED]]</b> Soft Costs    not less than <b>[REDACTED]</b> % of the total construction costs Delay in Start Up: Professional Charges <b>[\$[REDACTED]]</b> Unspecified Suppliers <b>[\$[REDACTED]]</b> Specified/Nominated Suppliers <b>[\$[REDACTED]]</b> Utilities <b>[\$[REDACTED]]</b> Additional Increase in Cost of Working <b>[\$[REDACTED]]</b> Prevention of Access <b>[\$[REDACTED]]</b> Principal Extensions: (a)      Replacement Cost Valuation (Property);	

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Type	Limits	Maximum Deductible
	<ul style="list-style-type: none"> <li>(b) Most Recent Technology Replacement Cost Valuation (Equipment or Machinery);</li> <li>(c) Flood (to policy limit or an agreed maximum foreseeable loss amount with annual aggregate);</li> <li>(d) Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with an annual aggregate);</li> <li>(e) Electronic Data Processing equipment and media, including data restoration and re-creation costs;</li> <li>(f) Inland Transit;</li> <li>(g) Unnamed locations;</li> <li>(h) By-laws including Demolition, Increased Cost of Repairs and Replacement;</li> <li>(i) Debris Removal;</li> <li>(j) Off Premises Services Interruption;</li> <li>(k) Professional Fees;</li> <li>(l) Fire Fighting Expenses;</li> <li>(m) Plans and Documents;</li> <li>(n) Accounts Receivable;</li> <li>(o) Green Building and LEED Upgrades;</li> <li>(p) Defence Costs;</li> <li>(q) Contamination Clean-up or Removal;</li> <li>(r) Ammonia Contamination;</li> <li>(s) LEED Rectification, Commissioning and Testing Expenses;</li> <li>(t) Permission for Partial Use or Occupancy prior to Substantial Completion;</li> <li>(u) Cost of Carrying Project Financing (36 Months), included in Delayed Start Up Coverage;</li> <li>(v) Margin of Profit Extension for Contractors;</li> <li>(w) 50/50 clause;</li> <li>(x) Radioactive contamination caused by sudden and</li> </ul>	

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Type	Limits	Maximum Deductible
	<p>accidental release of radioactive isotopes (resulting from an accident); and</p> <p>(y) Temporary Structures.</p> <p>Permitted Exclusions:</p> <p>(a) Defect in design or workmanship using LEG3 or LEG2 at the discretion of the insured;</p> <p>(b) Penalties and Liquidated Damages;</p> <p>(c) Wear and tear, excepting the cost of resultant damage;</p> <p>(d) Unexplained shortages;</p> <p>(e) Licensed vehicles;</p> <p>(f) Vessels/aircrafts;</p> <p>(g) Loss or damage to cash, bank notes, treasury notes, cheques, postal orders, money orders, stamps, or securities;</p> <p>(h) War, civil war, invasion, act of foreign enemy, terrorism;</p> <p>(i) Pollution except destruction of or damage to the property insured caused by: (a) pollution which results from an insured peril or (b) an insured peril which results from pollution;</p> <p>(j) Nuclear reaction or nuclear radiation or radioactive contamination but direct loss by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured;</p> <p>(k) Mould, fungus, wet and dry rot and bacteria;</p> <p>(l) Cyber/data;</p> <p>(m) Delay in Start Up exclusions</p> <p>(i) Cancellation of agreement or licence;</p> <p>(ii) Fines;</p> <p>(iii) Inability to raise Finance; and</p> <p>(iv) Other standard exclusions.</p> <p>Policy to include other standard conditions.</p>	

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## 1.3

Type	Limits	Maximum Deductible
Project Specific Pollution Liability (combined Contractors' Pollution Liability and Pollution Legal Liability Claims Made)	<p>The total combined limits of the Environmental Policies shall not be less than \$[REDACTED] per claim and in aggregate inclusive of defense and all costs and expenses for the DB Period.</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>(a) Hazardous Substances occurring at or emanating from the Facility or Site during the Policy Period;</li> <li>(b) Microbial Matter (including Fungus/Mould);</li> <li>(c) Underground and above ground storage tanks;</li> <li>(d) First Party Restoration and Clean -up Costs;</li> <li>(e) Disposal Site Extension, including Transportation (reporting required);</li> <li>(f) Duty to Defend;</li> <li>(g) Canada and US Territory;</li> <li>(h) Contractual Liability;</li> <li>(i) Emergency Response Costs;</li> <li>(j) Illicit Abandonment; and</li> <li>(k) Gradual and Sudden &amp; Accidental without time limitations.</li> </ul> <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>(a) Terrorism;</li> <li>(b) War;</li> <li>(c) Intentional non-compliance;</li> <li>(d) Prior knowledge/known conditions;</li> <li>(e) Workers' compensation;</li> <li>(f) Employers' liability;</li> <li>(g) Professional liability;</li> <li>(h) Nuclear liability;</li> <li>(i) Property damage to motor vehicles during Transportation; and</li> <li>(j) Other standard exclusions.</li> </ul>	\$[REDACTED] per claim

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Type	Limits	Maximum Deductible
	Policy to include other standard conditions.	

1.4

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>(a) [REDACTED]</p> <p>(b) [REDACTED]</p> <p>(c) [REDACTED]</p> <p>(d) [REDACTED]</p> <p>(e) [REDACTED]</p> <p>(f) [REDACTED]</p> <p>(g) [REDACTED]</p> <p>(h) [REDACTED]</p> <p>(i) [REDACTED]</p> <p>(j) [REDACTED]</p> <p>(k) [REDACTED]</p> <p>[REDACTED]</p> <p>(a) [REDACTED]</p> <p>(b) [REDACTED]</p> <p>(c) [REDACTED]</p> <p>(d) [REDACTED]</p> <p>(e) [REDACTED]</p> <p>(f) [REDACTED]</p> <p>(g) [REDACTED]</p> <p>(h) [REDACTED]</p> <p>(i) [REDACTED]</p> <p>(j) [REDACTED]</p>	[REDACTED]

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[REDACTED]	[REDACTED]	[REDACTED]
	<ul style="list-style-type: none"> <li>(k) [REDACTED]</li> <li>(l) [REDACTED]</li> <li>(m) [REDACTED]</li> <li>(n) [REDACTED]</li> <li>(o) [REDACTED]</li> <li>(p) [REDACTED]</li> <li>(q) [REDACTED]</li> <li>(r) [REDACTED]</li> <li>(s) [REDACTED]</li> <li>(t) [REDACTED]</li> <li>(u) [REDACTED]</li> <li>(v) [REDACTED]</li> <li>(w) [REDACTED]</li> <li>(x) [REDACTED]</li> <li>(y) [REDACTED]</li> <li>(z) [REDACTED]</li> <li>(aa) [REDACTED]</li> <li>(bb) [REDACTED]</li> <li>(cc) [REDACTED]</li> <li>(dd) [REDACTED]</li> </ul> <p>[REDACTED]</p> <ul style="list-style-type: none"> <li>(a) [REDACTED]</li> <li>(b) [REDACTED]</li> <li>(c) [REDACTED]</li> <li>(d) [REDACTED]</li> <li>(e) [REDACTED]</li> <li>(f) [REDACTED]</li> </ul>	

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[REDACTED]	[REDACTED]	[REDACTED]
	<p>(g) [REDACTED]</p> <p>(h) [REDACTED]</p> <p>(i) [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>(a) [REDACTED]</p> <p>(b) [REDACTED]</p> <p>(c) [REDACTED]</p> <p>(d) [REDACTED]</p> <p>(e) [REDACTED]</p> <p>[REDACTED]</p> <p>(a) [REDACTED]</p> <p>(b) [REDACTED]</p> <p>(c) [REDACTED]</p> <p>(d) [REDACTED]</p> <p>(e) [REDACTED]</p> <p>[REDACTED]</p>	

**PART 2**

**2.1**

Type	Limits	Maximum Deductible
Workers' Compensation/ Employers' Liability	The limit for Employers' Liability insurance shall not be less than <b>\$(REDACTED)</b> for each accident or disease for each employee.	Not Applicable

**2.2**

Type	Limits	Maximum Deductible
Marine Cargo	<p>Sum Insured</p> <p>(a) The total shall be on the basis of <b>(REDACTED)</b>% of the cost insurance freight (the CIF) value to arrival at the site of the Property Insured, subject</p>	Subject to a <b>(REDACTED)</b> % of loss minimum of <b>\$(REDACTED)</b> and a

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	<p>to the following limits for any one loss:</p> <ul style="list-style-type: none"> <li>(i) any one conveyance and/or in the course of transit a sum sufficient to cover the value, on the above basis, of the largest shipment; and</li> <li>(ii) any one location other than in the course of transit a sum sufficient to cover the maximum value, on the above basis.</li> </ul> <p>Principal Extensions</p> <ul style="list-style-type: none"> <li>(a) Institute Cargo Clauses (A) (Cl. 252);</li> <li>(b) Institute Cargo Clauses (C) (Cl. 254);</li> <li>(c) Institute Cargo Clauses (Air) (Cl. 2510);</li> <li>(d) Institute Strikes Clauses (Cargo) (Cl. 256);</li> <li>(e) Institute Strikes Clauses (Air Cargo) (Cl. 260);</li> <li>(f) Institute War Clauses (Cargo) (Cl. 255);</li> <li>(g) Institute War Clauses (Air Cargo) (Cl. 258);</li> <li>(h) Institute War Clauses (sending by Post) (Cl. 257);</li> <li>(i) Institute Replacement Clause (Cl. 161);</li> <li>(j) Termination of Transit Clause (Terrorism);</li> <li>(k) Institute Radioactive Contamination Exclusion Clause (Cl. 356);</li> <li>(l) Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical;</li> <li>(m) Electromagnetic Weapons Exclusion Clause (Cl. 370) USCAN B;</li> <li>(n) Institute Classification Clause 01/01/2001 (Cl. 354);</li> <li>(o) Cargo ISPS Endorsement;</li> <li>(p) Cargo ISPS Forwarding Charges Clause;</li> <li>(q) Cargo ISM Endorsement;</li> <li>(r) Cargo ISM Forwarding Charges Clause;</li> <li>(s) 50/50 clause;</li> <li>(t) seven (7) days' notice of cancellation for wars, strikes, riots and civil commotion, except forty-</li> </ul>	<p>maximum of  <b>[\$REDACTED]</b></p>
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	<p>eight (48) hours for sending to and from the US; and</p> <p>(u) Marine Cargo Survey Warranty.</p> <p>Permitted Exclusions:</p> <p>(a) Radioactive contamination;</p> <p>(b) Willful act;</p> <p>(c) Known insolvency of carrier;</p> <p>(d) Known unseaworthiness or lack of fitness of conveyance; and</p> <p>(e) Pollution.</p> <p>Period:</p> <p>From the commencement of the first shipment to site ex works until the completion of offloading at the final destination of the last shipment.</p>	
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**2.3**

Type	Limits	Maximum Deductible
Auto Liability	The limit shall not be less than \$[REDACTED] for each accident.	

**2.4**

Type	Limits	Maximum Deductible
All Risk Contractor's Equipment & Machinery	All Risks coverage on all owned, rented, leased or borrowed.  If Site equipment is 3 years old or less, the sum insured shall be equal to [REDACTED]% of the replacement value of all contractors' equipment used at the project. If Site equipment is more than 3 years old, actual cash value basis of loss settlement is acceptable.	

**2.5**

Type	Limits	Maximum Deductible
Project Specific Professional Liability	The liability limit under this Insurance Policy shall not be less than \$[REDACTED] each claim and in the aggregate for all claims, inclusive of defense and all costs and expenses for the DB Period.  Principal Extensions:  (a) Present, former partner, executive officer, director or shareholder of Named Insureds	\$[REDACTED]

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Type	Limits	Maximum Deductible
	<p>while acting within their scope of duties for the Named Insured;</p> <ul style="list-style-type: none"> <li>(b) Any individuals or personal corporations retained by the Named Insured under a personal services contract;</li> <li>(c) Claim defined as a written or oral demand for money or a written or oral allegation in breach in the rendering or failure to render professional services received by the Insured or Named Insured and resulting from a single error, omission or negligent act;</li> <li>(d) Lawyer fees and associated expenses incurred in the investigation, defence, settlement, arbitration or litigation of claims;</li> <li>(e) Duty to defend, even if the allegations are groundless, false or fraudulent; and</li> <li>(f) Territorial Limits: Worldwide.</li> </ul> <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>(a) A claim made by an Insured against another Insured, unless such claim emanates from an independent third party. It is understood and agreed that this exclusion shall not apply to a Claim or Claims Expense emanating from the First Named Insured against any Named Insured;</li> <li>(b) A related party claim, unless such claim emanates from an independent third party;</li> <li>(c) Workers' compensation and employers' liability;</li> <li>(d) Fraudulent, criminal, dishonest, intentionally or knowingly wrongful acts;</li> <li>(e) War and other hostile acts;</li> <li>(f) Express warranties or guarantees;</li> <li>(g) Estimates on profit, return;</li> <li>(h) Faulty workmanship, construction or work which is alleged or in fact not constructed in accordance with the design of the Project or the construction documents;</li> <li>(i) Design or manufacture of any good or products sold or supplied by the Named Insured;</li> </ul>	

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Type	Limits	Maximum Deductible
	<ul style="list-style-type: none"> <li>(j) Terrorism;</li> <li>(k) Nuclear Liability;</li> <li>(l) Judgments and awards deemed uninsurable by law;</li> <li>(m) Liability assumed under design contract, unless such liability would have attached to the Named Insured by law in the absence of such agreement;</li> <li>(n) Punitive or exemplary damages, fines, penalties or interest or liquidated punitive or exemplary damages or fees; and</li> <li>(o) Refusal to employ, termination of employment, humiliation or discrimination on any basis or other employment related practices or policies.</li> </ul>	

**2.6**

Type	Limits	Maximum Deductible
Marine Liability	Minimum \$[REDACTED] inclusive Owned or Non -Owned Watercraft	To be determined within 30 days following the Commencement Date

**2.7**

Type	Limits	Maximum Deductible
Aircraft Liability	Minimum \$[REDACTED] inclusive, including \$[REDACTED] passenger hazard - Owned Aircraft  Minimum \$[REDACTED] inclusive -Non -Owned Aircraft	To be determined within 30 days following the Commencement Date

**2.8**

Type	Limits	Maximum Deductible
Network Interruption and Data Loss	The limit for such insurance shall not be less than \$[REDACTED] for each incident	\$[REDACTED]

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**PART 3**

**INSURANCE DURING THE OMR PERIOD**

**3.1**

Type	Limits	Maximum Deductible
Property & Equipment Breakdown Insurance	<p>This Insurance Policy's limit of loss shall not be less than: (i) the full replacement cost of the Project or (ii) <b>[REDACTED]</b>% of the Maximum Foreseeable Loss as determined by WDBA pursuant to the Project Agreement, with the exception of certain coverages, anticipated to include those identified below:</p> <p>Sub-Limits:</p> <p>Business Interruption (Period of Indemnity – <b>[REDACTED]</b>) \$ To Be Advised</p> <p>Property In Transit       <b>[REDACTED]</b></p> <p>Off-site Storage         <b>[REDACTED]</b></p> <p>Extra Expense and Expediting Expense <b>[REDACTED]</b></p> <p>Bylaws (except as noted below) Included in Limit</p> <p>Contingent Business Interruption       <b>[REDACTED]</b></p> <p>Bylaws (with respect to Existing or Renovated Buildings) <b>[REDACTED]</b></p> <p>Debris Removal         <b>[REDACTED]</b></p> <p>Off Premises Services <b>[REDACTED]</b></p> <p>Auditors/Professional Fees       <b>[REDACTED]</b></p> <p>Fire Fighting Expenses <b>[REDACTED]</b></p> <p>Valuable Papers       <b>[REDACTED]</b></p> <p>Accounts Receivable   <b>[REDACTED]</b></p> <p>Green Building and LEED® Upgrades <b>[REDACTED]</b></p> <p>Radioactive Contamination       <b>[REDACTED]</b></p> <p>Defense Costs <b>[REDACTED]</b></p> <p>Contamination/Clean-Up and Removal <b>[REDACTED]</b></p> <p>Ammonia Contamination       <b>[REDACTED]</b></p> <p>LEED® Certification, Building Commissioning <b>[REDACTED]</b></p>	<p><b>[\$[REDACTED]]</b> for each and every loss, except with respect to natural catastrophe perils/hazards, including earthquake, flood, cyclone, hurricane, tsunami. The maximum deductible for these types of natural catastrophe perils/hazards shall be equivalent to the actual deductible obtained for these type of perils. WDBA shall endeavor to obtain a Policy with an initial <b>[\$[REDACTED]]</b> deductible for these types of natural catastrophe perils/hazards. If at the time of the initial placement of this coverage, the <b>[\$[REDACTED]]</b> deductible for these types of natural catastrophe perils/hazards if not available, then WDBA will consult with Project Co to determine the amount of the deductible and any cost increase, above the premium charged for the highest deductible</p>

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Type	Limits	Maximum Deductible
	<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>(a) Property covered by the All Risks Contractor's Equipment &amp; Machinery Coverage required in Section 20 of Appendix 29-1;</li> <li>(b) Wear and tear, excepting the cost of resultant damage;</li> <li>(c) Unexplained shortages;</li> <li>(d) Licensed vehicles;</li> <li>(e) Vessels/aircrafts;</li> <li>(f) Loss or damage to cash, bank notes, treasury notes, cheques, postal orders, money orders, stamps, or securities;</li> <li>(g) War, civil war, invasion, act of foreign enemy, terrorism;</li> <li>(h) Pollution except destruction of or damage to the property insured caused by: (a) pollution which results from an insured peril or (b) an insured peril which results from pollution;</li> <li>(i) Nuclear reaction or nuclear radiation or radioactive contamination but direct loss by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured;</li> <li>(j) Mould, fungus, wet and dry rot and bacteria;</li> <li>(k) Cyber/data; and</li> <li>(l) Other standard exclusions.</li> </ul> <p>Policy to include other standard conditions.</p>	<p>that is available for these type natural catastrophe perils/hazards, will be borne by Project Co. Upon the expiration of initial policy period for such coverage during the OMR Period, the parties agree that the same process will be followed in setting deductibles for such subsequent Policies.</p>

**3.2**

Type	Limits	Maximum Deductible
General Liability Insurance	<p>The combined total coverage limit of the General Liability Policies shall not be less than \$[REDACTED] per occurrence and in the aggregate pursuant to any combination of primary insurance, excess liability insurance or umbrella liability insurance.</p> <p>If structured in layers, policies will contain "drop-down"</p>	<p>\$[REDACTED] for personal injury including bodily injury and property damage any one occurrence.</p>

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Type	Limits	Maximum Deductible
	<p>provisions for impaired or exhausted aggregates (an automatic reinstatement of aggregate limits is an acceptable alternative).</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> <li>(a) \$[REDACTED] Non-Owned Automobile Liability;</li> <li>(b) \$[REDACTED] "All Risks" Tenants' Legal Liability, if any exposure exists;</li> <li>(c) \$[REDACTED] Prairie or Forest Fire Fighting Expense;</li> <li>(d) \$[REDACTED] Employee Benefits Administrative Errors and Omissions;</li> <li>(e) \$[REDACTED] Legal Liability for Damages to Non-owned Automobiles (SEF 94), unless coverage provided under automobile liability insurance; and</li> <li>(f) \$[REDACTED]/\$ [REDACTED] Medical Payments.</li> </ul> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>(a) Owner's and Contractor's Protective liability;</li> <li>(b) Blanket Contractual (written and oral);</li> <li>(c) Contingent Employers Liability;</li> <li>(d) Employee Benefits Administrative Errors and Omissions;</li> <li>(e) Personal Injury including bodily injury (nil participation);</li> <li>(f) Cross Liability and Severability of Interest with respect to each insured party;</li> <li>(g) Elevator and Hoist Collision Liability;</li> <li>(h) Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated project person(s)- to be identified by WDBA;</li> <li>(i) Non-owned Automobile;</li> <li>(j) Tenants' Legal Liability (All Risks);</li> <li>(k) Medical Expenses;</li> </ul>	

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Type	Limits	Maximum Deductible
	<ul style="list-style-type: none"> <li>(l) Prairie or Forest Fire Fighting Expenses;</li> <li>(m) Hostile Fire Pollution Liability;</li> <li>(n) Permission for unlicensed vehicles' partial road use;</li> <li>(o) Unlicensed Equipment;</li> <li>(p) Loss of Use Without Property Damage;</li> <li>(q) Loading and Unloading of Automobiles;</li> <li>(r) Broad Form Property Damage;</li> <li>(s) Broad Form Completed Operations;</li> <li>(t) Intentional Injury, committed to Protect Persons or Property;</li> <li>(u) Voluntary Compensation;</li> <li>(v) Worldwide Territory, subject to suits being brought in Canada or the US; and</li> <li>(w) Non-vitiation.</li> </ul> <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>(a) Injury to employees to the extent insured by workers compensation;</li> <li>(b) All aircraft, watercraft (more than 75 feet in length);</li> <li>(c) Automobile liability except for non-owned automobile liability;</li> <li>(d) Discharge, dispersal, release or escape of pollutants;</li> <li>(e) Liability which results from a deliberate act or omission committed by or with the full knowledge of the insured's management which could, in the view of a prudent person, have been likely to result in a claim – but this does not apply to any insured who neither sanctioned nor had knowledge of, nor was a party to, causing the claim;</li> <li>(f) Nuclear reaction or nuclear radiation or radioactive contamination;</li> </ul>	

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Type	Limits	Maximum Deductible
	<p>(g) Punitive or exemplary damages;</p> <p>(h) <b>[REDACTED]</b></p> <p>(i) Asbestos;</p> <p>(j) Mould, fungus, wet and dry rot and bacteria;</p> <p>(k) Cyber/data;</p> <p>(l) Other standard exclusions;</p> <p>(m) Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations;</p> <p>(n) Operation of licensed motor vehicles, other than attached machinery, while used for its purpose or at the OM&amp;R Work site;</p> <p>(o) Professional liability of engineers, architects and other professional consultants; and</p> <p>(p) Other permitted exclusions.</p> <p>Policy to include other standard conditions.</p>	

**3.3**

Type	Limits	Maximum Deductible
Environmental Impairment Liability	<p>The combined total limit of the OMR Environmental Policies shall not be less than <b>[\$REDACTED]</b> per claim and in the aggregate. inclusive of defense and all costs and expenses.</p> <p>Principal Extensions:</p> <p>(a) Hazardous Substances occurring at or emanating from the OMR Work or site during the Policy Period;</p> <p>(b) Microbial Matter (including Fungus/Mould);</p> <p>(c) Biological Agents;</p> <p>(d) Underground/above ground storage tanks;</p> <p>(e) First Party Restoration and Clean-up;</p> <p>(f) Duty to Defend;</p> <p>(g) Contractual Liability; and</p> <p>(h) Illicit Abandonment.</p>	<b>[\$REDACTED]</b> per claim

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Type	Limits	Maximum Deductible
	Permitted Exclusions: (a) Terrorism; (b) Intentional Non-Compliance; (c) Workers Compensation; (d) War; (e) Employers Liability; (f) Nuclear Liability; and (g) Professional Liability.	

3.4

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED] [REDACTED] (a) [REDACTED] (b) [REDACTED] (c) [REDACTED] (d) [REDACTED] (e) [REDACTED] (f) [REDACTED] (g) [REDACTED] (h) [REDACTED] (i) [REDACTED] (j) [REDACTED] (k) [REDACTED] [REDACTED] (a) [REDACTED] (b) [REDACTED]	[REDACTED]

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[REDACTED]	[REDACTED]	[REDACTED]
	<p>(c) [REDACTED]</p> <p>(d) [REDACTED]</p> <p>(e) [REDACTED]</p> <p>(f) [REDACTED]</p> <p>(g) [REDACTED]</p> <p>(h) [REDACTED]</p> <p>(i) [REDACTED]</p> <p>(j) [REDACTED]</p> <p>(k) [REDACTED]</p> <p>(l) [REDACTED]</p> <p>(m) [REDACTED]</p> <p>(n) [REDACTED]</p> <p>(o) [REDACTED]</p> <p>(p) [REDACTED]</p> <p>(q) [REDACTED]</p> <p>(r) [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>(a) [REDACTED]</p> <p>(b) [REDACTED]</p> <p>(c) [REDACTED]</p> <p>(d) [REDACTED]</p> <p>(e) [REDACTED]</p> <p>(f) [REDACTED]</p> <p>(g) [REDACTED]</p> <p>(h) [REDACTED]</p> <p>(i) [REDACTED]</p>	

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[REDACTED]	[REDACTED]	[REDACTED]
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>(a) [REDACTED]</p> <p>(b) [REDACTED]</p> <p>(c) [REDACTED]</p> <p>(d) [REDACTED]</p> <p>(e) [REDACTED]</p> <p>[REDACTED]</p> <p>(a) [REDACTED]</p> <p>(b) [REDACTED]</p> <p>(c) [REDACTED]</p> <p>(d) [REDACTED]</p> <p>(e) [REDACTED]</p>	

**PART 4**

**4.1**

Type	Limits	Maximum Deductible
Workers' Compensation/ Employers' Liability	The limit for Employers' Liability insurance shall not be less than \$[REDACTED] for each accident or disease for each employee.	Not Applicable

**4.2**

Type	Limits	Maximum Deductible
Auto Liability	The limit shall not be less than \$[REDACTED] for each accident.	

**4.3**

Type	Limits	Maximum Deductible
All Risk Contractor's Equipment & Machinery	<p>All Risks coverage on all owned, rented, leased or borrowed.</p> <p>If Site equipment is three years old or less, the sum insured shall be equal to [REDACTED]% of the replacement value of all contractors' equipment used at the project. If Site equipment</p>	

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	is more than three years old, actual cash value basis of loss settlement is acceptable.	
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**SCHEDULE 30**

**FORM OF LENDERS' DIRECT AGREEMENT**

**WINDSOR-DETROIT BRIDGE AUTHORITY**

**- AND-**

**BRIDGING NORTH AMERICA GENERAL PARTNERSHIP**

**- AND-**

**BNY TRUST COMPANY OF CANADA**

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**LENDERS' DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the 28<sup>th</sup> day of September, 2018

**BETWEEN:**

**WINDSOR-DETROIT BRIDGE AUTHORITY** a corporation incorporated under the *International Bridges and Tunnels Act (Canada)*

("WDBA")

- and-

**BRIDGING NORTH AMERICA GENERAL PARTNERSHIP**, a general partnership constituted under the laws of the Province of Ontario

("Project Co")

- and-

**BNY TRUST COMPANY OF CANADA**, a trust company duly constituted under the laws of Canada, acting as collateral trustee for and on behalf of Senior Lenders

(the "**Lenders' Agent**")

**BACKGROUND**

- A. WDBA and Project Co have entered into the Project Agreement.
- B. Pursuant to the Senior Lending Agreements, the Senior Lenders have agreed, subject to the terms and conditions contained therein, to make available to Project Co the Senior Debt to finance certain costs to be incurred and expenditures to be made by Project Co in connection with the Project Agreement.
- C. It is a condition precedent to the obligations of the Senior Lenders under the Senior Lending Agreements that this Agreement be executed and delivered by the parties.

**IN CONSIDERATION** of the mutual covenants of the parties and of other consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the parties agree with one another as follows.

**1. DEFINITIONS****1.1 Definitions**

Unless defined specifically in this Agreement or unless the context otherwise requires, capitalized but otherwise undefined terms in this Agreement will have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of this Project Agreement.

In this Agreement, the following terms have meanings set out in this Section 1.

**Agreement** means this lenders' direct agreement, as it may be amended, supplemented or restated from time to time.

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**Appointed Representative** means the Senior Lenders' Representative identified in a Step-In Notice.

**Assign** means to sell, convey, transfer, assign, subcontract, dispose of, an agreement or rights under an agreement and **Assignment** shall have a similarly extended meaning.

**Change in Control** has the meaning set out in the Project Agreement.

**Common Terms and Intercreditor Agreement** means the agreement dated as of the 21st, day of September, 2018 among Project Co, the general partners of Project Co, certain listed lenders and hedge providers, the Lenders' Agent, BNY Trust Company of Canada as indenture trustee and Royal Bank of Canada, as administrative agent, as it may be supplemented, amended, restated or replaced from time to time in compliance with the terms of the Project Agreement.

**Competitive Selection Process** means the competitive selection process instituted by WDBA to select a person to perform the Project Work and which culminated in the selection of Project Co to do so.

**Discharged Obligations** has the meaning set out in Section 7.4.

**Discharged Rights** has the meaning set out in Section 7.4.

**Deficiency** has the meaning set out in Section 10.4(b).

**Enforcement Measure** means (i) any notice of forfeiture of term, any acceleration of maturity of amounts due and owing under any of the Senior Lending Agreements or any realization proceedings, (ii) any enforcement measure taken by the Lenders' Agent under any one of the Security Documents (including the exercise of step-in rights under this Agreement or other agreements, if applicable, and any withdrawal, by the Lenders' Agent of the authorization granted to Project Co to collect its receivables), as well as any provisional measure relating to any such recourse or measure.

**Event of Default** has the meaning set out in the Common Terms and Intercreditor Agreement.

**Existing Liabilities** means, as at any time:

- (a) all amounts due and payable by Project Co to WDBA under the Project Agreement at such time; and
- (b) (i) all obligations of Project Co which should have but have not been performed under the Project Agreement, and (ii) all outstanding liabilities of Project Co under the Project Agreement, in each case, at such time;

**Indicative Notice** means either an Indicative Step-In Notice or an Indicative Transfer Notice given in accordance with Section 4.3.

**Indicative Notice Period** means:

- (a) where an Indicative Step-In Notice has been given, the period commencing on the date of delivery of such Indicative Step-In Notice and ending on the earlier of:
  - (i) the Step-In Date;
  - (ii) the date of delivery of a Lenders' Agent Withdrawal Notice; and

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- (iii) 60 days following the date of delivery of such Indicative Step-In Notice;
- (b) where an Indicative Transfer Notice has been given, the period commencing on the date of delivery of such Indicative Transfer Notice and ending on the earlier of:
  - (i) the date on which any transfer in accordance with Section 7.1 becomes effective;
  - (ii) the date of delivery of a Lenders' Agent Withdrawal Notice; and
  - (iii) 60 days following the date of delivery of such Indicative Transfer Notice.

**Indicative Step-In Notice** has the meaning set out in Section 4.3.

**Indicative Transfer Notice** has the meaning set out in Section 4.3.

**Ineligible Person** has the meaning set out in the Project Agreement.

**Insolvency Law** means any Law of Canada or the United States relating to:

- (a) bankruptcy or insolvency;
- (b) the reorganization of debts, liquidation, winding-up, dissolution, compromise of creditor claims, arrangement, composition, compounding, moratorium, extension of time, adjustment of liabilities or reorganization of or relief with respect to debtors or debtors' obligations or assets or other similar matters; or
- (c) execution, garnishment, sequestration, attachment, distress or similar process.

**Insolvency Officer** means any trustee, receiver, receiver and manager, interim receiver, liquidator, provisional liquidator, sequestrator, administrator, agent or trustee for secured creditors custodian or other person with similar powers.

**Insolvency Proceedings** means:

- (a) any:
  - (i) formal step (including petition, proposal, application, convening of a meeting or other proceeding) taken with a view to or for the purpose of considering;
  - (ii) the appointment of an Insolvency Officer in connection with;
  - (iii) an order made or resolution passed in connection with; or
  - (iv) a formal agreement reached regarding,

a dissolution, bankruptcy, receivership, winding up, liquidation, administration or other similar proceedings or any other proceeding seeking a stay of proceedings, reorganization, debt arrangement, compromise of the claims of creditors or any distribution of assets in respect of Project Co (whether voluntary or involuntary) made or commenced by any party under any Insolvency Law; or

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- (b) any execution, garnishment, sequestration, attachment, distress or similar process affecting any of the assets of Project Co or any other similar process or event occurring in relation to Project Co's assets.

**Lenders' Agent Withdrawal Notice** has the meaning set out in Section 4.4.

**Liability Report** has the meaning set out in Section 4.5.

**Material Existing Liabilities** means Existing Liabilities that are:

- (a) financial liabilities; or
- (b) non-financial liabilities, the breach of which will trigger any remedy of WDBA under Section 44.1 (*Indemnification by Project Co*) or Section 46 (*Project Co Default and WDBA Remedies*) of the Project Agreement.

**Notice Period** means:

- (a) in respect of a Project Co Event of Default, the Termination Notice Period; and
- (b) in respect of an Event of Default, the Indicative Notice Period.

**Performance and Payment Support** has the meaning set out in the Project Agreement.

**Prime Contract Default Notice** has the meaning of the term "Default Notice" in Section 3.1 of the relevant Prime Contractor Direct Agreement.

**Proceeds Accounts** means:

(i) in the case of payments which are made in Canadian dollars the following account held at the [REDACTED]:

[REDACTED]  
[REDACTED]; and

(ii) in the case of payments which are made in US dollars, the following account held at [REDACTED]:

[REDACTED]  
[REDACTED].

**Project Agreement** means the agreement dated as of the 28th day of September, 2018, executed and delivered between Project Co and WDBA, pursuant to which Project Co agreed to carry out and perform the Project Work, as such agreement may be amended, supplemented, restated or replaced from time to time.

**Project Agreement Debt** means all debts and monies which are now or which may at any time hereafter be due and owing to Project Co by WDBA under the Project Agreement.

**Project Documents** has the meaning set out in the Project Agreement and **Project Document** means any one of them.

**Reported Existing Liabilities** means the Existing Liabilities identified in the Liability Report.

**Revocation of Termination Notice** means a written notice from WDBA to the Lenders' Agent revoking a Termination Notice.

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**Security Documents** has the meaning set out in the Common Terms and Intercreditor Agreement.

**Senior Debt Discharge Date** means the date on which all amounts due and owing to the Senior Lenders under the Senior Lending Agreements have been fully and irrevocably paid or discharged (whether or not as a result of enforcement) and the Senior Lenders are under no further obligation to advance under the relevant Senior Lending Agreement.

**Senior Lenders** has the meaning set out in the Project Agreement.

**Senior Lending Agreements** means the lending agreements between Project Co and the Senior Lenders to assist in the financing of the Project including the Common Terms and Intercreditor Agreement, as such agreements may be amended, supplemented, restated or replaced from time to time in compliance with the terms of the Project Agreement.

**Senior Lenders' Representative** means:

- (a) the Lenders' Agent or any Senior Lender;
- (b) a receiver or receiver and manager of Project Co appointed under or in connection with any Security Document; or
- (c) any other person proposed by the Senior Lenders or the Lenders' Agent and approved by WDBA (such approval not to be unreasonably withheld or delayed).

**Step-In Date** means the day that a Step-In Notice is delivered.

**Step-In Notice** has the meaning set out in Section 5.1.

**Step-In Period** means, subject to Section 5.3, the period from the Step-In Date up to and including the earlier of:

- (a) the Step-Out Date;
- (b) the date of any transfer under Section 7;
- (c) the date of any termination under Section 5.6; and
- (d) the Expiry Date.

**Step-Out Date** means the date that is 20 Business Days after the date of a Step-Out Notice.

**Step-Out Notice** has the meaning set out in Section 6.1.

**Substantial Completion Payment Account** means the following account held at [REDACTED]:

[REDACTED]  
[REDACTED].

**Substitute Project Co** has the meaning set out in Section 7.1.

**Successor Agent** has the meaning set out in Section 11.3(a).

**Termination Notice** has the meaning set out in Section 4.1.

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**Termination Notice Period** means the period beginning on the date a Termination Notice is given and ending on the earlier of:

- (a) the Step-In Date;
- (b) the date of service of a Revocation of Termination Notice; and
- (c) the proposed Termination Date (subject to the minimum notice requirements under Section 4.1(a)) set out in the Termination Notice.

**UCF Account** means the following account held at **[REDACTED]**:

**[REDACTED]**  
**[REDACTED]**.

## 2. TERM

This Agreement will remain in effect until the earlier of:

- (a) the Senior Debt Discharge Date;
- (b) the Termination Date (provided that WDBA has complied with its obligations under Sections 4 and 10 of this Agreement); and
- (c) subject to compliance with Section 7.4(f), the date of transfer of Project Co's rights under the Project Agreement to, and the assumption of its liabilities under the Project Agreement by, a Substitute Project Co pursuant to Section 7.1.

## 3. AGREEMENTS AND SECURITY

### 3.1 Consent

- (a) WDBA acknowledges notice of and consents to, the security interests granted by Project Co in favour of the Lenders' Agent on behalf of the Senior Lenders under the Security Documents over:
  - (i) Project Co's rights under the Project Agreement and all other Project Documents;
  - (ii) Project Co's rights to Insurance Proceeds; and
  - (iii) all other assets of Project Co.
- (b) WDBA acknowledges notice of and consents to the security interests granted by the Equity Members and their Related Owners in favour of the Senior Lenders under the Security Documents in, (i) the Equity Interests of each Equity Member in Project Co, (ii) the Equity Interests in an Equity Member, held directly or indirectly by each Related Owner, provided that no further security, assignment or transfer of such interests shall be effected other than pursuant to the Project Agreement and this Agreement and (iii) the Equity Interests of each of the persons that holds an Equity Interest in an Equity Member.

### 3.2 No Notice of Other Security

WDBA confirms that as of the date of this Agreement, it has not received written notice of any other security granted over Project Co's assets described in Section 3.1 other than pursuant to the Security Documents.

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### 3.3 Payments under Project Agreement

Project Co and the Lenders' Agent hereby authorize and direct WDBA to pay all sums payable to Project Co under the Project Agreement as follows:

- (a) in the case of (i) Construction Period Payments (other than the Substantial Completion Payment and Unintended Consequences Fund Fees), (ii) Monthly Payments and (iii) all other sums payable by WDBA to Project Co under the Project Agreement (other than those set out in Sections 3.3(b) and 3.3(c), to the applicable Proceeds Account;
- (b) in the case of the Substantial Completion Payment, to the Substantial Completion Payment Account; and
- (c) in the case of any payments in respect of the Unintended Consequences Fund and Unintended Consequences Fund Fees, to the UCF Account.

WDBA agrees to make such payments in accordance with such direction. Upon the occurrence of an Enforcement Measure, if so directed in writing by the Lenders' Agent upon giving reasonable prior notice to WDBA, WDBA shall pay any sum which it is obliged to pay to Project Co under the Project Agreement to a bank account specified by the Lenders' Agent.

### 3.4 WDBA's Obligations

Except as specifically provided for in this Agreement and the Insurance Trust Agreement, WDBA has no obligations (whether express, implied, collateral or otherwise) to the Lenders' Agent or the Senior Lenders in connection with this Agreement, the Project Agreement or any other Project Documents or the Project. All of the obligations and liabilities given, undertaken or arising on the part of WDBA under this Agreement are given solely to the Lenders' Agent and the Senior Lenders and do not confer any rights on or in favour of Project Co or any Affiliate of Project Co or any other person.

### 3.5 WDBA's Rights Not Prejudiced

- (a) The parties acknowledge that nothing in the Senior Lending Agreements, the Security Documents, this Agreement or any other agreement between any of them (including any giving by the Lenders' Agent of a notice hereunder) will, except as between the Lenders' Agent and WDBA as expressly set out in this Agreement, affect the rights of WDBA under the Project Agreement (but an exercise by WDBA of those rights will not preclude a proper exercise by the Lenders' Agent of its rights under this Agreement). Without limiting the generality of the foregoing, nothing in this Agreement will limit, and WDBA will be entitled at all times in accordance with the provisions thereof to exercise, WDBA's rights under Sections 32.6 (*Remedial Rights*) and 46.3 (*Remedies of WDBA for Project Co Event of Default*) (other than termination rights under such Section) of the Project Agreement.
- (b) No provision of a Senior Lending Agreement and no exercise of any right or remedy by or on behalf of a Senior under a Senior Lending Agreement or a Security Document shall terminate, limit or restrict the rights of WDBA or a WDBA Party to the Project IP or the Tolling System IP as set out in Section 52 (*Intellectual Property*) of the Project Agreement.

### 3.6 Agreements and Security Documents

- (a) The Lenders' Agent acknowledges having received a copy of the Project Agreement and a copy of each Prime Contractor Direct Agreement as at the date of this Agreement.

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- (b) WDBA acknowledges having received copies of the Senior Lending Agreements and the Security Documents as at the date of this Agreement.
- (c) The Lenders' Agent confirms to WDBA that the copies of the Senior Lending Agreements and the Security Documents provided to WDBA for acknowledgement under Section 3.6(b) constitute all of the Senior Lending Agreements and the Security Documents as at the date of this Agreement.
- (d) WDBA confirms to the Lenders' Agent that the copies of the Project Agreement and the Prime Contractor Direct Agreements provided to the Lenders' Agent for acknowledgment under Section 3.6(a) constitute the entirety of the Project Agreement and the Prime Contractor Direct Agreements as at the date of this Agreement.
- (e) Project Co and the Senior Lenders shall not amend or modify the Senior Lending Agreements or any of them, except in accordance with the Project Agreement.
- (f) **[REDACTED]**.

### 3.7 Acknowledgement of WDBA's Ownership of Lands and Project Infrastructure and Rights to Tolling Revenues

The Lenders' Agent acknowledges and confirms, as contemplated in, and subject to the exceptions set out in Section 12 (*Title and Risk of Loss*) of the Project Agreement, that title to and ownership of the Lands, the Project Infrastructure and all other improvements on or to the Site from time to time are vested in one of WDBA, Canada or Michigan. The Lenders' Agent acknowledges and confirms WDBA owns all Tolling Revenues, that Project Co has no interest in the Tolling Revenues and that any Tolling Revenues received by Project Co are received as agent for WDBA and in trust for WDBA. The Lenders' Agent hereby on behalf of itself and the Senior Lenders:

- (a) confirms that the Security Documents do not create any security on, in, over or under, the Lands, the Site, the Project Infrastructure or the Tolling Revenues; and
- (b) disclaims and releases any security interest or other property interest in or title to any of the Tolling Revenues, the Lands, the Site, the Project Infrastructure and any other improvements on or to the Lands and the Site from time to time.

### 3.8 Lenders Advance Documentation

The Lenders' Agent consents to the delivery by Project Co to WDBA of the Lenders Advance Documentation as required pursuant to Schedule 26 [*Construction Period Payments*] of the Project Agreement.

## 4. NOTICES

### 4.1 Termination Notice By WDBA

WDBA will not terminate or deliver any notice terminating the Project Agreement pursuant to Section 46.3 (*Remedies of WDBA for Project Co Event of Default*) of the Project Agreement without giving to the Lenders' Agent a notice (a "**Termination Notice**") stating:

- (a) that a Project Co Event of Default has occurred, and the proposed Termination Date which will be not sooner than:

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*Schedule 30 [Form of Lenders' Direct Agreement]*

- (i) 30 days after the Termination Notice for any Project Co Events of Default set out in Sections 46.1(a) to (e) inclusive, Section 46.1(i) and Section 46.1(s);
  - (ii) 45 days after the Termination Notice for any Project Co Events of Default set out in Sections 46.1(f), 46.1(g) 46.1(m), 46.1(r) 46.1(y) and 46.1(aa) of the Project Agreement;
  - (iii) 60 days after the Termination Notice for any Project Co Events of Default set out in Sections 46.1(l), 46.1(n), 46.1(o), 46.1(q), 46.1(z) of the Project Agreement;
  - (iv) 90 days after the Termination Notice for any other Project Co Event of Default; and
- (b) the grounds for termination in reasonable detail.

#### 4.2 Notice of Event of Default and Notice of Enforcement Measure

- (a) Concurrently with delivery by it to Project Co of any notice of an Event of Default, the Lenders' Agent shall provide a copy of such notice to WDBA together with reasonable details of such Event of Default.
- (b) Concurrently with delivery by it to Project Co of any notice of an Enforcement Measure, the Lenders' Agent shall provide a copy of such notice to WDBA, together with reasonable details of such Enforcement Measure, prior to exercising any Enforcement Measure.

#### 4.3 Indicative Notice

Without prejudice to the rights of the Lenders' Agent under the Security Documents, at any time upon the occurrence of an Event of Default, and where relevant to such Event of Default the continuance of such Event of Default, the Lenders' Agent shall promptly give notice to WDBA of its intention to nominate a Senior Lenders' Representative to step in in accordance with Section 5.1 (an "**Indicative Step-In Notice**") or to effect a transfer in accordance with Section 7.1 (an "**Indicative Transfer Notice**").

#### 4.4 Lenders' Agent Withdrawal Notice

If at any time after the giving of an Indicative Notice or the receipt of a Termination Notice, the Lenders' Agent has determined that it is not, or is no longer, considering appointing a Senior Lenders' Representative or effecting a transfer of Project Co's rights, liabilities and obligations under the Project Agreement to a Substitute Project Co in accordance with this Agreement, the Lenders' Agent will give notice (a "**Lenders' Agent Withdrawal Notice**") to WDBA and thereafter the provisions of this Agreement will not be applicable with respect to the event that led to such Indicative Notice or Termination Notice and WDBA may take any and all action available to it under the Project Agreement and any other Project Documents, without further notice to the Lender's Agent or the Senior Lenders.

#### 4.5 Notice of Material Existing Liabilities

Unless a Lenders' Agent Withdrawal Notice has been given, not later than 21 days after the date of delivery by WDBA of a Termination Notice or the date of delivery by the Lenders' Agent of an Indicative Notice, as the case may be, WDBA will give the Lenders' Agent a notice (the "**Liability Report**") containing details of:

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- (a) any Material Existing Liabilities accrued and outstanding as of the date of delivery of the Termination Notice or Indicative Notice, as the case may be; and
- (b) any financial liabilities of which WDBA is aware (after reasonable enquiry) that will fall due under the Project Agreement on or after the date of delivery of the Termination Notice or Indicative Notice, as the case may be, and on or prior to:
  - (i) in the case of a Termination Notice, the proposed Termination Date set out in that notice; and
  - (ii) in the case of an Indicative Notice, 60 days after the date of delivery of the Indicative Notice.

#### **4.6 Subsequent Notice of Liabilities**

After the delivery of the Liability Report, unless a Lenders' Agent Withdrawal Notice has been given, WDBA will, promptly upon becoming aware of them, notify the Lenders' Agent in writing of any additional Material Existing Liabilities arising on or after the date of delivery of the Termination Notice or Indicative Notice, as the case may be, and prior to the end of the Termination Notice Period or the Indicative Notice Period, as the case may be.

#### **4.7 No Right to Terminate**

WDBA will not terminate or deliver any notice terminating the Project Agreement during any Notice Period that would have the effect of terminating the Project Agreement prior to the expiry of the relevant periods referred to in Section 4.1(a), provided however that until the expiry of that period, WDBA will be entitled to require Project Co to remedy any Project Co Event of Default and will be entitled to exercise all rights under the Project Agreement, other than termination of the Project Agreement.

#### **4.8 Notices Under Project Agreement**

Subject to Section 4.4, WDBA shall deliver to the Lenders' Agent, concurrently with delivery to Project Co, any notice provided under the Project Agreement, during (i) the 90 day period after a Termination Notice has been given and (ii) the 60 day period after an Indicative Notice has been given.

### **5. STEP-IN**

#### **5.1 Step-In Notice**

Subject to Section 5.3, the Lenders' Agent may give WDBA a notice (a "**Step-In Notice**") at any time during an Indicative Notice Period or a Termination Notice Period, as the case may be indicating the Lenders' Agent intention to exercise its right to step-in under this Agreement.

#### **5.2 Contents of Step-In Notice**

In the Step-In Notice, the Lenders' Agent will:

- (a) state that it intends to exercise its step-in rights under this Agreement; and
- (b) identify the Appointed Representative.

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### 5.3 One Step-In Period

There will be not more than one Step-In Period following any one Indicative Notice or Termination Notice.

### 5.4 Remedial Program

Following the Step-In Notice, the Appointed Representative shall promptly (and in no event later than 90 days from the Step-In Notice) provide WDBA with a proposed remedial program.

### 5.5 Appointed Representative Rights

On the Step-In Date, the Appointed Representative will acquire and assume jointly and severally with Project Co, the rights of Project Co under the Project Agreement, subject to the performance by or on behalf of Project Co of Project Co's obligations under the Project Agreement. During the Step-In Period, WDBA will deal with the Appointed Representative and not Project Co. No Appointed Representative will be liable to WDBA or Project Co for any liabilities or obligations of Project Co. An Appointed Representative which is also an Insolvency Officer will not, and will not be required to, assume or have any personal liability for any liabilities or obligations of Project Co.

### 5.6 WDBA's Right to Terminate

WDBA will not terminate the Project Agreement in whole or in part during the Step-In Period except as set out in this Section 5.6. WDBA will be entitled to terminate the Project Agreement during the Step-In Period by notice to Project Co, the Lenders' Agent and the Appointed Representative:

- (a) if the Reported Existing Liabilities that are financial liabilities, have not been paid to WDBA on or before the Step-In Date or, if the due date for payment thereof is after the Step-In Date, have not been paid by the due date;
- (b) if amounts, of which WDBA was not aware (having made reasonable enquiry) at the time of the Liability Report, subsequently become payable and are not discharged by:
  - (i) if notice of the liability is given to the Lenders' Agent at least 20 Business Days prior to the Step-In Date, the Step-In Date or if the due date of such amount is after the Step-In Date on the due date for payment of such liability;
  - (ii) if notice of the liability is given to the Lenders' Agent within 20 Business Days before the Step-In Date and such liability is material (as stated by WDBA, acting reasonably, when it gives such notice or by the Lenders' Agent, acting reasonably, by notice to WDBA within five Business Days of receipt of the notice from WDBA), 20 Business Days after the Step-In Date or if the due date of such amount is after such 20 Business Day period, on the due date for payment of such liability; or
  - (iii) otherwise, 20 Business Days after delivery of the notice, but the due date of such amount is after such 20 Business Day period, on the due date for payment of such liability;
- (c) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement, provided that for the purposes of termination under the Project Agreement, any Service Failure Deductions and Availability Failure Deductions that arose prior to the Step-In Date will not be taken into account during the Step-In Period;

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- (d) on grounds arising prior to the Step-In Date (whether or not continuing at the Step-In Date) in accordance with the terms of the Project Agreement but only if the Appointed Representative is not using all reasonable efforts to remedy the relevant Existing Liabilities which are non-financial liabilities; or
- (e) if Substantial Completion does not occur within 24 months following the Scheduled Substantial Completion Date.

## 6. STEP-OUT

### 6.1 Step-Out Notice

The Lenders' Agent or the Appointed Representative may at any time during the Step-In Period deliver to WDBA a notice (a "**Step-Out Notice**") which specifies the Step-Out Date.

### 6.2 Expiry of Step-In Period

Upon the termination or expiry of the Step-In Period:

- (a) the rights and obligations of the Appointed Representative in relation to WDBA under the Project Documents arising prior to the expiry of the Step-In Period will be assumed by Project Co to the exclusion of the Appointed Representative;
- (b) the rights of WDBA against the Appointed Representative and the rights of the Appointed Representative against WDBA hereunder or under any Project Document will be cancelled and have no legal effect and each shall be released from all obligations and liabilities to one another under the Project Documents; and
- (c) WDBA will no longer deal with the Appointed Representative and will deal with Project Co in connection with all matters related to the Project Documents.

### 6.3 Project Co Remains Bound

Subject to Section 7.4, Project Co will continue to be bound by the terms of the Project Agreement notwithstanding the occurrence of an Indicative Notice, a Step-In Notice, a Step-In Period, a Step-Out Notice, a Step-Out Date, any action by the Lenders' Agent or the Appointed Representative or any provision of this Agreement. Project Co will be liable for any and all obligations and liabilities arising under the Project Agreement prior to the expiry of the Step-In Period from actions or inactions of the Lenders' Agent, the Appointed Representative or the Senior Lenders. Project Co will remain liable for any unpaid amounts due and payable to WDBA by Project Co under the Project Agreement.

## 7. REPLACEMENT OF PROJECT CO BY SENIOR LENDERS

### 7.1 Project Co Transfer Notice

Subject to Section 7.2, at any time:

- (a) after the Lenders' Agent has given an Indicative Transfer Notice; or
- (b) during the Step-In Period;

the Lenders' Agent may, on 30 Business Days' notice to WDBA and any Appointed Representative, take any action available to it to cause the transfer of Project Co's rights and liabilities under the Project Agreement to a proposed transferee ("**Substitute Project Co**") in accordance with the provisions of this Section 7.

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## 7.2 WDBA's Consent

WDBA will notify the Lenders' Agent as to whether any person to whom the Lenders' Agent proposes to transfer Project Co's rights and liabilities under the Project Agreement is a suitable Substitute Project Co, not later than 45 days after the date of receipt from the Lenders' Agent of all information reasonably required by WDBA to determine whether the proposed transferee is a suitable Substitute Project Co, including information and documentation which would have been required by the Competitive Selection Process. If WDBA fails to notify the Lenders' Agent of WDBA's determination within such period, the proposed transferee will be deemed to be a suitable Substitute Project Co.

## 7.3 Criteria for Granting or Withholding Consent by WDBA

WDBA will not unreasonably withhold or delay its determination of whether the proposed transferee is a suitable Substitute Project Co. In making such determination WDBA will consider the following criteria:

- (a) does the person proposed as the Substitute Project Co have the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Project Agreement;
- (b) does the person proposed as the Substitute Project Co have in its employ or under contract directly or through subcontractors, individuals having the appropriate qualifications, experience and technical competence and does it have the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of Project Co under the Project Agreement;
- (c) are there are unremedied breaches under the Project Agreement and if so, is there a remedial program acceptable to WDBA in respect of such breaches;
- (d) are the proposed security interests to be granted by the Substitute Project Co for any financing granted to it, (i) materially different from those contained in the Security Documents, (ii) will such security interests materially adversely affect the ability of the Substitute Project Co to perform under the Project Documents or (iii) will such security interests have the effect of increasing any liability of WDBA, whether actual or potential;
- (e) the criteria set out in Section 55 (*Assignment, Change in Control and Subcontracting*) of the Project Agreement which WDBA would consider on any assignment of Project Co's assets and rights under the Project Agreement or a Change in Ownership or Change in Control of Project Co;
- (f) is the person proposed as the Substitute Project Co able to comply with the Security Requirements;
- (g) is the person proposed as the Substitute Project Co together its key individuals and subcontractors in compliance with the Integrity Provisions;
- (h) is the person proposed as the Substitute Project Co or any its key individuals and subcontractors an Ineligible Person; and
- (i) the criteria that WDBA considered in selecting Project Co pursuant to the Competitive Selection Process.

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It will be reasonable for WDBA to withhold its consent if any of the foregoing criteria are not met to the satisfaction of WDBA, acting reasonably.

#### 7.4 Terms of Transfer

If WDBA accepts the Substitute Project Co pursuant to Section 7.3, the Lenders' Agent may then take any action available to it to cause the transfer of Project Co's rights and liabilities under the Project Agreement to the Substitute Project Co and at the request of WDBA shall cause the Substitute Project Co to enter into an agreement with WDBA on substantially the same terms as the Project Agreement. Upon the transfer referred to in Section 7.1 becoming effective:

- (a) Project Co and WDBA will be released from their obligations under the Project Agreement to each other, including with respect to indemnification under the Project Agreement whether arising prior to or after such transfer (the "**Discharged Obligations**");
- (b) the Substitute Project Co and WDBA will assume obligations which are substantially similar to the Discharged Obligations, but owed to or assumed by the Substitute Project Co instead of Project Co;
- (c) the rights of Project Co against WDBA under the Project Agreement and *vice versa* (the "**Discharged Rights**") will be cancelled;
- (d) the Substitute Project Co and WDBA will acquire rights against each other which differ from the Discharged Rights only insofar as they are exercisable by or against the Substitute Project Co instead of Project Co;
- (e) any subsisting ground for termination of the Project Agreement by WDBA will be deemed to have no effect and any subsisting Termination Notice will be automatically revoked;
- (f) WDBA will enter into an agreement with the Substitute Project Co and a representative of Senior Lenders lending to the Substitute Project Co on substantially the same terms as this Agreement; and
- (g) any accrued Service Failure Deductions and Availability Failure Deductions that arose prior to that time will not be taken into account and any related Monitoring Notice shall be withdrawn after the transfer for the purpose of Sections 32.5 (*Increased Monitoring*) and 46.1(j) (*Project Co Events of Default*) of the Project Agreement.

#### 8. INSURANCE PROCEEDS

Notwithstanding the other provisions of this Agreement and the terms and conditions of the Senior Lending Agreements and any Security Document, the Lenders' Agent shall permit, and shall not exercise any rights under the Senior Lending Agreements or any Security Document or take any other steps to prevent, the remittal/deposit of Insurance Proceeds to the Account Trustee under the Insurance Trust Agreement and the release of any and all Insurance Proceeds for application in accordance with the Insurance Trust Agreement. The Lenders' Agent acknowledges and agrees that such insurance proceeds may be only and exclusively used for the purposes stated and set out in Section 31 (*Damage and Destruction*), Section 40 (*Insurance*), Schedule 29 [*Insurance Requirements*] of the Project Agreement and the Insurance Trust Agreement.

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## 9. COVENANTS

### 9.1 WDBA's Covenants

WDBA agrees with the Lenders' Agent that WDBA will:

- (a) as soon as is reasonably practicable, at Project Co's expense, take whatever action the Lenders' Agent, an Appointed Representative or a Substitute Project Co taking a transfer in accordance with Section 7 may reasonably require for perfecting any transfer or release under this Agreement, including the execution of any assignment or transfer, and the giving of any notice, order or direction and the making of any registration which, in each case, the Lenders' Agent or Appointed Representative or Substitute Project Co reasonably requires;
- (b) not, prior to the Senior Debt Discharge Date, unless the Lenders' Agent has (acting reasonably) consented in writing:
  - (i) appoint an Insolvency Officer;
  - (ii) commence any Insolvency Proceedings;
  - (iii) sanction, by voting or failing to vote, any Insolvency Proceedings and will, if requested to do so by the Lenders' Agent, vote against any Insolvency Proceedings;
  - (iv) without prejudice to its rights of set off under the Project Agreement, including rights to take amounts owing by Project Co into account in calculating termination compensation payable, claim or prove as creditor or otherwise in competition with any Finance Party in respect of any monies owing to it by Project Co for or on account of Project Co's liabilities under the Project Documents in the event of any Insolvency Proceedings; or
  - (v) take any action authorising, or which might result in or is in furtherance of, any of the prohibited matters referred to in Sections 9.1(b)(i), 9.1(b)(ii), 9.1(b)(iii) or 9.1(b)(iv);
- (c) not take or fail to take any action (including amendments, waivers and enforcement action) with respect to any material agreement between WDBA and a third party, the effect of which would be reasonably likely to render WDBA unable to satisfy its obligations under the Project Agreement; and
- (d) not issue a Step-In Notice under any Prime Contractor Direct Agreement at any time that the Lenders' Agent is validly exercising under any Senior Lending Agreement, any Security Document or any step-in rights, with respect to the applicable Prime Contract.

### 9.2 The Lenders' Agent Covenants

The Lenders' Agent will promptly:

- (a) upon request by WDBA, assign, novate or otherwise transfer to WDBA or any person designated by WDBA, all of the Performance and Payment Support in which the Senior Lenders have an interest, effective on the Senior Debt Discharge Date and prior to the Senior Debt Discharge Date, shall not permit the discharge, release or material adverse amendment of any of the Performance and Payment Support;

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- (b) notify WDBA when it receives written notice from Project Co that the Senior Debt Discharge Date has occurred (and Project Co covenants to provide notice to the Lenders' Agent immediately upon repayment in full of the Senior Debt);
- (c) notify WDBA of (i) the occurrence of an Event of Default, together with reasonable details of such event and (ii) its intention to take any Enforcement Measure, together with reasonable details of any such action;
- (d) unless notice is already provided under the foregoing provisions, notify WDBA of any decision by the Lenders' Agent to:
  - (i) appoint an Insolvency Officer;
  - (ii) commence any Insolvency Proceedings;
  - (iii) sanction, by voting or failing to vote, any Insolvency Proceedings; or
  - (iv) take any action authorizing, or which might result in or is in furtherance of, any of the matters referred to in Sections 9.2(d)(i), 9.2(d)(ii) or 9.2(d)(iii).
- (e) if it will have access to 'classified information' as so designated by a Governmental Authority relating to the Project, ensure that its personnel who have such access comply with the Security Requirements.

### **9.3 Project Co's Covenant**

Project Co acknowledges and consents to the arrangements set out in this Agreement and agrees not to do or omit to do anything that may prevent any party from enforcing its rights under this Agreement. Project Co has no right to enforce any provision of this Agreement.

## **10. STEP-IN RIGHTS UNDER PRIME CONTRACTS**

### **10.1 Priority of Lenders' Agent Step-In Rights under Prime Contracts**

Subject to Section 10.3, notwithstanding any provision in any Prime Contractor Direct Agreement, WDBA will not exercise any right it may have pursuant to a Prime Contractor Direct Agreement to step in and assume (or cause a third party designated by WDBA to step in and assume) Project Co's rights and obligations under any of the Prime Contracts (including the issuance of a step-in notice by WDBA pursuant to any Prime Contractor Direct Agreement), or to assign or transfer a Prime Contract during a Step-In Period, unless:

- (a) within 60 days of delivery by the relevant Prime Contractor to WDBA of a Prime Contract Default Notice, WDBA has not received a copy of a step-in notice delivered by the Lenders' Agent under the terms of the lenders' direct agreement in respect of such Prime Contract; or
- (b) if (i) within 60 days of delivery by the relevant Prime Contractor to WDBA of a Prime Contract Default Notice, WDBA has received a copy of a step-in notice referred to in Section 10.1(a) but (ii) within 105 days of delivery by the relevant Prime Contractor to WDBA of a Prime Contract Default Notice, the Lenders' Agent has not completed either a step-in and assumption of Project Co's rights and obligations under the relevant Prime Contract or an assignment or transfer thereof to an acceptable Substitute Project Co.

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## 10.2 Step-In from Termination Date

Subject to Section 10.4, from and after the Termination Date, provided that WDBA has (if applicable) complied with Section 4.7 and Section 5.6 in terminating the Project Agreement, WDBA will be free to exercise its rights under any Prime Contractor Direct Agreement to step in and assume (or cause a third party designated by WDBA to step in and assume) Project Co's rights and obligations under, or to assign or transfer, any Prime Contract in accordance with a Prime Contractor Direct Agreement.

## 10.3 Assignment and Release of Security

Subject to Section 10.4, upon WDBA becoming entitled to exercise its step in rights under a Prime Contractor Direct Agreement in accordance with this Section 10, the Lenders' Agent shall, at the request of WDBA, promptly and at no cost to WDBA, assign or transfer to WDBA the Performance and Payment Support held by or in the name of the Lenders' Agent on behalf of the Senior Lenders and release and discharge (or cause to be released and discharged), without adversely impacting the Performance and Payment Support, all of the Lenders' Agent's interest in and to all security in respect of each of the Prime Contracts in respect of which any of Project Co's rights or obligations thereunder are assumed by or transferred or assigned to WDBA (or by or to a third party designated by WDBA) pursuant to such Prime Contractor Direct Agreement.

## 10.4 Retention of Security for Deficiency

Until such time as any Deficiency has been determined and an amount equal to the Deficiency has been recovered by the Senior Lenders, the Senior Lenders will be entitled to retain the benefit of the Performance and Payment Support in respect of Claims and Losses that Project Co has against a Prime Contractor under the relevant Prime Contract (or as against any guarantor of such Prime Contract) that arose prior to the date of the assumption, transfer or assignment of the relevant Prime Contract (or guarantee in respect of such Prime Contract) by or to WDBA (or by or to a third party designated by WDBA) provided that:

- (a) the Lenders' Agent will not, and will not be entitled to, exercise any rights or enforce any security in respect of any such Claim or Loss during the period from the date on which such assumption, transfer or assignment occurs to the Termination Date; and
- (b) the rights in relation to the Performance and Payment Support retained by the Lenders' Agent for and on behalf of the Senior Lenders pursuant to this Section 10.4 may only be exercised if and to the extent that the amount actually paid by WDBA pursuant to Section 3 of Schedule 27 [*Compensation on Termination*] (the "**Termination Payment**") is less than the Senior Debt Amount. The amount by which the Termination Payment is or, in the reasonable opinion of the Lenders' Agent is likely to be less than the Senior Debt Amount is herein referred to as the "**Deficiency**".

Any amounts recovered by the Senior Lenders pursuant to Claims or Losses referred to in this Section 10.4, from the Termination Date to the date on which the Termination Payment and the amount of the Deficiency, if any, have been determined, will be held by the Lenders' Agent in a segregated account on terms satisfactory to the Lenders' Agent and WDBA, each acting reasonably, and, upon determination of the Termination Payment and the amount of the Deficiency, if any, such funds will be distributed to the Lenders' Agent, to the extent of the Deficiency, if any, and the balance of such funds will be paid to WDBA.

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## 10.5 Assignment of Prime Contracts by Senior Lenders

The Senior Lenders will not assign or transfer any Prime Contract except to a Substitute Project Co in conjunction with a permitted assignment of the Project Agreement to that Substitute Project Co in accordance with Section 7.

## 11. ASSIGNMENT

### 11.1 Binding on Successors and Assigns

This Agreement shall enure to the benefit of, and shall be binding upon, WDBA, Project Co the Lenders' Agent and their respective successors and permitted assigns.

### 11.2 Restriction on Assignment

No party to this Agreement may Assign this Agreement or all or any part of its rights under this Agreement except as provided in this Section 11. Any Assignment which is permitted under this Section 11 is conditional upon the assignee assuming all obligations of the assignor under this Agreement.

### 11.3 Assignment by/Change in Control of the Lenders' Agent

- (a) The Lenders' Agent, in its own capacity and not as agent for the Senior Lenders, may assign or transfer its rights this Agreement and the Security Documents to a successor agent ("**Successor Agent**") in accordance with the Senior Lending Agreements without the consent of WDBA, provided that the Lenders' Agent delivers to WDBA not less than 10 Business Days prior to such assignment, a notice setting out such contact information regarding the Successor Agent as WDBA may reasonably require and such person enters into a new agreement with WDBA and Project Co to the same effect as this Agreement. However, the Lenders' Agent may not assign or transfer this Agreement to a Successor Agent who is an Ineligible Person.
- (b) The Lenders' Agent, as a condition precedent to any assignment provided for in Section 11.3(a), shall cause the assignee to enter into an assignment and assumption agreement with Project Co and WDBA pursuant to which the assignee assumes all of the covenants, obligations and liabilities of the Lenders' Agent under this Agreement and agrees with Project Co and WDBA to observe, perform and discharge such obligations and liabilities in full. Project Co and WDBA shall enter into assignment and assumption agreement with the assignee and Project Co and WDBA shall, at Project Co's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- (c) The Lenders' Agent may undergo a Change in Control without the consent of WDBA but if the person or group of persons acquiring Control are or include an Ineligible Person, the Senior Lenders shall replace such Lenders' Agent within 90 days after the occurrence of such Change in Control with a new Lenders' Agent who is not an Ineligible Person.

### 11.4 Assignment by/Change in Control of a Senior Lender

- (a) [REDACTED]
- (b) [REDACTED]

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### 11.5 Assignment by WDBA

WDBA will assign and transfer its rights under this Agreement to any permitted assignee of its interest in the Project Agreement concurrently with the assignment of the Project Agreement to such assignee and the Lenders' Agent and the Senior Lenders will co-operate with WDBA in completing the formalities of any transfer or assignment including by executing any additional documents as may be reasonably required by WDBA.

### 11.6 Assignment by Project Co

Project Co may only assign or transfer this Agreement to any person to whom Project Co assigns its interest in the Project Agreement pursuant to Section 55.1 (*Assignment by Project Co*) of the Project Agreement. Project Co shall provide prior notice to WDBA and the Lenders' Agent of such assignment or transfer. Such assignee, as a condition precedent to any such assignment, shall assume the obligations and acquire the rights of Project Co under this Agreement pursuant to an assumption agreement with, and in form and substance satisfactory to, WDBA and the Lenders' Agent each acting reasonably. WDBA and the Lenders' Agent shall, at Project Co's cost and expense, do all things and execute all further documents as may be necessary in connection with such assignment.

## 12. NOTICES

### 12.1 Requirement for Writing

Wherever in this Agreement provision is made for the giving, making or issuing of any notice, consent, confirmation, request, approval, or other report or determination (a "**Notice**") by any person, unless otherwise specified, such Notice shall be in writing, which shall include any electronic or digital version of writing.

### 12.2 Addresses

- (a) Any Notice shall be deemed duly given if it is (i) signed by a duly authorized representative of the person giving the Notice, or by a person acting on its behalf, and (ii) personally delivered, sent through a secure document-sharing site approved by WDBA, sent by a recognized courier service (with delivery receipt requested), or sent by confirmed facsimile or e-mail transmission, to the following addresses:

To WDBA:

[REDACTED]

With a copy to:

Windsor-Detroit Bridge Authority

[REDACTED]

[REDACTED]

To Project Co:

[REDACTED]

[REDACTED]

With a copy to:

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[REDACTED]

[REDACTED]

With a copy to:

[REDACTED]

[REDACTED]

With a copy to:

[REDACTED]

[REDACTED]

To the Lenders' Agent:

[REDACTED]

[REDACTED]

- (b) Where any Notice is sent to a party through a secure document-sharing site, or by facsimile or email, an original of the Notice, if requested by the addressee, shall also be personally delivered or sent by a recognized courier service (with delivery receipt requested) within 5 Business Days of such request by the addressee.

### 12.3 Change of Address

Any party may change its address for Notice to a new address, a new facsimile number or a new email address by Notice to the other parties.

### 12.4 Deemed Receipt

Any Notice shall be deemed to have been received:

- (a) if sent by personal delivery or by a courier service, upon delivery;
- (b) if sent through a secure document-sharing site, by facsimile or e-mail:
- (i) on a Business Day prior to 4:00 p.m., upon sending;
  - (ii) on a Business Day after 4:00 p.m. or on a day which is not a Business Day, at 9:00 a.m. on the next Business Day; and

in the case of a Notice set by facsimile or email, subject to:

- (iii) confirmation of transmission or acknowledgement of receipt; and
- (iv) there having been no telephonic communication by the recipient to the sender (any such telephonic communication to be confirmed in writing) that the facsimile or the email has not been received in legible form:
  - (A) within three hours after sending, if sent on a Business Day before 2:00 p.m.; or

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- (B) by noon on the following Business Day if sent after 2:00 p.m. on a Business Day or if sent on a day which is not a Business Day.

### **13. CONFIDENTIALITY**

#### **13.1 ATI/FOI Legislation**

Each of the Lenders' Agent, and Project Co acknowledges that applicable ATI/FOI Legislation applies to this Agreement and to all contractual submissions, other documents and records under the control of WDBA relating to this Agreement and to the Competitive Selection Process and that WDBA is required to comply with ATI/FOI Legislation and other Applicable Laws. Each of the Lenders' Agent, and Project Co waives any right it may have to make any Claim or take any other action against WDBA or any WDBA Party as a result of any action taken properly or required to be taken by WDBA or a WDBA Party for the purpose of complying with the ATI/FOI Legislation, other Applicable Laws or any order of a Governmental Authority.

#### **13.2 Disclosure of Agreement**

WDBA shall have the right to disclose or publish this Agreement and any terms hereof, including any contractual submissions or other records kept in accordance with this Agreement, any information related to the performance of the Lenders' Agent or any information derived from the foregoing. Prior to disclosing or publishing such information, WDBA shall provide to the Lenders' Agent a redacted version of this Agreement or other information or documents to be disclosed or published, on the basis that the information so redacted constitutes information which should not be disclosed pursuant to this Section 13.2. If the Lenders' Agent, acting in good faith, contends that any of the information not redacted constitutes information that falls within the scope of Section 13.3 and accordingly, would be exempt from disclosure under ATI/FOI Legislation, the Dispute may be referred to the Dispute Resolution Procedure and WDBA subject to the ATI/FOI Legislation or other Applicable Laws, shall not disclose any information in dispute until a determination is made.

#### **13.3 Confidential Information**

Subject to Section 13.4, each of WDBA and the Lenders' Agent, will hold in confidence any Confidential Information received from the other party, except that this Section 13.3 will not restrict either party from disclosing or granting access to such information (i) as permitted pursuant to the Project Agreement, or (ii) to its professional advisers and consultants, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Agreement and provided further that the Lenders' Agent may:

- (a) provide in confidence to the Senior Lenders, potential lenders, replacement lenders, replacement lenders' agents and potential Substitute Project Cos, their advisors and their potential lenders, equity providers, underwriters, arrangers, investment dealers, monoline insurers and their respective advisors, such documents and other information as are reasonably required by them in connection with assessing and raising financing for the Project; and
- (b) subject to obtaining confidentiality undertakings similar to those set out in this Agreement, provide to a Prime Contractor and its advisors, or provide or cause to be provided to other third parties, Confidential Information which is necessary to enable the Lenders' Agent to perform (or to cause to be performed) its obligations under this Agreement.

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### 13.4 Exception To Confidentiality Obligations

Subject to any restrictions on the Confidential Information which are imposed by a third party that may own any Confidential Information, the obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:

- (a) which the party that disclosed the Confidential Information confirms in writing is not required to be treated as Confidential Information;
- (b) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement or the Project Agreement;
- (c) to the extent any person is required to disclose such Confidential Information by Applicable Law or by its regulatory authority;
- (d) provided to a WDBA Party or any other Governmental Authority which requires the information in relation to the Project; or
- (e) that WDBA may be entitled to receive from Project Co pursuant to this Agreement or the Project Agreement in the event of, or following, termination of this Agreement.

### 13.5 Remedies

Without prejudice to any other rights and remedies that the other party may have, each of WDBA, and the Lenders' Agent agrees that damages may not be an adequate remedy for a breach of Section 13.3 and that the other party will, in such case, be entitled to the remedies of injunction, specific performance or other relief for any threatened or actual breach of Section 13.3.

## 14. GENERAL PROVISIONS

### 14.1 Exercise of Discretion by WDBA

- (a) Except as otherwise required by Applicable Law, when WDBA has,
  - (i) the choice to take or not take an action including to give or grant an agreement, approval, confirmation, acceptance, waiver, permission or consent,
  - (ii) the right or obligation to make an election, determination, designation, rejection, requirement or stipulation, to reserve a right, to make a request, to exercise an option, to make a decision, or
  - (iii) the right to consider or to come to a judgment, view or an opinion,

with respect to any matter under this Agreement, it means that WDBA has the sole, subjective, absolute and unfettered discretion with respect to the matter in question, with no requirement to act reasonably or to provide reasons, unless there is a specific requirement in this Agreement for WDBA to act reasonably with respect to such matter. In the exercise of any such unfettered discretion, WDBA shall act in good faith but shall be entitled to have regard solely to what it considers to be in its own best interests and where relevant, in the best interests of any affected WDBA Person.

- (b) When the exercise of WDBA's discretion is subject to an 'acting reasonably' standard, WDBA shall without limitation be deemed to be acting reasonably if the exercise of such discretion is consistent with the obligations of WDBA under the Crossing Agreement and other Applicable Law.

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**14.2 Conflict in Documents**

- (a) If there is any ambiguity, conflict or inconsistency between the provisions of this Agreement and the provisions of the Project Agreement, as between the Lenders' Agent and WDBA the provisions of this Agreement will prevail.
- (b) If there is any ambiguity, conflict or inconsistency between the provisions of this Agreement and the provisions of a Prime Contractor Direct Agreement, as between the Lenders' Agent and WDBA, the provisions of this Agreement will prevail.

**14.3 No Partnership or Agency**

- (a) The parties are independent contractors. This Agreement is not intended to and does not create or establish between the parties, or between any party, a Senior Lender, an Appointed Representative or a Substitute Project Co, any relationship as partners, joint venturers, employer and employee, master and servant, or of principal and agent. Nothing in this Agreement shall be construed as constituting the Senior Lender, the Lenders' Agent, the Appointed Representative, any other Senior Lenders' Appointed Representative or a Substitute Project Co as an agent of WDBA. No such person will hold itself out as having any authority or power to bind WDBA in any way.
- (b) Except as expressly provided in this Agreement, no party shall be, or shall be deemed to be, an agent of any other party, and no party shall have authority to represent that it is an agent of any other party, or to accept any order, or enter into any contract or agreement, or make any representations or warranties of any kind to any person, or to assume or create any obligation, express or deemed, on behalf of or binding, or purportedly binding upon, such other party.
- (c) Except as otherwise expressly provided in this Agreement, each party shall be free from the control of each other party as to the manner in which it shall perform its obligations, or cause such obligations to be performed, under this Agreement.

**14.4 Waiver**

Failure by any party at any time to enforce any provision of this Agreement or to require performance by any other party of any of the provisions of this Agreement shall not be construed as a waiver of any such provision and shall not affect the validity of this Agreement or any part thereof or the right of any party to enforce any provision in accordance with its terms.

**14.5 Amendments**

This Agreement may not be varied, amended or supplemented except by an agreement in writing signed by the duly authorized representative of each of the parties hereto and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Agreement.

**14.6 Entire Agreement**

Unless otherwise stated in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No party has relied on any representation except as expressly set out in this Agreement.

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**14.7 Further Assurances**

The parties shall do, execute and deliver, or shall cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the parties' respective obligations under this Agreement.

**14.8 Remedies Cumulative**

The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

**14.9 Disputes**

- (a) Any dispute between any of the parties with respect to any of the subject matter of this Agreement will be resolved in accordance with, and the parties will comply with, the Dispute Resolution Procedure, and Schedule 23 [*Dispute Resolution Procedure*] of the Project Agreement is deemed to be incorporated, with the necessary alterations, in this Agreement.
- (b) The parties agree to consolidate any arbitration procedure instituted pursuant hereto with any other arbitration procedure instituted by WDBA or Project Co arising from a Dispute that raises common, identical or similar issues of fact or law.

**14.10 Governing Laws and Jurisdiction**

- (a) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, without regard to any Laws or choice of Law rules that might direct the application of the Laws of another jurisdiction.
- (b) Subject to the provisions of Section 14.9 of this Agreement, the courts of the Province of Ontario shall have exclusive jurisdiction (subject to any court or tribunal of federal jurisdiction in Canada) with respect to any matter or issue which the Dispute Resolution Procedure permits to be submitted to the courts.

**14.11 Counterparts**

This Agreement is executed in one or more counterparts, each of which contains one original signature. Any single counterpart or a set of counterparts executed, in either case, by all of the parties shall constitute a full, original and binding agreement for all purposes.

**14.12 Electronic Execution**

To evidence the fact that a party has executed this Agreement, such party may send a copy of its executed counterpart to the other party by facsimile, or by email in portable document format (PDF). That party will be deemed to have executed this Agreement on the date that its facsimile or email is deemed to be received in accordance with Section 12.4. In such event, such sending party will forthwith deliver to the other party the originally executed counterpart of this Agreement to the other party.

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## 15. INTERPRETATION

### 15.1 Construction and Interpretation

This Agreement will be interpreted according to the following provisions, save to the extent that the context or the express provisions of this Agreement otherwise require.

- (a) The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of such agreement.
- (b) The table of contents, headings and sub headings, marginal notes and references to them in this Agreement are for convenience of reference only, do not constitute a part of this Agreement, and will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement.
- (c) Each reference to an agreement, document or other instrument includes (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document or other instrument) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned.
- (d) Each reference to a statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by laws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute.
- (e) Each reference to time of day is local Windsor, Ontario time.
- (f) Words importing the singular include the plural and *vice versa*. Words importing a particular gender include all genders.
- (g) References to persons shall include their respective heirs, executors, administrators, personal representatives, successor, and assigns. References to a public organization shall include its successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.
- (h) Each reference to "parties" means the parties to this Agreement and each reference to a "party" means any one of the parties to this Agreement, provided however that a reference to a third party does not mean a party to this Agreement.
- (i) All monetary amounts are expressed in Canadian Dollars.
- (j) In this Agreement, the words "including" and "includes", when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set out or to similar items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.
- (k) Generic words are not to be given a restrictive meaning:

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- (i) if they are introduced by the word “other”;
  - (ii) if they are preceded by words indicating a particular class of act, matter or thing; or
  - (iii) if they are followed by particular examples intended to be embraced by those general words.
- (l) References containing terms such as “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set out but instead refer to the Agreement taken as a whole;
- (m) Words importing the singular include the plural and *vice versa*, and words importing gender include all genders.
- (n) Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement which is not material to a right or obligation of a party is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the parties shall promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.
- (o) The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of a party means the taking in good faith and with due diligence, of all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit.
- (p) All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with the Accounting Principles, consistently applied.
- (q) If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day.
- (r) Where this Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (s) Where this Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (t) Where this Agreement provides that a document is to be “certified”, that means that an authorized officer or director of the relevant legal entity shall certify that such document (i) is a true and complete copy of the original document and (ii) such original document is in full force and effect unamended as of the date of the certification.

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**[Signatures on the Next Pages]**

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**TO EVIDENCE** their agreement, the parties have executed this Agreement as of the date and year written on the first page hereof.

**WINDSOR-DETROIT BRIDGE AUTHORITY**

By: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

By: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

We have authority to bind the corporation.

**BRIDGING NORTH AMERICA GENERAL PARTNERSHIP, by its partners, BRIDGING NORTH AMERICA HOLDING CORPORATION**

By: \_\_\_\_\_  
Name: [REDACTED]  
Title: Authorized Signatory

By: \_\_\_\_\_  
Name: [REDACTED]  
Title: Authorized Signatory

By: \_\_\_\_\_  
Name: [REDACTED]  
Title: Authorized Signatory

We have authority to bind the corporation

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**BRIDGING NORTH AMERICA HOLDING ULC, by  
its sole shareholder BRIDGING NORTH  
AMERICA HOLDING CORPORATION**

By: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: Authorized Signatory

By: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: Authorized Signatory

By: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: Authorized Signatory

We have authority to bind the corporation

**BNY TRUST COMPANY OF CANADA**

By: \_\_\_\_\_  
**[REDACTED]**

I have authority to bind the corporation

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**SCHEDULE 31**

**FORM OF PRIME CONTRACTOR DIRECT AGREEMENT**

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**SCHEDULE 31****FORM OF PRIME CONTRACTOR DIRECT AGREEMENT**

**[Note: Form to be adapted for each Prime Contract depending on whether there is a guarantor and for any other specific requirements related to each particular Prime Contract.]**

**THIS AGREEMENT** is made as of the 28th day of September, 2018

**BETWEEN:**

**WINDSOR-DETROIT BRIDGE AUTHORITY** a corporation incorporated under the *International Bridges and Tunnels Act (Canada)*

(“WDBA”)

- and-

**BRIDGING NORTH AMERICA GENERAL PARTNERSHIP**, a general partnership constituted under the laws of Ontario

(“Project Co”)

- and-

**[REDACTED]**

(the “Contractor”)

- and-

**[REDACTED]**

(the “Guarantor”)

**BACKGROUND**

- A. WDBA and Project Co have entered into the Project Agreement pursuant to which Project Co shall carry out the Project Work;
- B. Project Co and the Contractor have entered into the Prime Contract pursuant to which the Contractor agreed to carry out and complete part of the Project Work, as more particularly described in the Prime Contract;
- C. The obligations of the Contractor under the Prime Contract have been guaranteed pursuant to the PC Guarantee; and
- D. The Project Agreement requires that Project Co enter into, and arrange for the Contractor and the Guarantor to enter into, this Agreement with WDBA.

**IN CONSIDERATION** of the mutual covenants of the parties and of other consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the parties agree with one another as follows.

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## 1. DEFINITIONS

### 1.1 Definitions

Unless defined specifically in this Agreement or unless the context otherwise requires, capitalized but otherwise undefined terms in this Agreement will have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of the Project Agreement.

In this Agreement, the following terms have meanings set out in this Section 1.

**Agreement** means this prime contractor direct agreement, as it may be amended, supplemented or restated from time to time.

**Assign** means to sell, convey, transfer, assign, subcontract, dispose of an agreement or rights under an agreement and **Assignment** shall have a similarly extended meaning.

**Change in Control** has the meaning set out in the Project Agreement.

**Collateral Trustee** means the person appointed as collateral trustee pursuant to the Senior Lending Agreements from time to time.

**Default Notice** has the meaning set out in Section 3.1(a)(i).

**Ineligible Person** has the meaning set out in the Project Agreement.

**Letters of Credit** has the meaning set out in the Prime Contract.

**PC Guarantee** means the guarantee dated <@> granted by the Guarantor in favour of Project Co, as such guarantee may be amended, supplemented, restated or replaced from time to time.

**Performance Security** means the [**Letters of Credit, Prime Contract Guarantees, PC Guarantee, other**]

**Prime Contract** means the agreement dated the date hereof between the Contractor and Project Co pursuant to which the Contractor has agreed to perform a part of the Project Work, as such agreement may be amended, supplemented, restated or replaced from time to time.

**Prime Contract Guarantees** means the guarantees, bonds or security given or to be given by the Contractor to Project Co pursuant to the Prime Contract, including <@>.

**Project Agreement** means the agreement entered into between WDBA and Project Co dated as of September 28, 2018 pursuant to which Project Co is responsible for carrying out the Project Work, as such agreement may be amended, supplemented, restated or replaced from time to time.

**Replacement** has the meaning set out in Section 3.4.

**Replacement Designation Notice** has the meaning set out in Section 3.4.

**Step-In Period** means the period beginning on the date of the receipt by WDBA of a Default Notice from the Contractor under Section 3.1 of this Agreement and ending on the later of:

- (a) the date that is 45 days following the date of such receipt of a Default Notice by WDBA; and

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- (b) the date that is 15 days following the date upon which WDBA becomes entitled, in accordance with Section 9.1 of the Lenders' Direct Agreement, to exercise its rights as set out in and pursuant thereto.

**Step-In Notice** has the meaning set out in Section 3.2.

**Step-Out Notice** has the meaning set out in Section 3.3.

## 2. AGREEMENTS RELATING TO THE PROJECT

### 2.1 Acknowledgement of Documents

Each of the parties acknowledges that it has received and examined a copy of each of the Project Agreement and the Prime Contract.

### 2.2 Termination or Amendment of Documents

The Contractor and the Guarantor shall not terminate or permit the termination of, assign or permit the assignment of, make or agree to or permit the making of any material amendment to or material variation of, make or agree to any departure from, or waive or fail to enforce any material rights it may have under, or allow others in any material respect to depart from their material obligations under, or enter into any agreement or document which would materially affect the interpretation or application of, or enter into any contract or agreement in replacement of, the Prime Contract, the PC Guarantees or any of the Prime Contract Guarantees, except in full compliance with Section 3.4 (*Amendments/Termination of Project Documents*) of the Project Agreement.

### 2.3 Covenants of Contractor

The Contractor shall throughout the term of this Agreement:

- (a) supply and perform the works and services it is to carry out, supply and perform under the Prime Contract in accordance with the Prime Contract;
- (b) provide the services that are to be provided by it under the Prime Contract according to Good Industry Practice using appropriate methods that comply with the Prime Contract; and
- (c) maintain in full force and effect all of the Prime Contract Guarantees in accordance with the terms of the Prime Contract and this Agreement,

provided that

- (d) WDBA shall not be entitled to exercise against the Contractor any rights or recourses to which it becomes entitled as a result of a breach by the Contractor of this Section 2.3 until the date on which WDBA exercises its step-in rights pursuant to Section 3.2 (whether such breach occurs prior to, on or after such date); and
- (e) such rights and recourses to which WDBA becomes entitled to as a result of a breach by the Contractor of this Section 2.3 shall exclusively be those that are provided in the Prime Contract and such rights or recourses shall be limited to those available to Project Co under the Prime Contract and subject to any defenses or limits on the Prime Contractor's liability set out in the Prime Contract.

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## 2.4 Project Co as Party

Project Co is a party to this Agreement for the purposes of providing its consent and agreeing to be bound by the provisions hereof. Project Co agrees that the Contractor will not be in breach of the Prime Contract merely by reason of Contractor observing and performing its covenants and obligations under this Agreement.

## 2.5 Contractor's Liability

- (a) The obligations and liabilities of the Contractor under this Agreement and the Prime Contract, and the obligations and liabilities of the Guarantor under this Agreement and the PC Guarantee, shall not be modified, released, limited, diminished or in any way affected by:
- (i) any independent inspection, investigation or request for information which may be made or carried out by or on behalf of WDBA, or by any failure or omission to carry out such inspection, investigation or request for information; or
  - (ii) the appointment, by WDBA, of another person to inspect, investigate or present a request for information, study the progress of the Project Work or any aspect of it, or prepare a report to that effect for WDBA, or an action or omission of such person, whether or not such action or omission incurs the liability of such person to WDBA.
- (b) In the event that WDBA issues a Step-In Notice pursuant to Section 3.2:
- (i) the Contractor shall have no greater liability to WDBA or any Replacement than it would have had to Project Co under the Prime Contract had the Prime Contract continued with Project Co as a party, and the Contractor shall be entitled in any proceedings by WDBA or any Replacement in relation to the Prime Contract to rely on any liability limitations set out in the Prime Contract; and
  - (ii) the Guarantor shall have no greater liability to WDBA or any Replacement than it would have had to Project Co under its respective PC Guarantee, had such PC Guarantee continued with Project Co as a recipient thereof and the Guarantor shall be entitled in any proceedings by WDBA or any Replacement in relation to the PC Guarantee to rely on any liability limitations set out in the PC Guarantee.
- (c) The Contractor shall incur no liability for delay or failure to perform the work to be completed under the Prime Contract, to the extent such delay or failure is caused directly and exclusively by WDBA in its exercise of its Step In Rights under this Agreement or by the designation of a Replacement in accordance with Section 3.4.

## 3. DEFAULT, TERMINATION AND STEP IN

### 3.1 No Termination on the Part of the Contractor without a Default Notice

- (a) The Contractor shall not to exercise a right to cancel or otherwise terminate the Prime Contract or suspend its execution, unless each of the following conditions are met:
- (i) the Contractor shall first give WDBA a written notice (a "**Default Notice**") describing the defaults or other acts or omissions of Project Co that it intends to invoke to cancel or otherwise terminate the Prime Contract or to suspend its performance under the Prime Contract;

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- (ii) on or before the expiry of the Step-In Period:
    - (A) the defaults that the Contractor intends to invoke to cancel or otherwise terminate the Prime Contract or to suspend its performance under the Prime Contract have not been remedied; and
    - (B) the Contractor either:
      - (I) has not received a Step-In Notice from WDBA; or
      - (II) has received a Step-Out Notice from WDBA; and
  - (iii) the Collateral Trustee has not exercised any of its step in or transfer rights pursuant to and in accordance with, respectively, Section 5 or Section 7 of the Lenders' Direct Agreement or any other agreement between the Contractor and the Collateral Trustee on behalf of the Senior Lenders.
- (b) If the Contractor gives a Default Notice to WDBA in accordance with Section 3.1(a)(i), WDBA shall pay the Contractor, in accordance with the Prime Contract, for the work the Contractor shall have performed during the period starting on the date on which the Contractor, but for the provisions of Section 3.1, would have had the right to suspend its performance under the Prime Contract or to terminate the Prime Contract based on the defaults specified in the Default Notice, and ending on the first of the following dates:
- (i) the date on which WDBA gives a Step-In Notice pursuant to Section 3.2 (in which case the provisions of Section 3.5 shall apply);
  - (ii) the date on which WDBA gives a Step-Out Notice pursuant to Section 3.3;
  - (iii) the date on which the Collateral Trustee exercises any of its step-in or transfer rights pursuant to and in accordance with, respectively, Section 5 or Section 7 of the Lenders' Direct Agreement or any other agreement between the Contractor and the Collateral Trustee on behalf of the Senior Lenders and obtains and assumes the rights and obligations of Project Co under the Prime Contract or assigns the rights and obligations under the Prime Contract; and
  - (iv) the expiry of the Step-In Period.

WDBA shall not be liable for the payment of amounts that Project Co owes to the Contractor under the Prime Contract in consideration for the work performed by it before the Contractor, but for the provisions of this Section 3.1, would have had the right to suspend its performance under the Prime Contract or to terminate it based on the defaults specified in the Default Notice.

### 3.2 Step-In Rights

Subject to the provisions of the Lenders' Direct Agreement, including Section 10 of the Lenders' Direct Agreement, WDBA may, at any time in the following situations, deliver a notice to the Contractor and the Guarantor (a "**Step-In Notice**") specifying its election to replace Project Co under the Prime Contract and under the PC Guarantees with WDBA or to have Project Co replaced by a third party that WDBA has designated in the Step-In Notice:

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- (a) on or before the expiry of the Step-In Period, provided that all defaults that the Contractor intended to invoke, to cancel or otherwise terminate the Prime Contract or to suspend its execution, have not been remedied on or before the expiry of the Step-In Period; or
- (b) at any time, if WDBA is in a position to exercise its right to terminate the Project Agreement pursuant to Section 46.3 of the Project Agreement.

### 3.3 Step-Out

If, during the Step-In Period and whether before or after the delivery of a Step-In Notice under Section 3.2, WDBA determines that it is not, or is no longer considering, exercising its step-in rights under Section 3.2, WDBA may give notice of such determination (a "**Step-Out Notice**") to the Contractor and the Guarantor and upon the receipt of such Step-Out Notice by the Contractor and the Guarantor, then provided that WDBA has paid all amounts for which it is responsible pursuant to Section 3.1(b), the provisions of Section 3.1 shall no longer be applicable with respect to any defaults which led to the issuance of such Default Notice, or any other event giving rise to WDBA's right of termination of the Project Agreement as referred to in Section 3.2(b).

### 3.4 Designation of a Replacement

If WDBA, in a Step-In Notice, elected to replace Project Co with WDBA, WDBA may, by delivering a further notice (a "**Replacement Designation Notice**") designate a third party as its replacement, in which case the third party so designated shall succeed WDBA in respect of all rights and obligations of WDBA under the terms of the Prime Contract and other agreements or documents referred to in Section 3.5(a). WDBA shall be fully released from all of its covenants, obligations and liabilities under the terms of the Prime Contract and such other agreements or documents provided that WDBA has paid all amounts for which it is responsible pursuant to Section 3.1(b). In this Agreement, a third party designated by WDBA in a Step-In Notice or Replacement Designation Notice is called a "**Replacement**".

### 3.5 Effects of Step-In Notice

- (a) As of the time the Contractor and the Guarantor receive a Step-In Notice designating WDBA as a substitute for Project Co under the Prime Contract or a Replacement Designation Notice designating the Replacement as a substitute for Project Co under the Prime Contract, the following provisions shall apply.
  - (i) WDBA or the Replacement, as the case may be, shall acquire all of Project Co's rights under the Prime Contract (including, if applicable, Project Co's rights pertaining to the Project IP and the Tolling Systems IP that have been or shall be provided by the Contractor pursuant to the Prime Contract), which shall be deemed to have been assigned to WDBA or the Replacement, as the case may be, and WDBA or the Replacement, as the case may be, and the Contractor shall be deemed to be the parties to the Prime Contract, with all the consequences that arise therefrom, except with respect to any claims that Project Co and the Contractor could have pending one against the other and that have arisen from events that have taken place before the date of receipt of the Step-In Notice by the Contractor.
  - (ii) The rights and benefits previously available to Project Co under the PC Guarantee (which the Guarantor hereby expressly acknowledges shall continue unmodified and in full force and effect notwithstanding such step-in by WDBA or

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- a Replacement) and the Prime Contract Guarantees shall be transferred and assigned to WDBA or the Replacement, as the case may be.
- (iii) At the request of WDBA, the Contractor and the Guarantor shall execute, and WDBA shall execute or have the Replacement execute, as the case may be, all agreements or any other documents that may be necessary to give effect to the provisions of this Section 3.5.
- (b) If WDBA replaces Project Co under the Prime Contract by issuing a Step-In Notice and then designates a Replacement under the terms of a Replacement Designation Notice, the relevant parties shall execute (and WDBA shall arrange for the Replacement to execute) any agreements or other documents necessary to give effect to the accession of the Replacement to the rights and obligations of WDBA under the terms of agreements and other documents referred to in Section 3.5(a) entered into and executed earlier by WDBA or on its behalf and to confirm such accession, and to release WDBA from all covenants, obligations and liabilities under the terms of these agreements and other documents other than its payment obligations under Section 3.1(b).
- (c) If WDBA arranges for a Replacement to execute the agreements and other documents necessary to give effect to the provisions of this Section 3.5, the Contractor's approval of the Replacement shall not be required if the Replacement is a person to which WDBA may assign the Project Documents in accordance with Section 55.2 (*Assignment by WDBA*) of the Project Agreement. Otherwise, the Replacement shall be subject to approval by the Contractor within 10 days of receiving any Replacement Designation Notice, which approval shall not be unreasonably withheld or delayed.
- (d) Project Co and the Contractor undertake to cooperate whenever necessary, at their expense, with WDBA and any Replacement to ensure that the assignment of the Prime Contract to WDBA or to the Replacement, as the case may be, proceeds smoothly, efficiently and in an orderly manner to avoid or minimize any cost or delay as much as possible, including the administration of the Prime Contract, ongoing supervisory activities and scheduling.
- (e) A written notification from the Collateral Trustee, exercising the Senior Lenders' Step-In or transfer rights pursuant to and in accordance with, respectively, Section 5 or Section 7 of the Lenders' Direct Agreement or any other agreement between the Contractor and the Collateral Trustee on behalf of the Senior Lenders or the guarantees provided pursuant to the Project Agreement, received by the Contractor before receiving a Step-In Notice in accordance with this Agreement, shall have priority over any Step-In Notice and, under such circumstances, only the notice received from the Collateral Trustee will take effect, and the Step-In Notice provided in accordance with this Agreement shall not bind the Contractor or WDBA.

### **3.6 Amounts Paid by WDBA or the Replacement**

All of the amounts that WDBA or a Replacement pays to the Contractor pursuant to this Agreement or any other agreement or document executed hereunder (including the amounts that WDBA pays to the Contractor pursuant to Section 3.1 and those that WDBA or a Replacement pays pursuant to Section 3.5 or any other agreement or document executed hereunder), other than amounts which WDBA or a Replacement and the Contractor agree beyond what Project Co has agreed to pay under the Prime Contract, are deemed to be amounts that Project Co owes to WDBA under the Project Agreement and they may be deducted or, subject to Section 37.8 (*Set-*

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off) of the Project Agreement, they may be set off against amounts that are to be paid by WDBA to Project Co pursuant to the Project Agreement.

#### **4. DISCLAIMER REGARDING DISCLOSED DATA**

Subject to Section 7.3 (*Exceptions for the Guaranteed Engineering Data*) of the Project Agreement, WDBA makes no representation and gives no warranty regarding the sufficiency, accuracy or relevancy of the Disclosed Data and fitness for the purpose for which it is intended and gives no representation or warranty that the Disclosed Data represents all necessary or relevant information for purposes of the Project Work. WDBA shall have no liability or obligation to the Contractor arising out of a fault on the part of WDBA, of any WDBA Person or of any Governmental Authority in respect of any inaccuracy, error, insufficiency, omission, unfitness for purpose, defect or inadequacy of such Disclosed Data. The Contractor shall not be entitled to make and shall not make any Claim against WDBA, any WDBA Person, any WDBA Party or any other Governmental Authority, including Claims for damages, for extensions of time or additional payments, compensation or other relief under this Agreement on any grounds whatsoever in connection with such Disclosed Data.

#### **5. ASSIGNMENT**

##### **5.1 Binding on Successors and Assigns**

This Agreement shall enure to the benefit of, and shall be binding upon, WDBA, Project Co the Contractor, the Guarantor and their respective successors and permitted assigns.

##### **5.2 General Restriction on Assignment**

No party to this Agreement may Assign this Agreement or all or any part of its rights under this Agreement, except as provided in this Section 5. Any Assignment which is permitted under this Section 5 is conditional upon the assignee assuming all obligations of the assignor under this Agreement.

##### **5.3 Assignment by Project Co**

Project Co may assign this Agreement to any person to whom Project Co assigns its interest in the Project Agreement pursuant to Section 55.1 (*Assignment by Project Co*) of the Project Agreement.

##### **5.4 Assignment by WDBA**

WDBA may concurrently assign this Agreement and any of its rights hereunder to any person to whom WDBA assigns its interest in the Project Agreement pursuant to Section 55.2 (*Assignment by WDBA*) of the Project Agreement and shall provide written notice to Project Co and the Contractor of any such assignment.

##### **5.5 Assignment by the Contactor or the Guarantor**

Neither the Contractor nor the Guarantor shall assign this Agreement or all or any of its rights hereunder unless:

- (a) the assignor delivers to WDBA not less than 10 Business Days prior to such assignment, a notice setting out such contact information regarding the assignee as WDBA may reasonably require;
- (b) the proposed assignee is not an Ineligible Person; and

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- (c) such person enters into a new agreement with WDBA and Project Co to the same effect as this Agreement.

## 5.6 Change in Control

Neither the Contractor nor the Guarantor shall undergo a Change in Control without the prior written consent of WDBA, not to be unreasonably withheld, provided that the person or group of persons acquiring Control must either (i) not be or include a person who is an Ineligible Person or (ii) if that is not the case, such Ineligible Person must divest its Equity Interests in the Contractor or Guarantor, within 90 days of such Change in Control.

## 5.7 Security Interest

The Contractor, the Guarantor and WDBA acknowledge that Project Co has granted a security interest over its rights under this Agreement to the Collateral Trustee and consent to such security interest.

## 6. NOTICES

### 6.1 Requirement for Writing

Wherever in this Agreement provision is made for the giving, making or issuing of any notice, consent, confirmation, request, approval, or other report or determination (a "**Notice**") by any person, unless otherwise specified, such Notice shall be in writing.

### 6.2 Addresses

- (a) Any Notice shall be deemed duly given if it is (i) signed by a duly authorized representative of the person giving the Notice, or by a person acting on its behalf, and (ii) personally delivered, sent through a secure document-sharing site approved by WDBA, sent by a recognized courier service (with delivery receipt requested), or sent by confirmed facsimile or e-mail transmission, to the following addresses:

To WDBA

100 Ouellette Avenue, Suite 400  
Windsor, Ontario N9A 6T3

**[REDACTED]**

With a copy to:

100 Ouellette Avenue, Suite 400  
Windsor, Ontario N9A 6T3

**[REDACTED]**

To Project Co:

**[REDACTED]**

**[REDACTED]**

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With a copy to:

[REDACTED]

[REDACTED]

With a copy to:

[REDACTED]

[REDACTED]

With a copy to:

[REDACTED]

[REDACTED]

To the Contractor:

[REDACTED]

[REDACTED]

To the Guarantor:

[REDACTED]

[REDACTED]

- (b) Where any Notice is sent to a party through a secure document-sharing site, or by facsimile or email, an original of the Notice, if requested by the addressee, shall also be personally delivered or sent by a recognized courier service (with delivery receipt requested) within 5 Business Days of such request by the addressee.

### 6.3 Change of Address

Any party may change its address for Notice to a new address, a new facsimile number or a new email address by Notice to the other parties.

### 6.4 Deemed Receipt

Any Notice shall be deemed to have been received:

- (a) if sent by personal delivery or by a courier service, upon delivery;
- (b) if sent through a secure document-sharing site, by facsimile or e-mail:
- (i) on a Business Day prior to 4:00 p.m., upon sending;
  - (ii) on a Business Day after 4:00 p.m. or on a day which is not a Business Day, at 9:00 a.m. on the next Business Day; and

in the case of a Notice set by facsimile or email, subject to:

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- (iii) confirmation of transmission or acknowledgement of receipt; and
- (iv) there having been no telephonic communication by the recipient to the sender (any such telephonic communication to be confirmed in writing) that the facsimile or the email has not been received in legible form:
  - (A) within three hours after sending, if sent on a Business Day before 2:00 p.m.; or
  - (B) by noon on the following Business Day if sent after 2:00 p.m. on a Business Day or if sent on a day which is not a Business Day.

## 7. GENERAL PROVISIONS

### 7.1 Exercise of Discretion by WDBA

- (a) Except as otherwise required by Applicable Law, when WDBA has:
  - (i) the choice to take or not take an action including to give or grant an agreement, approval, confirmation, acceptance, waiver, permission or consent;
  - (ii) the right or obligation to make an election, determination, designation, rejection, requirement or stipulation, to reserve a right, to make a request, to exercise an option, to make a decision; or
  - (iii) the right to consider or to come to a judgment, view or an opinion,with respect to any matter under this Agreement, it means that WDBA has the sole, subjective, absolute and unfettered discretion with respect to the matter in question, with no requirement to act reasonably or to provide reasons, unless there is a specific requirement in this Agreement for WDBA to act reasonably with respect to such matter. In the exercise of any such unfettered discretion, WDBA shall act in good faith but shall be entitled to have regard solely to what it considers to be in its own best interests and where relevant, in the best interests of any affected WDBA Person.
- (b) When the exercise of WDBA's discretion is subject to an 'acting reasonably' standard, WDBA shall without limitation be deemed to be acting reasonably if the exercise of such discretion is consistent with the obligations of WDBA under the Crossing Agreement and other Applicable Law.

### 7.2 Confidentiality

The Contractor and the Guarantor:

- (a) acknowledge the provisions of the Project Agreement relating to the non-disclosure by Project Co and Project Co Persons of Confidential Information including those set out in Section 53 (Confidentiality) of the Project Agreement;
- (b) agree to comply with such provisions to the same extent that Project Co is required to comply under the Project Agreement; and
- (c) agree that the provisions of Section 53 (*Confidentiality*) of the Project Agreement are incorporated herein by reference and shall apply to this Agreement, with the necessary alterations.

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### **7.3 Security Requirements**

This Agreement and the rights of Project Co, the Contractor and any person deriving any benefit under this Agreement are subject to, and such rights shall be exercised at all times in accordance with, the Security Requirements.

### **7.4 No Partnership or Agency**

- (a) The parties are independent contractors. This Agreement is not intended to and does not create or establish between the parties any relationship as partners, joint venturers, employer and employee, master and servant, or of principal and agent.
- (b) Except as expressly provided in this Agreement, no party shall be, or be deemed to be, an agent of any other party, and no party shall have authority to represent that it is an agent of any other party, or to accept any order, or enter into any contract or agreement, or make any representations or warranties of any kind to any person, or to assume or create any obligation, express or deemed, on behalf of or binding, or purportedly binding upon, such other party.
- (c) Except as otherwise expressly provided in this Agreement, each party shall be free from the control of each other party as to the manner in which it shall perform its obligations, or cause such obligations to be performed, under this Agreement.

### **7.5 Liabilities, Obligations and Rights Under the Project Agreement**

The provisions of this Agreement are without prejudice to the liabilities and obligations of Project Co and WDBA under the Project Agreement or the rights granted to Project Co and WDBA by the Project Agreement and they do not limit, restrict or compromise them in any manner whatsoever.

### **7.6 Conflicts in Documents**

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Agreement, the Project Agreement and the Prime Contract, this Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Agreement and the Lenders' Direct Agreement, the Lenders' Direct Agreement shall prevail.

### **7.7 Costs**

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Agreement.

### **7.8 Survival of Representations and Warranties**

All representations and warranties made or given by the Contractor or the Guarantor under any provision of this Agreement or in any certificate or other documents delivered by or on behalf of the Contractor or the Guarantor at the time of execution of this Agreement are given at the date of execution of this Agreement and shall, unless expressly provided otherwise, survive the execution of this Agreement and the other Project Documents and are not mitigated or affected by any investigation by or on behalf of WDBA or Project Co, as the case may be.

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**7.9 Waiver**

Failure by any party at any time to enforce any provision of this Agreement or to require performance by any other party of any of the provisions of this Agreement shall not be construed as a waiver of any such provision and shall not affect the validity of this Agreement or any part thereof or the right of any party to enforce any provision in accordance with its terms.

**7.10 Amendments**

This Agreement may not be varied, amended or supplemented except by an agreement in writing signed by the duly authorized representative of each of the parties hereto and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Agreement.

**7.11 Entire Agreement**

Unless otherwise stated in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No party has relied on any representation except as expressly set out in this Agreement.

**7.12 Further Assurances**

The parties shall do, execute and deliver, or shall cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the parties' respective obligations under this Agreement.

**7.13 Remedies Cumulative**

The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

**7.14 Disputes**

- (a) Any Dispute between any of the parties with respect to any of the subject matters of this Agreement will be resolved in accordance with, and the parties will comply with, the Dispute Resolution Procedure. Schedule 23 [*Dispute Resolution Procedure*] of the Project Agreement is incorporated, with the necessary alterations, into this Agreement.
- (b) The parties agree to consolidate any arbitration procedure instituted pursuant hereto with any other arbitration procedure instituted by WDBA or Project Co arising from a Dispute that raises common, identical or similar issues of fact or law.

**7.15 Governing Laws and Jurisdiction**

- (a) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, without regard to any Laws or choice of Law rules that might direct the application of the Applicable Laws of another jurisdiction.

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- (b) Subject to the provisions of Section 7.14 of this Agreement, the courts of the Province of Ontario shall have exclusive jurisdiction (subject to any court or tribunal of federal jurisdiction in Canada) with respect to any matter or issue which the Dispute Resolution Procedure permits to be submitted to the courts.

## **7.16 Counterparts**

This Agreement is executed in one or more counterparts, each of which contains one original signature. Any single counterpart or a set of counterparts executed, in either case, by all of the parties shall constitute a full, original and binding agreement for all purposes.

## **7.17 Electronic Execution**

To evidence the fact that a party has executed this Agreement, such party may send a copy of its executed counterpart to the other party by facsimile, or by email in portable document format (PDF). That party will be deemed to have executed this Agreement on the date that its facsimile or email is deemed to be received in accordance with Section 6.4. In such event, such sending party will forthwith deliver to the other party the originally executed counterpart of this Agreement to the other party.

## **8. INTERPRETATION**

### **8.1 Construction and Interpretation**

This Agreement will be interpreted according to the following provisions, save to the extent that the context or the express provisions of this Agreement otherwise require.

- (a) The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of such agreement.
- (b) The table of contents, headings and sub-headings, marginal notes and references to them in this Agreement are for convenience of reference only, do not constitute a part of this Agreement, and will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement.
- (c) Each reference to an agreement, document or other instrument includes (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document or other instrument) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned.
- (d) Each reference to a statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute.
- (e) Each reference to time of day is a reference to local Windsor, Ontario time.
- (f) Time is of the essence of each provision of this Agreement.
- (g) Words importing the singular include the plural and *vice versa*.

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- (h) References to persons shall include their respective heirs, executors, administrators, personal representatives, successor, and assigns. References to a public organization shall include its successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.
- (i) Each reference to "parties" means the parties to this Agreement and each reference to a "party" means any one of the parties to this Agreement, provided however that a reference to a third party does not mean a party to this Agreement.
- (j) All monetary amounts are expressed in Canadian Dollars.
- (k) In this Agreement, the words "including" and "includes", when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set out or to similar items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.
- (l) Generic words are not to be given a restrictive meaning:
  - (i) if they are introduced by the word "other";
  - (ii) if they are preceded by words indicating a particular class of act, matter or thing; or
  - (iii) if they are followed by particular examples intended to be embraced by those general words.
- (m) References containing terms such as "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to the Agreement taken as a whole.
- (n) Words importing a particular gender include all genders.
- (o) Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement which is not material to a right or obligation of a party is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the parties shall promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.
- (p) Any consent contemplated to be given under this Agreement must be in writing.
- (q) The expression "all reasonable efforts" and expressions of like import, when used in connection with an obligation of a party means the taking in good faith and with due diligence, of all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances, and in any event taking no less steps and efforts than those that would be taken by a

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commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person's own benefit.

- (r) All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with the Accounting Principles, consistently applied.
- (s) If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day.
- (t) Where this Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (u) Where this Agreement states that an obligation shall be performed "on" a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (v) Where this Agreement provides that a document is to be "certified", that means that an authorized officer or director of the relevant legal entity shall certify that such document (i) is a true and complete copy of the original document and (ii) such original document is in full force and effect unamended as of the date of the certification.

**[Signatures on the Next Page]**

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**TO EVIDENCE** their agreement, the parties have executed this Agreement as of the date and year written on first page hereof.

**WINDSOR DETROIT BRIDGE AUTHORITY**

By: \_\_\_\_\_  
Authorized Signatory [REDACTED]

By: \_\_\_\_\_  
Authorized Signatory [REDACTED]

**BRIDGING NORTH AMERICA GENERAL PARTNERSHIP**

By: \_\_\_\_\_  
Authorized Signatory [REDACTED]

By: \_\_\_\_\_  
Authorized Signatory [REDACTED]

**[REDACTED]**

By: \_\_\_\_\_  
Authorized Signatory [REDACTED]

By: \_\_\_\_\_  
Authorized Signatory [REDACTED]

**[REDACTED]**

By: \_\_\_\_\_  
Authorized Signatory [REDACTED]

By: \_\_\_\_\_  
Authorized Signatory [REDACTED]

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**SCHEDULE 32**

**FORM OF INDEPENDENT CERTIFIER AGREEMENT**

**WINDSOR-DETROIT BRIDGE AUTHORITY,**

**- and -**

**LEIGHFISHER CANADA INC.**

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## FORM OF INDEPENDENT CERTIFIER AGREEMENT

**THIS AGREEMENT** is made and is first effective as of the 28<sup>th</sup> day of September, 2018.

### BETWEEN

**WINDSOR-DETROIT BRIDGE AUTHORITY**, a  
corporation incorporated pursuant to the *International  
Bridges and Tunnels Act* (Canada)

("WDBA")

- and -

**LEIGHFISHER CANADA INC.**

(the "Independent Certifier").

### BACKGROUND

- A. WDBA and BRIDGING NORTH AMERICA GENERAL PARTNERSHIP, a general partnership constituted under the laws of Ontario ("Project Co") have executed the Project Agreement.
- B. Pursuant to the terms of the RFP, the Independent Certifier has been selected to perform the role of Independent Certifier under the Project Agreement.
- C. The Project Agreement provides that WDBA shall enter into this Agreement and shall be responsible for the management of this Agreement and the payment of the Independent Certifier's Fees and Disbursements.
- D. WDBA and the Independent Certifier wish to enter into this Agreement in order to set forth the terms and conditions upon which the Independent Certifier shall perform the Certification Services.

**IN CONSIDERATION** of the mutual covenants contained in this Agreement and of other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the parties, the parties agree as follows.

### 1. DEFINITIONS AND SCHEDULES

- 1.1 Terms defined in Schedule 1 [*Definitions and Interpretation*] of the Project Agreement and used in this Agreement have the same meaning as in the Project Agreement, unless such term is specifically defined in this Agreement or in a Schedule to this Agreement. Terms defined in this Agreement are found in Section 12.1 (*Definitions*).
- 1.2 The following schedules are attached to and form part of this Agreement:
  - 1.2.1 Schedule 1 – Scope of Work
  - 1.2.2 Schedule 2 – Basis of Payment
  - 1.2.3 Schedule 3 – WDBA Request for Proposals
  - 1.2.4 Schedule 4 - Proposal

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### 1.2.5 Schedule 5 – Non-Disclosure Agreement

In the event of any conflict or inconsistency between the documents listed above the following order of priority shall apply: (a) the main body of this Agreement; (b) Schedule 1 (Scope of Work); (b) Schedule 2 (Basis of Payment); (c) Schedule 3 – (WDBA Request for Proposals); (d) Schedule 5 (Non-Disclosure Agreement) as amended by this Agreement, and (e) Schedule 4 (Proposal).

## 2. ROLE OF THE INDEPENDENT CERTIFIER

### 2.1 Appointment

- (i) WDBA hereby appoints the Independent Certifier to perform all of the Certification Services in accordance with the terms of this Agreement and the Project Agreement.
- (ii) The Independent Certifier hereby accepts such appointment and agrees to perform the Certification Services in accordance with the provisions of this Agreement and the Project Agreement.

2.2 Without limiting the extent of Section 2.1(i), as part of the Scope of Work and this Contract, the Independent Certifier shall verify, by means of actual verification such as LIDAR or other physical measurement techniques, the actual quantities of Category I, II and III soils, as referenced in PA Schedule 26, Section 2.14 of Schedule 26 [*Construction Period Payments*] of the Project Agreement Duties.

### 2.3 Duties

2.3.1 The Independent Certifier represents and warrants to WDBA that:

- (A) it has and shall at all times continue to have all requisite professional qualifications, specialized knowledge, experience and expertise or shall retain such services to perform the Certification Services;
- (B) it holds and shall at all times continue to hold all requisite practice permits and authorizations as well as any other requisite licenses and consents to perform the Certification Services;
- (C) all Project Work applicable to the Michigan Interchange, US POE and US part of the Main bridge, shall be certified under the authority of and signed by a professional engineer licensed to practice in the State of Michigan, USA;
- (D) all Project Work applicable to the Canadian POE and Canadian part of the Main bridge, shall be certified under the authority of and signed by a professional engineer licensed to practice in the Province of Ontario, Canada;
- (E) it has and shall maintain all necessary permits and authorizations both in Michigan and Ontario, as applicable to each project element, in accordance with the local laws and regulations to perform the Certification Services
- (F) it has and shall at all times continue to have all requisite facilities, documents and equipment to perform the Certification Services;
- (G) it has and shall at all times continue to have human resources in sufficient numbers to perform the Certification Services; and

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- (H) it has complied with and shall at all times continue to comply with, the provisions set forth in Section 2.7 (*Conflict of Interest*), Section 2.8 (*Integrity Provisions*) and Section 2.11 (*Security Requirements*).

2.3.2 In performing the Certification Services, the Independent Certifier shall:

- (A) act impartially, honestly, independently, and professionally, in accordance with the standards applicable to Independent Certifier's industry;
- (B) perform the Certification Services with a degree of skill, care and diligence which may reasonably be expected from a seasoned professional having extensive experience in rendering services similar to the Certification Services in connection with projects similar to the Project and shall ensure that all of its staff or external experts undertake to act and do act with the same degree of skill, care and diligence;
- (C) perform the services in a timely fashion, in keeping with the time frames stipulated in this Agreement and in the Project Agreement, including the deadlines contained in the DB Schedule, the Review Procedure and the Certification Procedure, or, where no time periods are prescribed, within a reasonable time period, so as to enable the PA Parties to exercise their rights and perform their respective obligations under the Project Agreement; and
- (D) perform the services in accordance with the directions of WDBA provided that such directions are not inconsistent with applicable codes of ethics and professional conduct, with the other terms of this Agreement or the terms of the Project Agreement and do not vary or prejudice the Independent Certifier's authority or responsibilities or the exercise by the Independent Certifier of its professional judgment and impartiality under this Agreement, in which case it may refuse to act in accordance with such directions, subject only to its obligation to give to the PA Parties a notice stating the reasons for its refusal.

2.3.3 Although the Independent Certifier may take into account opinions, representations or directions made or given by WDBA, the Independent Certifier shall not be bound to comply therewith in connection with any matter on which the Independent Certifier is required to exercise its professional and impartial judgment.

2.3.4 The Independent Certifier, without limiting its obligations under Section 2.3.2, undertakes to use its best skill and judgment in performing the Certification Services, including with respect to determinations, findings, opinions, advice and recommendations made or given and the delivery of the Certificates.

## 2.4 Restrictions

The parties acknowledge that the Independent Certifier:

- 2.4.1 is an independent consultant and nothing in this Agreement creates or establishes between the parties hereto any relationship as partners, joint ventures, agents, mandataries, employers or employees;
- 2.4.2 has no authority to give directions to any of the PA Parties, WDBA Persons or Project Co Persons; and

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2.4.3 has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release any of the PA Parties from any of their respective obligations under the Project Agreement unless jointly agreed by the PA Parties in writing.

## 2.5 Knowledge of Requirements

The Independent Certifier represents and warrants to WDBA that:

- (i) it has received a copy of and it has reviewed the Project Agreement and it has and shall be deemed to have informed itself fully of the requirements of the Project Agreement, including all Technical Requirements and all Applicable Laws and of such other documents as may become relevant from time to time to the performance of the Certification Services;
- (ii) without limiting the extent of Section 2.5(i), it has and shall be deemed to have informed itself fully of all time constraints and other requirements for the performance of the Certification Services;
- (iii) without limiting the extent of Section 2.5(i), it has and shall be deemed to have informed itself fully of the Certification Services and of the means of gaining access to the Project Infrastructure, the Site and certain off-Site locations, including with respect to work performed at night and in winter conditions, as well as such other restrictions on such access or protocols that may be required to gain such access; and
- (iv) it has satisfied itself as to the correctness and sufficiency of its Proposal for the performance of the Certification Services and that the Fees and Disbursements cover the cost of complying with all of the requirements under this Agreement and of all matters and duties required by the performance of the Certification Services.

## 2.6 Coordination by Independent Certifier

The Independent Certifier shall fully co-operate in good faith with the PA Parties and shall carefully co-ordinate the Certification Services with the performance of the obligations of the PA Parties under the Project Agreement. Without limiting the scope of its obligations under this Agreement, the Independent Certifier shall perform the Certification Services so as to avoid unreasonably interfering with, disrupting or delaying the performance of the obligations of the PA Parties under the Project Agreement.

## 2.7 Conflict of Interest

- (i) The Independent Certifier represents and warrants to WDBA that, as of the date of this Agreement:
  - (A) it has no knowledge of any fact, circumstance or condition that adversely affects or, so far as it can foresee, might adversely affect its ability to perform the Certification Services in accordance with the terms of this Agreement;
  - (B) no actual or perceived conflict of interest exists or is likely to arise in the performance of the Certification Services;
  - (C) without limiting the scope of the representation and warranty made in Section 2.7(i)(B) , it is not a Contracting Affiliate of Project Co or an Affiliate of Project Co, an Equity Member, a Related Owner or any Project Co Person; and

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- (D) it has not retained or does not intend to retain external resources or sub-consulting firms for which the above conditions could apply, without the prior consent of WDBA.
- (ii) The Independent Certifier shall not (and shall at all times have and maintain in place practices and procedures to ensure that it does not) perform services for or provide advice to any other person, or engage in any other activity, that may or does give rise to any actual or perceived conflict of interest in the performance of the Certification Services. If during the term of this Agreement any such actual or perceived conflict of interest or risk of actual or perceived conflict of interest arises, the Independent Certifier shall immediately notify WDBA of that conflict or risk of conflict in writing, including full particulars of all relevant facts and circumstances. Without limiting any other rights or remedies of WDBA, the Independent Certifier shall forthwith provide WDBA with such further information as it may request in respect of such conflict or risk of conflict and take such steps as may be required by WDBA to avoid or mitigate the effects of that conflict or risk of conflict.

## 2.8 Integrity Provisions

- 2.8.1 The Independent Certifier (i) represents and warrants to WDBA that it and each of its Affiliates are in compliance with the Integrity Provisions and (i) covenants with WDBA that each of them shall remain in compliance with the Integrity Provisions throughout the term of this Agreement. Compliance with the Integrity Provisions at any time means that the entity in question is in compliance with such provisions and is not ineligible, debarred, or suspended from bidding on any contracts with Canada or the United States.
- 2.8.2 The Independent Certifier provided a list of names of all directors of the Independent Certifier in the Proposal. The Independent Certifier shall promptly inform WDBA in writing of any changes in its directors during the term of this Agreement. The Independent Certifier must also, when requested, provide WDBA with properly completed and signed consent forms and associated information, and cooperate in the verification process.
- 2.8.3 The Independent Certifier certifies that it is aware, and that its Affiliates are aware, that WDBA may verify the information provided by the Independent Certifier, through independent research, use of any government resources or by contacting third parties.
- 2.8.4 The Independent Certifier certifies that neither the Independent Certifier nor any of its Affiliates have directly or indirectly, paid or agreed to pay, and will not, directly or indirectly, pay a contingency fee to any individual for the solicitation, negotiation or obtaining of this Agreement including if the payment of the fee would require the individual to file a return under Section 5 of the *Lobbying Act*, RSC 1985, c 44 (4th Supp).
- 2.8.5 The Independent Certifier shall ensure that all subcontractors retained by it to perform any aspect of the Certification Services, are at the time they are retained and throughout the period of their retainer, in compliance with the Integrity Provisions.
- 2.8.6 The Independent Certifier represents and covenants that no bribe, gift, benefit, nor other inducement has been nor shall be paid, given, promised or offered directly or indirectly to any official or employee of WDBA or of a Governmental Authority or to a member of the family of such a person, with a view to influencing the entry into this Agreement or the administration of this Agreement.

## 2.9 Independent Certifier Personnel

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- (i) The Independent Certifier represents and warrants to WDBA that:
  - (A) it has and shall continue to have or it shall retain specialized, expert and professional personnel who are competent, experienced and qualified to perform, and who have all the requisite means and ability necessary to perform the Certification Services in accordance with the terms of this Agreement and the Project Agreement, including with respect to its safety inspection duties and duties relating to security-sensitive information both described in Schedule 1 [*Scope of Work*]; and
  - (B) it and such personnel are and shall remain duly authorized to carry on business and practice their respective professions in the Province of Ontario, Michigan and in any other relevant jurisdiction.
- (ii) The Independent Certifier shall use the services of the persons listed in its Proposal attached as Schedule 4 [Proposal] ("*IC Personnel*") in connection with the performance of the Certification Services. Subject to Sections 2.9(iii), 2.9(iv) and Section 2.10 (*Subcontracting*), the tasks to be performed by such persons may not be subcontracted or delegated. Such persons shall have full authority to act for and on behalf of and bind the Independent Certifier for all purposes in connection with this Agreement.
- (iii) The Independent Certifier acknowledges that IC Personnel was taken into consideration by WDBA during the selection process leading to its appointment as Independent Certifier. In view of the foregoing, but subject to Sections 2.9(iv) and 2.9(v), no such IC Personnel shall be removed or replaced, except: (A) where such person (i) ceases to work as a partner, director or employee of the Independent Certifier or one of its subcontractors for any reason; (ii) has become unable to work because of death, sickness, maternity or paternal leave, retirement, resignation, dismissal for cause or termination of an agreement for default or in the event that the relevant individual's professional license has been suspended, revoked or has expired (in the case of a temporary license); or (B) as a result of a WDBA request that the IC Personnel be removed.
- (iv) In the event the Independent Certifier requires the removal or replacement of any one of the IC Personnel, the following rules shall apply.
  - (A) Where the Independent Certifier requires the removal or replacement of such person in circumstances other than those described in Section 2.9(iii) it shall first give notice to WDBA indicating its reasons for the request, and WDBA may, acting reasonably, refuse the change requested by the Independent Certifier.
  - (B) The Independent Certifier acknowledges however that such change request made on the grounds that it wishes to assign such a person to another mandate or other duties within its enterprise shall not, in and of itself, be deemed to be a request made for a valid reason.
  - (C) Where the Independent Certifier requires the removal or replacement of such person in the circumstances described in Section 2.9(iii), the Independent Certifier shall notify WDBA of the circumstances as soon as they arise.

Where WDBA consents to a request made pursuant to Section 2.9(iv)(A) or in the situations described in Section 2.9(iv)(C), the Independent Certifier shall find a replacement who is suitably qualified and experienced, but whose candidacy shall in any event require the prior written approval of WDBA.

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- (v) WDBA may, acting reasonably, require that any of the IC Personnel be removed and replaced. The request shall be set out in a notice sent to the Independent Certifier, containing the specifics of the grounds for the request and when a request is so made, the Independent Certifier shall remove such IC Personnel. The Independent Certifier shall, within 30 days of receipt of such notice (or such other reasonable time frame as the parties may agree upon) find a replacement who is at least as qualified and experienced but whose appointment shall require the prior written approval of WDBA.

## 2.10 Subcontracting

- (i) Without limiting the extent of Section 2.9 (*Independent Certifier Personnel*), the Independent Certifier may not enter into subcontracts for the performance of the Certification Services without the prior written consent of WDBA, which consent shall not be unreasonably withheld. The Independent Certifier shall be liable for its Subcontractors' performance of Independent Certifier's obligations under this Agreement.
- (ii) WDBA may at any time, and acting reasonably, request that an approved Subcontractor be replaced.
- (iii) The Independent Certifier shall not be entitled to any additional Fees and Disbursements as a result of its decision to subcontract any portion of the Certification Services.

## 2.11 Security Requirements

- 2.11.1 If the Independent Certifier and its personnel do not already possess the federal government security clearances described in this Section as of the effective date of the Contract, Independent Certifier shall, as soon as possible, ensure all required applications are submitted to obtain such clearances and cooperate with WDBA to ensure the smooth processing of all applications, as required without additional cost charged to WDBA.
- 2.11.2 Subject to 2.10.1, the Independent Certifier (and its Subcontractors, if any) must, at all times during the term of this Agreement, hold a valid Facility Security Clearance ("FSC") with approved Document Safeguarding capability at the SECRET level, issued by the Canadian Industrial Security Directorate, Public Services and Procurement Canada or granted and approved by the Designated Security Authority ("DSA") of a country with which Canada holds a bilateral industrial security instrument, verified by the International Industrial Security Directorate ("IISD") of Public Service and Procurement Canada.
- 2.11.3 Subject to 2.10.1, the Independent Certifier personnel requiring access to protected information, assets or sensitive work site(s) must each hold either a valid RELIABILITY STATUS or SECRET clearance, granted or approved by the Canadian Industrial Security Directorate ("**CISD**") of Public Services and Procurement Canada. The Key Individuals (Project Manager, Deputy Project Manager, Senior Technical Specialist and Intermediate Technical Specialist) will be required to hold security clearances at the SECRET level.
- 2.11.4 In the event of changes in Independent Certifier's personnel or Subcontractors, until the security screening of the Independent Certifier personnel required by this Agreement has been completed satisfactorily by CISD and WDBA, the Independent Certifier personnel may not have access to Protected B or SECRET information or assets and cannot enter sites where such information or assets are kept, without an authorized escort.
- 2.11.5 The Independent Certifier who has been granted an FSC and DSC clearance will be able to process Protected B and SECRET material at their sites provided they comply with all

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provisions of the Industrial Security Manual. The Independent Certifier will be subjected to a CISD inspection by examining the physical security requirements as per the Industrial Security Manual and their IT system, and final approval by WDBA.

2.11.6 Subcontractors requiring a security clearance are not to be engaged in providing any part of the Independent Certifier services without the prior written permission of WDBA or CISD. Subcontractors shall not have access to Protected B information until such time they hold a Reliability Status confirmed by CISD / IISD and approved by WDBA.

### **3. ROLE OF WDBA**

#### **3.1 Assistance**

At the explicit and specific request of the Independent Certifier: (i) WDBA shall provide the Independent Certifier with such reasonable and diligent assistance as may be requested in order to enable the Independent Certifier to perform the Certification Services and shall use reasonable efforts to cause Project Co to provide assistance as appropriate.

#### **3.2 Instructions in Writing**

Where applicable, WDBA shall give all formal instructions to the Independent Certifier in writing.

#### **3.3 Information**

The Independent Certifier shall, upon written request by WDBA provide access to or copies of any information, documents, particulars or other communications received from Project Co.

#### **3.4 Right to Enter and Inspect**

- (i) The Independent Certifier (and any person authorized by it) may enter and inspect the Project Infrastructure, the Site, or any parts thereof at any reasonable time in connection with the exercise or performance or proposed exercise or performance of the Certification Services, subject to:
  - (A) observance of the reasonable rules of Project Co and any other relevant party as to the safety and security for the Project Infrastructure;
  - (B) not causing unreasonable delay in the carrying out of the Project Work by reason of its presence on the premises of the Project Infrastructure or the Site; and
  - (C) not causing any damage to the Project Infrastructure, the Site or any part thereof.
- (ii) The Independent Certifier may inspect, examine and take copies of test data, samples, audits, books, records, files, plans, designs, shop drawings and other documents of Project Co and the Subcontractors, at any reasonable time and to the extent reasonably required for the performance of the Certification Services.

### **4. SUSPENSION**

#### **4.1 Notice**

WDBA may at any time suspend the Independent Certifier's performance of the Certification Services (or any part thereof), which suspension shall come into effect:

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- 4.1.1 where the Independent Certifier fails to comply with any of its obligations under this Agreement or the Project Agreement, immediately upon notice in writing to the Independent Certifier executed by WDBA; or
- 4.1.2 in any other case, on the date which is 30 days following notice in writing to the Independent Certifier executed by WDBA or such later date as may be specified in such notice.

Notwithstanding the foregoing, if the Independent Certifier is not in compliance with the provisions of Section 2.8 (*Integrity Provisions*), WDBA may suspend the Independent Certifier's performance of the Certification Services (or any part thereof) immediately upon notice in writing to the Independent Certifier.

#### 4.2 Costs of Suspension

The Independent Certifier, provided it is in compliance with Section 7 (*Change in Certification Services*), shall be entitled to recover from WDBA any additional costs incurred by the Independent Certifier by reason of a suspension pursuant to Section 4.1.2 and, where applicable, pursuant to Section 7 (except to the extent that, following the application of the provisions of Section 7.4 (*Cost of a Change*) the Independent Certifier is entitled to any additional compensation). The Independent Certifier shall not be entitled to seek reimbursement from WDBA for any costs, expenses, losses or damages or any nature and kind howsoever arising (including loss of revenue, loss of profit, loss of contract, loss of goodwill and indirect loss of any nature) resulting from a suspension pursuant to Section 4.1.1 or a suspension following a failure to comply with Section 2.8 (*Integrity Provisions*).

#### 4.3 Resumption of Performance

Following any suspension pursuant to Section 4.1, the Independent Certifier shall immediately resume the performance of the Certification Services (or any part thereof) upon receipt of a written notice requiring it to do so from WDBA.

### 5. INDEPENDENT CERTIFIER'S INSURANCE

#### 5.1 Professional Liability Insurance

Pursuant to the Project Agreement, Project Co shall take out with an Eligible Insurer, and maintain in force, at its expense, a project-specific professional liability insurance policy in accordance with the requirements of the Project Agreement for the period specified therein which shall cover the Independent Certifier as an insured.

#### 5.2 Other Requirements Applicable to the Independent Certifier's Insurance

The insurance requirements stipulated in Section 5.1 or in the Project Agreement shall not affect or limit the Independent Certifier's obligations or liability under this Agreement. The Independent Certifier shall not assert that WDBA or Project Co's failure to take out or maintain any insurance policy or the failure to designate the Independent Certifier as an insured under any such policy, relieves it of any such obligations or liabilities.

### 6. PAYMENT FOR SERVICES

#### 6.1 Fees and Disbursements Invoice

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The Independent Certifier shall remit to WDBA, with a copy to Project Co, a detailed Fees and Disbursements invoice in the form provided in Schedule 2 [*Basis of Payment*] setting out all information pertaining to the Certification Services rendered in the previous month, including, where applicable (such as where fees are based on time and materials), the names of the persons who accomplished tasks or services for the Independent Certifier, a detailed description of the tasks or services accomplished, including the number of hours required to accomplish them and the date they were accomplished. The Independent Certifier shall provide in support of its invoice, such additional information and supporting documentation as is set forth in Schedule 2 [*Basis of Payment*] and otherwise as may reasonably be requested by WDBA.

#### Fees and Disbursements

- (i) So long as the Independent Certifier performs the Certification Services in accordance with this Agreement and is not in default of its obligations hereunder but subject to Section 6.2(ii), the Independent Certifier shall be entitled to payment of the amounts (the "**Fees and Disbursements**") set out in Schedule 2 [*Basis of Payment*]. The Fees and Disbursements are the maximum amount that the Independent Certifier may claim for the performance of the Certification Services and fees may only be adjusted in the event of a Change in accordance with Section 7 (*Change in Certification Services*).
- (ii) The Fees and Disbursements include all Taxes (except Applicable Canadian Taxes, which are payable in addition to the Fees and Disbursements), disbursements, expenses, overhead and all other expenses of any nature incurred in connection with the performance of the Certification Services, the whole as set forth in Schedule 2 [*Basis of Payment*].

#### 6.2 Payment

- (i) WDBA shall pay the Fees and Disbursements owed to the Independent Certifier on a monthly basis, in accordance with the payment terms and conditions provided in Section 6.1. Subject to Section 6.2(ii), the monthly payments shall be made by WDBA within 30 days of remittance of the Fees and Disbursements invoices provided to WDBA in accordance with Section 6.1.
- (ii) WDBA may refuse to make all or part of a payment to the Independent Certifier under Section 6.2 upon the determination, acting reasonably, that the Independent Certifier is not performing its obligations under this Agreement, including if it fails to remit duly substantiated Fees and Disbursements invoices in accordance with Section 6.1 or if it fails use any one or more of the IC Personnel in connection with the performance of the Certification Services.

#### 6.3 Audit

The Independent Certifier agrees that WDBA or its authorized representatives or agents may, at WDBA's expense, examine the Independent Certifier's books and records that relate to the Certification Services and this Agreement. This right may be exercised to the extent deemed necessary to verify the accuracy of any accounting statement, charge or computation drawn up or made pursuant to any of the provisions of this Agreement, including any Fees and Disbursements invoice. Where such examination discovers any inaccuracy or error in any Fees and Disbursements invoice which gives rise or would have given rise to overpayment by WDBA, the Independent Certifier shall forthwith reimburse such amount to WDBA. The expenses and other audit costs incurred by WDBA by reason of such examination of the books and records shall then be paid to WDBA by the Independent Certifier, up to an amount equal to the amount overpaid by WDBA.

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## 7. CHANGE IN CERTIFICATION SERVICES

### 7.1 Notice of Change in Certification Services

- (i) If the Independent Certifier believes, other than in the case of a Change Order under Section 7.3, that any direction given by WDBA or any suspension under Section 4.1.2 constitutes a Change, it shall:
  - (A) within 5 Business Days after receiving the direction and before commencing work on the subject matter of the direction, give notice to WDBA that it considers that the direction constitutes a Change; and
  - (B) within 14 days after giving the notice under Section 7.1(i)(A), submit a claim for a change ("**Claim for a Change**") to WDBA which includes detailed particulars of the claim, the amount of the claim and how it was calculated, in particular in relation to the schedule of rates set forth in Schedule 2 [*Basis of Payment*] of this Agreement.
- (ii) Regardless of whether the Independent Certifier considers that such a direction constitutes a Change, the Independent Certifier shall continue to perform the Certification Services in accordance with this Agreement and all directions from WDBA, including any direction in respect of which notice has been given under this Section 7.

### 7.2 No Adjustment

If the Independent Certifier fails to comply with the requirements of Section 7.1(i) within the time periods stipulated therein, it shall be deemed to have irrevocably waived the right to claim and obtain an adjustment to its Fees and Disbursements in connection with any direction issued by WDBA.

### 7.3 Change Procedure

- (i) WDBA may issue a change price request ("**Change Price Request**") to the Independent Certifier which shall set out details of a proposed Change which WDBA is considering.
- (ii) Within 5 Business Days after the receipt of a Change Price Request, the Independent Certifier shall provide WDBA with a written notice setting out the effect of the proposed Change on the Fees and Disbursements.
- (iii) WDBA may (but is under no obligation to) then direct the Independent Certifier to carry out a Change by written document entitled "**Change Order**" which shall state either that:
  - (A) the Fees and Disbursements are adjusted as set out in the Independent Certifier's notice referred to in Section 7.3(ii); or
  - (B) the adjustment (if any) to the Fees and Disbursements shall be determined pursuant to Section 7.4.

### 7.4 Cost of a Change

- (i) Subject to Section 7.2, in the event WDBA issues a Change Order, the Fees and Disbursements shall be adjusted:

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- (A) by the amount indicated in the Claim for a Change in accordance with Section 7.3 or in the Change Order in accordance with Section 7.1(i)(B); or in the change order in accordance with Section 7.3(iii)(A); or
  - (B) where WDBA does not agree with the amount indicated in the Claim for a Change in accordance with Section 7.1(i)(B) or in the notice from the Independent Certifier referred to in Section 7.3(ii), by such reasonable amount as has been agreed upon by WDBA and the Independent Certifier.
- (ii) Any reductions in the Fees and Disbursements shall be calculated on the same basis as any increases.
  - (iii) Any increase or reduction in the Fees and Disbursements payable to the Independent Certifier in accordance with Section 7.4(i) resulting from a Change Order shall be payable in the manner described in Section 6.2(i) (*Payment*).

**8. Travel Expenses.** The Independent Certifier acknowledges and agrees that it shall comply with the following, in respect of all eligible travel expenses incurred ("Travel Expenses"):

- 8.1 for the purposes of this Section 8, all references to the Independent Certifier shall include the Independent Certifier, any Representative and any other employee of the Independent Certifier;
- 8.2 all travel undertaken by the Independent Certifier or any of its employees related to the Services shall be in accordance with the policy provisions for "travellers" located in appendices B, C and D of the National Joint Council *Travel Directive*;
- 8.3 the total amount incurred by the Independent Certifier for Travel Expenses shall not exceed the amount set out in Schedule 2 [*Basis of Payment*] (as applicable);
- 8.4 all travel expenses submitted must include receipts (photocopies are accepted);
- 8.5 WDBA will reimburse air fares up to full-fare economy only. The Independent Certifier is required to seek the lowest possible airfares, including charters and other discounts for each trip, and to book immediately in order to take advantage of the lowest fares. WDBA retains the right to limit the reimbursement of the air portion when the lowest appropriate fare is not obtained. Upgrades to business or first class may be personally paid by the Independent Certifier;
- 8.6 meals will be reimbursed in accordance with the National Joint Council's *Travel Directive* on a per diem basis;
- 8.7 WDBA will not reimburse any hospitality expenditures incurred by the Independent Certifier;
- 8.8 if the Independent Certifier uses a private motor vehicle in connection with the Services, the Independent Certifier shall be entirely responsible for the management and underwriting of risk pertaining to the operation of the vehicle. Insurance premiums shall be paid by the Independent Certifier and are not reimbursed other than through the payment of the kilometric allowance (per Appendix B of the *Travel Directive*);
- 8.9 the Independent Certifier is expected to use moderately priced hotels and acknowledge that they risk partial reimbursement of actual costs should claims be for unreasonably high-priced accommodation or transportation. Should any employee or Key Person of the Independent Certifier stay with friends or relatives in connection with the provision of the Services, the private non-commercial accommodation rate shall be reimbursed in accordance with Appendix "C" of the *Travel Directive*;

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- 8.10 the Independent Certifier is expected to pay for all travel and related living expenses personally and subsequently invoice WDBA for reimbursement. WDBA shall not pay the suppliers of travel and related services (hotel, air, etc.) directly, but will reimburse the Independent Certifier for appropriate costs incurred. Such expenses as telephone calls home, child care and weekend travel home shall not be paid to the Independent Certifier;
- 8.11 the Independent Certifier will not be provided with a travel advance and is expected to fund its own travel expenses and bill WDBA following the trip, within the terms of the appropriate travel provisions and the level of travel funds authorized within the terms of this Agreement; and
- 8.12 where the Independent Certifier combines its travel in connection with the Services with either personal or business travel for other clients, the travel expenses must be appropriately apportioned. Additional travel costs pertaining to indirect routings and stopovers, or extensions at work location(s) will be paid by the Independent Certifier.

## 9. INDEMNIFICATION

### 9.1 Indemnification by the Independent Certifier

9.1.1 Subject to "Liability Cap" defined below, the Independent Certifier shall indemnify and hold WDBA and each WDBA Person harmless from and against any and all Losses and Claims, including expenses incurred in retaining another person to act as the Independent Certifier under the Project Agreement in the event of termination of this Agreement pursuant to Section 10.3 (*Termination for Default*) or Section 10.4 (*Termination for Financial Difficulty*) of this Agreement incurred or suffered by any of them to the extent caused by:

- (A) the breach of any representation, warranty, covenant, term, duty or obligation of the Independent Certifier set out in or arising under this Agreement or the Project Agreement; or
- (B) any negligent act or omission of the Independent Certifier, or any of its employees, contractors, subcontractors or other persons for whom it is in law responsible, in connection with the subject matter of this Agreement.

For purposes of this Section 9.1.1, the "Liability Cap" is defined as the greater of (a) an amount of insurance coverage applicable to the specific Losses and Claims; and (b) [REDACTED] (\$[REDACTED]) Canadian.

9.1.2 This indemnity shall survive any termination of this Agreement.

## 10. TERM AND TERMINATION

### 10.1 Term

10.1.1 Subject to earlier termination in accordance with the provisions of this Agreement and Section 10.1.2, the term of this Agreement shall commence on the Commencement Date and continue in full force until the later of:

- (a) 7 years following December 31, 2018; or
- (b) the expiration date of an extended term, where WDBA has exercised its right to extend the term pursuant to Section 10.1.2.

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10.1.2 The Independent Certifier hereby grants to WDBA the irrevocable option to extend the term of this Agreement by up to five additional one-year periods under the same conditions, subject to any provisions governing the increase of rates set forth in Schedule 2 [*Basis of Payment*]. WDBA may exercise this option at any time by giving notice to the Independent Certifier at least 30 days before the expiry of the then current term of this Agreement. The original term of this Agreement as it may be extended by one or more extensions, is herein called the “**Term**”.

## 10.2 Notice of Default

If the Independent Certifier breaches or is in default of any of its obligations under this Agreement, WDBA may give notice to the Independent Certifier specifying the default and directing its rectification in the period specified in the notice, which period may not be less than 7 Business Days from the date of giving of the notice.

## 10.3 Termination for Default

If the Independent Certifier:

10.3.1 fails to rectify any default referred to in a notice of default issued in accordance with Section 10.2 within the period specified in such notice; or

10.3.2 has received three or more notices of default within a period of six consecutive months or five or more notices of default since the commencement of the Term;

then WDBA may terminate this Agreement without further notice or delay by giving written notice of termination to the Independent Certifier, which termination shall be effective immediately.

## 10.4 Termination for Financial Difficulty of Change in Control

WDBA may terminate this Agreement immediately by written notice to the Independent Certifier to that effect, if:

10.4.1 an Insolvency Event occurs; or

10.4.2 a Change in Control of the Independent Certifier occurs when prior written consent was not obtained, as required by Section 11.6.

## 10.5 Termination for Convenience

WDBA may at any time, terminate this Agreement upon 30 days written notice to the Independent Certifier.

## 10.6 Independent Certifier's Rights upon Termination

10.6.1 Upon a termination under Sections 10.3, 10.4 or 10.5 of this Agreement, the Independent Certifier shall not be entitled to any damages or compensation in respect of the termination or any other amount in respect of Indirect Losses.

10.6.2 Upon a termination pursuant to Section 10.5, the Independent Certifier shall be entitled to payment from WDBA of an amount corresponding to the value of the Certification Services it has performed up to the later of the termination date or, if it is not replaced on the termination date, the date on which it is replaced and ceases to perform the Certification Services.

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## 10.7 Procedure Upon Termination

10.7.1 After the end of the term of this Agreement or the earlier termination thereof, the Independent Certifier shall:

- (a) work in collaboration with WDBA; and
- (b) return to WDBA all Contract Material and all other information concerning the Project Work held or prepared by or otherwise in the possession or control of the Independent Certifier.

10.7.2 In the event of the early termination of this Agreement, the Independent Certifier shall, as and when required by WDBA, cause the persons it appointed to carry out the Certification Services to meet with WDBA, and/or Project Co and such other persons as may be designated by WDBA, with a view to providing them with sufficient information to enable them to continue to carry out the Certification Services and obtain Certificates for the Project Work and other matters requiring certification without difficulty or delay.

## 10.8 Effect of Termination

Except as otherwise expressly provided in this Agreement, termination of this Agreement shall be without prejudice to any accrued rights and obligations hereunder as at the date of termination (including the right of WDBA to recover damages from the Independent Certifier).

## 10.9 Survival

The Termination of this Agreement shall not affect the continuing rights and obligations of WDBA and the Independent Certifier under Sections 10.6, 10.7, 10.8 or under Sections 11.9 (*Confidentiality*) and Section 11.10 (*Contract Material*), or under any other Section of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

## 11. GENERAL

### 11.1 Entire Agreement

11.1.1 Subject to the terms of the Project Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement.

11.1.2 No reliance may be placed on any representation, warranty, opinion, notice or statement of fact by WDBA or by its respective directors, officers, employees, representatives or agents, except to the extent such representation, warranty, opinion, notice or statement of fact is in writing and is incorporated into or set out in this Agreement. Accordingly, no Claim may be made in connection with any such representation, warranty, opinion, notice or statement of fact, except as provided herein.

### 11.2 Independent Contractor

11.2.1 The Independent Certifier, its officers, directors, members, employees and agents, IC Personnel and any other persons engaged by the Independent Certifier in the performance of the Certification Services, shall not by virtue of this Agreement or the

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performance of the Certification Services be in the service or employment of WDBA for any purpose whatsoever.

11.2.2 The Independent Certifier shall be responsible for all necessary matters as employer or otherwise in relation to its officers, directors, members, employees and agents, IC Personnel and other persons who are engaged by the Independent Certifier.

### 11.3 Waiver

Failure by WDBA or the Independent Certifier at any time to enforce any provision of this Agreement or to require performance by any other party of any of the provisions of this Agreement shall not be construed as a waiver of any such provision and shall not affect the validity of this Agreement or any part thereof or the right of either party to enforce any provision in accordance with its terms.

### 11.4 Notices

11.4.1 Wherever in this Agreement provision is made for the giving, making or issuing of any notice, endorsement, consent, confirmation, request, approval, report or determination (a "**Notice**") by any person, unless otherwise specified, such Notice shall be in writing.

11.4.2 Any Notice shall be deemed duly given if it is (i) signed by a duly authorized representative of the person giving the Notice, or by a person acting on its behalf, and (ii) personally delivered, sent through a secure document-sharing site approved by WDBA, sent by a recognized courier service (with delivery receipt requested), or sent by confirmed facsimile or e-mail transmission, to the following addresses:

To WDBA

Windsor-Detroit Bridge Authority  
[REDACTED]

[REDACTED]

With a copy to: [REDACTED]

[REDACTED]

To the Independent Certifier

[REDACTED]

[REDACTED]

11.4.3 Any party may change its address for Notice to a new address, a new facsimile number or a new e-mail address by Notice to the other party.

11.4.4 Where any Notice is sent to a party through a secure document-sharing site or by facsimile or e-mail, an original of the Notice, if requested by the addressee, shall also be personally delivered or sent by a recognized courier service (with delivery receipt requested) within 5 Business Days of such request by the addressee.

### 11.5 Deemed Receipt

Any Notice shall be deemed to have been received:

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11.5.1 if sent by personal delivery or by a courier service, upon delivery;

11.5.2 if sent through a secure document-sharing site, by facsimile or e-mail:

(a) on a Business Day prior to 4:00 p.m., upon sending;

(b) on a Business Day after 4:00 p.m. or on a day which is not a Business Day, at 9:00 a.m. on the next Business Day; and

in the case of a Notice set by facsimile or email, subject to:

(c) confirmation of transmission or acknowledgement of receipt; and

(d) there having been no telephonic communication by the recipient to the sender (any such telephonic communication to be confirmed in writing) that the facsimile or the email has not been received in legible form:

(i) within three hours after sending, if sent on a Business Day before 2:00 p.m.; or

(ii) by noon on the following Business Day if sent after 2:00 p.m. on a Business Day or if sent on a day which is not a Business Day.

#### 11.6 Transfer, Assignment and Change in Control

The Independent Certifier:

11.6.1 shall not (i) Assign this Agreement or any right under this Agreement or (ii) undergo a Change in Control, without the prior written consent of WDBA; and

11.6.2 agrees that any Assignment which WDBA consents to, shall not release or discharge the Independent Certifier from any obligation or liability under this Agreement.

#### 11.7 Disputes

11.7.1 Any dispute between any of the parties with respect to any of the subject matter of this Agreement will be resolved in accordance with, and the parties will comply with, Section 5 of the Dispute Resolution Procedure set out, and PA Schedule 23 [*Dispute Resolution Procedure*] of the Project Agreement is deemed to be incorporated, with the necessary alterations, in this Agreement.

11.7.2 The parties agree to consolidate any arbitration procedure instituted pursuant hereto with any other arbitration procedure instituted by WDBA or Project Co arising from a Dispute that raises common, identical or similar issues of fact or law.

#### 11.8 Governing Laws and Jurisdiction

11.8.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, without regard to any laws or choice of law rules that might direct the application of the laws of another jurisdiction.

11.8.2 Subject to the provisions of Section 11.7 of this Agreement, the courts of the Province of Ontario shall have exclusive jurisdiction (subject to any court or tribunal of federal jurisdiction in Canada) with respect to any dispute arising out or in connection with this

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Agreement including disputes regarding its validity or interpretation and the exercise of any right or the enforcement of any obligation arising hereunder.

## 11.9 Confidentiality

### 11.9.1 The Independent Certifier shall ensure that:

- (a) except as required by Applicable Law or as otherwise may be required under this Agreement, the Independent Certifier, its officers, directors, members, employees, agents, contractors or subcontractors (or any of their respective employees) shall not disclose, or otherwise make public, any Contract Material or any other information or document acquired in connection with the performance of the Certification Services without the prior written consent of WDBA; and
- (b) no Contract Material shall be used, copied, supplied or reproduced for any purpose other than for the performance of the Certification Services under this Agreement.

11.9.2 Except where expressly stipulated to the contrary herein, the respective rights and obligations of the parties under this Section 11.9 shall remain in effect for a period of **10** years following the termination or expiry of this Agreement, unless WDBA gives notice to the contrary to the Independent Certifier.

11.9.3 WDBA may at any time require the Independent Certifier to give and to arrange for its officers, directors, members, employees, agents or subcontractors of any other third party (or any of their respective employees) engaged in the performance of the Certification Services to give written undertakings, in the form of confidentiality agreements on terms required by WDBA, relating to the non-disclosure of Contract Material, in which case the Independent Certifier shall promptly arrange for such agreements to be made and delivered to WDBA.

## 11.10 Contract Material

11.10.1 WDBA and the Independent Certifier agree that the Independent Certifier does not and shall not have any rights, including any Intellectual Property Rights, in any Contract Material provided to the Independent Certifier or created or required to be created by any WDBA, a WDBA Party, a WDBA Person, Project Co or a Project Co Person.

11.10.2 All title and ownership rights, including any Intellectual Property Rights, in and to the Contract Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Certification Services, are hereby assigned to WDBA on creation, or where such title or ownership rights cannot be assigned before creation of the Contract Material, they shall be assigned to WDBA upon creation. In addition, to the extent that copyright may subsist in such Contract Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and shall ensure that any agent or employee of the Independent Certifier shall have waived all such moral rights.

11.10.3 The Independent Certifier shall do all such things and execute all such documents as may be reasonably requested by WDBA in order to confirm or perfect the assignment of any title or ownership rights in or to the Contract Material.

## 11.11 Time of Essence

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Time shall be of the essence of this Agreement and of the transactions contemplated by this Agreement.

#### 11.12 Amendment

No change or modification of this Agreement shall be valid unless it is in writing and signed by each party.

#### 11.13 Binding Effect

Subject to Section 11.6 (*Transfer, Assignment and Change of Control*), this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

#### 11.14 Counterparts

This Agreement may be executed in one or more counterparts, each of which contains one original signature. Any single counterpart or a set of counterparts executed, in either case, by all of the parties shall constitute a full, original and binding agreement for all purposes.

#### 11.15 Electronic Execution

To evidence the fact that a party has executed this Agreement, such party may send a copy of its executed counterpart to the other party by facsimile, or by email in portable document format (PDF) format. That party will be deemed to have executed this Agreement on the date that its facsimile or email is deemed to be received in accordance with Section 11.5. In such event, such sending party will forthwith deliver to the other party the originally executed counterpart of this Agreement to the other party.

## 12. DEFINITIONS AND INTERPRETATION

### 12.1 Definitions

Unless defined specifically in this Agreement or unless the context otherwise requires, capitalized but otherwise undefined terms in this Agreement will have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of the Project Agreement.

In this Agreement, unless the context otherwise requires, the following words and expressions have the following meanings.

**Agreement** means this independent certifier agreement, including the Background and all schedules, as it may be amended, supplemented or restated from time to time.

**Assign** means to sell, convey, transfer, assign, subcontract, dispose of, or otherwise alienate or encumber an agreement or rights under an agreement and **Assignment** shall have a similarly extended meaning.

**Certification Services** means the services listed in Schedule 1 [*Certification Services*].

**Change** means any change made or proposed to be made to the Certification Services in accordance with the provisions of Section 7 (*Change in Certification Services*).

**Change in Control** has the meaning set out in the Project Agreement.

**Change Order** has the meaning set out in Section 7.3(iii).

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**Change Price Request** has the meaning set out in Section 7.3(i).

**CISD** mean the Canadian Industrial Security Directorate of Public Procurement and Services Canada

**Claim for a Change** has the meaning set out in Section 7.1(i)(B).

**Contract Material** means the material:

- (a) provided to the Independent Certifier or created or required to be created by Project Co or WDBA; and
- (b) provided by or created or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Certification Services;

including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored or recorded by any means).

**DOS** means designated organization screening.

**Fees and Disbursements** has the meaning set out in 6.1(i).

**Insolvency Event** means the occurrence of any of the following events or circumstances with respect to the Independent Certifier:

- (a) if the Independent Certifier commits any act of bankruptcy, becomes insolvent, admits in writing its inability to pay its debts generally as they become due, or admits its insolvency or is declared bankrupt;
- (b) if any proceeding or assignment, voluntary or involuntary, is commenced or any action is taken by or respecting the Independent Certifier pursuant to any Laws relating to bankruptcy, insolvency, reorganization of debts, liquidation, winding up, dissolution or reorganization of or relief with respect to debtors or debtors' obligations or assets or other similar matters in a relevant jurisdiction, and in respect only of proceedings which are involuntary, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 10 Business Days of such proceedings being instituted or commenced;
- (c) if any person takes control of, or takes steps to take control the Independent Certifier or any of its assets, or if any proceedings are instituted against the Independent Certifier that could result in it being declared or ordered bankrupt or in administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of any of them or with respect to its debts or obligations, or any such proceedings are instituted by the Independent Certifier or a third party seeking any such result;
- (d) if a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or like person takes possession of or is appointed over, the Independent Certifier or the whole or any material part of the assets of the Independent Certifier;
- (e) if any execution, sequestration, extent, garnishment or other process of or order by any Governmental Authority becomes enforceable against the Independent Certifier or if a distress or analogous process is levied against any property of the

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Independent Certifier that materially adversely affects the ability of the Independent Certifier to perform its obligations; or

- (f) if the Independent Certifier ceases to carry on any material part of its business;

**Integrity Provisions** means:

- (a) the integrity regime published by Public Services and Procurement Canada which consists of (i) The Ineligibility and Suspension Policy found at <http://www.tpsgc-pwgsc.gc.ca/ci-if/politique-policy-eng.html>, and (ii) Standard Instructions - Goods and Services - Competitive Requirements – Integrity Provisions – Bid, Sections 01 to 20 (“**Code of Conduct - Integrity Provisions**”) found at <https://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual/1/2003/20>; and
- (b) the United States federal suspension and debarment list found at <https://www.sam.gov/portal/SAM/>, and the 1980 *Public Act 278* (180 PA 278), Michigan Compiled Law (MCL) 423.321 et seq. which requires that no contract may be entered into with a subcontractor, manufacturer, or supplier listed in the register maintained by the United States Department of Labor of employers who have been found in contempt of court by a federal court of appeals on not less than 3 occasions involving different violations during the preceding 7 years for failure to correct an unfair labor practice, as prohibited by Section 8 of Chapter 372 of the *National Labor Relations Act*, 29 USC 158, and any similar or comparable provisions of the Federal Aid Eligibility Requirements including any false statements regarding highway projects,

each as they may be amended, supplemented or restated from time to time, or replaced by policies or Applicable Laws for substantially the same purpose from time to time.

**PA Party and PA Parties** means each of WDBA and Project Co.

**Project Agreement** means the agreement entered into between WDBA and Project Co dated as of September 28, 2018 pursuant to which Project Co is responsible for carrying out the Project Work, as such agreement may be amended, supplemented, restated or replaced from time to time.

**Proposal** means the proposal submitted by the Independent Certifier in response to the request for proposals leading to its appointment as Independent Certifier.

**Term** has the meaning set out in Section 10.1.

## 12.2 Interpretation

This Agreement shall be interpreted according to the following provisions, save to the extent that the context or the express provisions of this Agreement otherwise require:

12.2.1 Except as otherwise required by Applicable Law, when WDBA has,

- (a) the choice to take or not take an action including to give or grant an agreement, approval, confirmation, acceptance, waiver, permission or consent,

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- (b) the right or obligation to make an election, determination, designation, rejection, requirement or stipulation, to reserve a right, to make a request, to exercise an option, to make a decision, or
- (c) the right to consider or to come to a judgment, view or an opinion,

with respect to any matter under this Agreement, it means that WDBA has the sole, subjective, absolute, unqualified and unfettered discretion with respect to the matter in question, without (i) any implied or express duty of good faith and (ii) any requirement to act reasonably or to provide reasons, unless there is a specific requirement in this Agreement for WDBA to act reasonably with respect to such matter. In the exercise of any such unfettered discretion, WDBA shall be entitled to have regard solely to what it considers to be in its own best interests and where relevant, in the best interests of any affected person. Such discretion includes the right to refrain from taking any action and the ability, where appropriate, to impose conditions in the exercise of such discretion.

- 12.2.2 The table of contents, headings and sub headings, marginal notes and references to them in this Agreement are for convenience of reference only and shall not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement.
- 12.2.3 Save in the event of an express reference to another document, all references to Sections and Schedules are references to sections or schedules of this Agreement.
- 12.2.4 The Schedules to this Agreement are an integral part of this Agreement and any reference to this Agreement includes a reference thereto.
- 12.2.5 Any reference to a document shall include any supplement, replacement or restatement of that document.
- 12.2.6 Unless the context indicates otherwise, the words "Agreement", "this Agreement", "the Agreement", "herein", "hereto", "hereof" and "hereunder" and other words of like import refer to this Agreement as a whole and not to the particular Section, Schedule, Part, paragraph, Annex or Appendix in which such word may be used.
- 12.2.7 Any reference to the time of day is a reference to Eastern Standard Time or Eastern Daylight Time, as the case may be.
- 12.2.8 All monetary amounts are expressed in Canadian dollars.
- 12.2.9 Subject to any specific provision of this Agreement expressly concerning an agreement, a document, a standard or a principle, all references to any agreement, document, standard or principle in this Agreement, shall mean that agreement, document, standard or principle as amended or supplemented by any addition or supplement, or the agreement, document, standard or principle that replaces it.
- 12.2.10 Any stipulation that any obligation be performed or action be taken "in accordance" with or "in compliance" with or "in conformity" with any standard, code or specification or other requirement means that such obligation or action is to exceed or at least equal that Standard, code, specification or other requirement.
- 12.2.11 A reference to any statute or statutory provision, including any subordinate legislation, includes any statute or statutory provision which amends, extends, consolidates or replaces it and includes any orders, regulations, codes of practice, instruments or other

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subordinate legislation made under the relevant statute. This rule also applies to the norms, quality standards, codes and other rules established by self-regulatory bodies to which reference is made in this Agreement.

12.2.12 The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of such agreement.

12.2.13 Words importing the singular include the plural and vice versa, and words importing gender include all genders.

12.2.14 Whenever the terms “will” or “shall” are used in this Agreement they are to be construed and interpreted as synonymous and are to be read as shall.

12.2.15 In this Agreement, the words “including” and “includes”, when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set out or to similar items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.

12.2.16 Generic words are not given a restrictive meaning:

- (a) if they are introduced by the word “other”;
- (b) if they are preceded by words indicating a particular class of act, matter or thing;  
or
- (c) if they are followed by particular examples intended to be embraced by those general words.

12.2.17 No waiver of or consent to depart from the requirements of any provision of this Agreement shall be binding against WDBA unless it is in writing and is signed by or on behalf of WDBA. For all purposes of this Agreement, the terms “writing” or “written” shall include any text in an electronic communication.

12.2.18 Any reference to a public body shall be deemed to include a reference to any successor(s) to such public body or any body or entity which has taken over the functions or responsibilities of such public body.

12.2.19 A reference to persons for whom a party is in law responsible includes that party's employees, representatives, agents, mandataries and any other persons over whom that party could reasonably be expected to exercise control.

12.2.20 The term “person” means a natural person, legal person, partnership (including undeclared partnerships, general partnerships, and limited partnerships), trust, fund, association, organization or other group of persons, whether or not constituted as a legal person, including a natural person or other person acting in its capacity as trustee, liquidator, executor or legal representative, including any agency, or any public law body, administrative unit or financial unit which, pursuant to Laws, has the capacity to exercise civil rights and possess property, in its own name or in the name of the Federal Government.

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- 12.2.21 Any reference to accounting or financial terms in this Agreement, unless otherwise indicated, are to be interpreted in accordance with the Accounting Principles, consistently applied.
- 12.2.22 Each party has had the opportunity to take legal advice with respect to this Agreement.
- 12.2.23 Subject to Section 11.4 (*Notices*), if the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.
- 12.2.24 Where this Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 12.2.25 Where this Agreement states that an obligation shall be performed “no later than” or “by” a prescribed number of days before a stipulated date or event or “by” a date which is a prescribed number of days before a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 12.2.26 Where this Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 12.2.27 Acronyms, abbreviations and terms that are technical terms or terms of art in an industry which are not defined in this Agreement will be interpreted consistent with Good Industry Practice appropriate to that industry.
- 12.2.28 Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Law. If any provision of this Agreement which is not material to a right or obligation of a party, is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.
- 12.2.29 The Non-Disclosure Agreement attached as Schedule 5 (Non-Disclosure Agreement) is hereby incorporated into this Agreement and applies to all Confidential Information disclosed or otherwise made available to Independent Certifier pursuant to this Agreement.

**TO EVIDENCE THEIR AGREEMENT**, the parties have executed this Agreement as of the date and year written on the first page hereof.

**WINDSOR-DETROIT BRIDGE AUTHORITY**

By: \_\_\_\_\_  
[REDACTED]

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**LEIGHFISHER CANADA INC.**

By: \_\_\_\_\_  
Authorized Signatory  
**[REDACTED]**

By: \_\_\_\_\_  
Authorized Signatory  
**[REDACTED]**

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**SCHEDULE 1****SCOPE OF WORK****CERTIFICATION SERVICES**

Project Agreement Incorporated by Reference

The Project Agreement, including all references to the role and activities of the Independent Certifier set out therein, is incorporated into this Schedule 1 by reference and forms part of the Contract.

In the event of conflicts or inconsistencies between the Project Agreement and this Schedule 1, the provisions of this appendix shall prevail.

**I GENERAL SCOPE OF WORK****I.1 General obligations of the Independent Certifier****(a) Certification Services**

- (i) The Independent Certifier shall provide the Certification Services (i) in accordance with the provisions of the Agreement, Good Industry Practice and the obligations and duties set out in this Schedule and (ii) as required for the purposes of carrying out the Certification Services, pursuant to the Project Agreement or as otherwise directed by WDBA.
- (ii) The Independent Certifier shall perform its services in such instances and in such a manner as is required and appropriate in order to facilitate the Project Work undertaken by Project Co in compliance with the requirements set out in the Project Agreement.
- (iii) The Independent Certifier shall undertake all activities and work that are assigned to the Independent Certifier in the Project Agreement and shall undertake these activities and work in accordance with the requirements set out in the Project Agreement.

**(b) Monitoring and Reporting**

- (i) The Independent Certifier shall monitor and record whether the progress of the implementation of the Project Work is in compliance with the schedules provided in Schedule 9 [*Project Schedule*] of the Project Agreement.
- (ii) If documentation including reports, certifications, comments and/or any other document is required to be sent by the Independent Certifier to the PA Parties and/or other persons, then the Independent Certifier shall ensure that such documentation is sent to such entities simultaneously.
- (iii) The Independent Certifier shall use any electronic systems that are provided by Project Co for the purposes of Project Work.

**(c) On-Site Personnel**

The Independent Certifier shall ensure the presence on the Site of its engineer representative and technical field service representatives as necessary: (i) to undertake the Independent Certifier's responsibilities under the Certification Procedure and this

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Agreement and (ii) to monitor and observe commissioning activities undertaken by Project Co. Such presence on Site is not expected to be full-time.

(d) Disputes

The Independent Certifier shall provide its opinion on any matters of dispute referred to the Independent Certifier under the Project Agreement.

I.2 Specific obligations of the Independent Certifier relating to Project Work

(a) Duties Relating to the Project Work Schedule

The Independent Certifier shall monitor the progress of Project Work, particularly Construction Work, relative to the DB Schedule.

(b) Duties Relating to Quality

The Independent Certifier shall monitor the NCR tracking system that Project Co shall prepare and identify any NCRs generated by Project Co or WDBA that may reduce or alter the Construction Period Payments as described in Schedule 26 [*Construction Period Payments*]

(c) Duties Relating to Meetings

The Independent Certifier shall:

- (i) attend all meetings to which the Independent Certifier is invited including any committee meetings to facilitate coordination between Project Co and WDBA; and
- (ii) keep full and proper written records of all meetings attended and/or conducted by the Independent Certifier and within 7 days of the relevant meeting provide a copy of the meeting record to Project Co and WDBA.

(d) Duties Relating to Certification

- (i) The Independent Certifier shall in all cases start to prepare for a certification, in advance of receiving a formal request for the certification from Project Co.
- (ii) The Independent Certifier shall take account of the time periods for certification allowed for in the Project Agreement and shall ensure that, in all cases where such time period may not allow for all necessary on-Site inspections and review of all relevant submissions and supporting documentation for the certification, that the necessary inspection and review activities shall be started by the Independent Certifier sufficiently in advance of the formal request for certification such that the certification time periods specified in the Project Agreement shall be met by the Independent Certifier in all instances.

I.3 Reporting obligations of the Independent Certifier

(a) General

- (i) All reports and documentation prepared by the Independent Certifier shall be sent by the Independent Certifier to Project Co and WDBA.

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- (ii) In addition to any other reports specified in the Project Agreement and the Agreement, the Independent Certifier shall prepare and issue:
  - (A) Independent Certifier monthly progress reports; and
  - (B) Independent Certifier quarterly summary reports.

(b) Independent Certifier Monthly Progress Report

Each month, the Independent Certifier shall prepare and issue within 5 Business Days of the end of each month a detailed report addressing at a minimum:

- (i) significant progress of Project Work during the reporting period and the achieved Project Work relative to Project Co's schedule, supplemented by photographs and tables as applicable demonstrating the status of Construction Work;
- (ii) a listing and brief details of NCRs arising during the reporting period and a list of all outstanding NCRs as at the end of the reporting period;
- (iii) list of inspections undertaken by the Independent Certifier during the reporting period, distinguishing between on-Site and off-Site inspections;
- (iv) list of meetings attended by the Independent Certifier during the reporting period; and
- (v) any certification processes started or completed during the reporting period.

(c) Independent Certifier Quarterly Summary Reports

Every calendar quarter, the Independent Certifier shall prepare and issue within 10 Business Days of the end of each quarter, a detailed report presenting at a minimum:

- (i) an executive summary on the progress of the Project Work;
- (ii) a list of any Disputes arising during the reporting period;
- (iii) a financial report for the services of the Independent Certifier detailing: (i) the Fees and Disbursements expended in the past quarter; and (ii) the Fees and Disbursements expected to be expended in the next quarter; and
- (iv) a look-ahead to the next quarter including: any significant events and/or Project milestones scheduled for the next quarter; a list of scheduled audits and inspections to be undertaken by the Independent Certifier.

## II KEY INDIVIDUALS AND OTHER TEAM MEMBERS

A team of individuals will be assigned to a team that will perform the Independent Certifier services. The following positions are expected to be included as part of the team ("Key Individuals"):

- Project Manager (1 resource)
- Deputy Project Manager (1 resource)
- Senior Technical Specialist (2 resources)

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- Intermediate Technical Specialist (2 resources)

Other Team Members (include, but not limited to the following)

- Technical Field Support (8 resources)
- Administrator (1 resource)

Additional resources may be assigned to in the above or additional positions as part of the team. Such personnel are “**Other Team Members**”.

### **III FACILITIES AND OTHER RESOURCES PROVIDED TO INDEPENDENT CERTIFIER**

The Independent Certifier’s personnel shall be furnished and have access to a dedicated office at the Site during normal business hours, as determined by WDBA and Project Co.

### **IV FEDERAL GOVERNMENT SECURITY CLEARANCE REQUIREMENTS**

If the Independent Certifier and its personnel do not already possess the federal government security clearances described in the Contract as of the effective date of the Contract, the Independent Certifier shall, as soon as possible, ensure all required applications are submitted to obtain such clearances and cooperate with WDBA to ensure the smooth processing of all applications, as required, and without additional cost charged to WDBA.

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**SCHEDULE 2**

**BASIS OF PAYMENT**

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**SCHEDULE 3**

**WDBA REQUEST FOR PROPOSALS**

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**SCHEDULE 4**

**PROPOSAL**

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**SCHEDULE 5**

**NON-DISCLOSURE AGREEMENT**

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**SCHEDULE 33**

**FORM OF INSURANCE TRUST AGREEMENT**

**WINDSOR-DETROIT BRIDGE AUTHORITY**

- and -

**BRIDGING NORTH AMERICA GENERAL PARTNERSHIP**

- and -

**BNY TRUST COMPANY OF CANADA as  
Collateral Trustee**

- and -

**BNY TRUST COMPANY OF CANADA as Account Trustee**

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**INSURANCE TRUST AGREEMENT**

**THIS AGREEMENT** is made as of the 28th day of September, 2018.

AMONG:

**WINDSOR-DETROIT BRIDGE AUTHORITY,**  
a corporation incorporated pursuant to the *International Bridges and Tunnels Act* (Canada)

(“**WDBA**”)

- and -

**BRIDGING NORTH AMERICA GENERAL PARTNERSHIP,**  
a general partnership constituted under the laws of Ontario

(“**Project Co**”)

- and –

**BNY TRUST COMPANY OF CANADA,**  
a trust company duly constituted under the laws of Canada,  
acting as collateral trustee for and on behalf of the Senior Lenders

(the “**Collateral Trustee**”)

- and -

**BNY TRUST COMPANY OF CANADA,**  
a trust company duly constituted under the laws of Canada,  
acting as Account Trustee for the benefit of the parties

(the “**Account Trustee**”)

**BACKGROUND:**

- A. WDBA and Project Co have entered into the Project Agreement.
- B. WDBA, the Collateral Trustee and Project Co have entered into the Lenders' Direct Agreement.
- C. WDBA, the Collateral Trustee and Project Co have agreed that all amounts from time to time contained in the Insurance Trust Accounts are to be held in trust by the Account Trustee in accordance with the terms of this Agreement, and that no releases, distributions or transfers of any funds from the Insurance Trust Accounts shall be made other than in accordance with the terms of this Agreement.

**IN CONSIDERATION** of the mutual covenants and agreements of the parties herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

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## 1. DEFINITIONS

Unless defined specifically in this Agreement or unless the context otherwise requires, capitalized but otherwise undefined terms in this Agreement will have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of the Project Agreement.

In this Agreement the following terms have the meanings set out in this Section 1.

**Agreement** means this insurance trust agreement including the Background and any schedules to this agreement, as amended, supplemented or restated from time to time.

**Assign** means to sell, convey, transfer, assign, subcontract, dispose of, or otherwise alienate or encumber an agreement or rights under an agreement and **Assignment** shall have a similarly extended meaning.

**Bank** means The Toronto-Dominion Bank.

**Change of Authorization Event** has the meaning set out in Section 8(a) of this Agreement.

**Change of Authorization Notice** has the meaning set out in Section 8(b)(ii) of this Agreement.

**Change in Control** has the meaning set out in the Project Agreement.

**Default Notice** means a written notice given by the Collateral Trustee to the Account Trustee that an event of default under the Senior Lending Agreements has occurred and is continuing.

**Default Period** means the period commencing on the date upon which the Account Trustee receives a Default Notice and ending on the date upon which the Account Trustee receives notice from the Collateral Trustee that the event of default which was the subject matter of the applicable Default Notice has been cured.

**Dispute Resolution Procedure** means the procedure for resolving Disputes set out in Schedule 23 [*Dispute Resolution Procedure*] of the Project Agreement.

**Ineligible Person** has the meaning set out in Section 10.5.

**Insurance Accounts** means:

(i) in the case of Insurance Proceeds which are received in Canadian dollars and which are to be dealt with as set out in Section 4(a)(i)(B), the following account held at the Bank - Transit/Branch No.

[REDACTED]:

[REDACTED].

and

(ii) in the case of Insurance Proceeds which are received in US dollars and which are to be dealt with as set out in Section 4(a)(i)(B), the following account held at the Bank - Transit/Branch No.

[REDACTED]:

[REDACTED].

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**Insurance Policies** means the following insurance policies required to be obtained and maintained by WDBA pursuant to Schedule 29 [*Insurance Requirements*] of the Project Agreement:

*DB Period*

Wrap-up Liability  
Course of Construction  
Environmental Impairment Liability  
Sabotage and Terrorism

*OMR Period*

Property & Equipment Breakdown  
General Liability  
Environmental Impairment Liability  
Sabotage and Terrorism

**Insurance Proceeds** means the proceeds of any Insurance Policy received or receivable by an Insured Party pursuant to an Insurance Policy. Proceeds of any Insurance Policy received or receivable by any party other than an Insured Party are not Insurance Proceeds.

**Insurance Trust Accounts** means:

(i) in the case of Insurance Proceeds which are received in Canadian dollars and which are to be dealt with as set out in Section 4(a)(ii), the following account held at the Bank - Transit/Branch No.

[REDACTED]:

[REDACTED].

and

(ii) in the case of Insurance Proceeds which are received in US dollars and which are to be dealt with as set out in Section 4(a)(ii), the following account held at the Bank - Transit/Branch No.

[REDACTED]:

[REDACTED].

**Insured Party** means each person who is designated as a named or additional insured under an Insurance Policy.

**Lenders' Direct Agreement** means the lenders' direct agreement dated as of the 28<sup>th</sup> day of September, 2018 between WDBA, Project Co and the Collateral Trustee.

**Notice** has the meaning set forth in Section 11.1.

**Order** has the meaning set out in Section 7(l) of this Agreement.

**Proceeds Accounts** means:

(i) in the case of Insurance Proceeds which are received in Canadian dollars and which are to be dealt with as set out in Section 4(a)(i)(A), the following account held at the Bank - Transit/Branch No.

[REDACTED]:

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[REDACTED]

and

(ii) in the case of Insurance Proceeds which are received in US dollars and which are to be dealt with as set out in Section 4(a)(i)(A), the following account held at the Bank - Transit/Branch No.

[REDACTED]:

[REDACTED].

**Trust Property** means all of the property held in trust by the Account Trustee pursuant to this Agreement, including (i) the Insurance Trust Accounts, and all amounts from time to time contained in such accounts, (ii) the Insurance Policies and (iii) the Insurance Proceeds.

## 2. INSURANCE TRUST ACCOUNT

- (a) Prior to the commencement of a Default Period, the Insurance Trust Accounts and all amounts from time to time contained in such accounts, including interest thereon, shall be held in trust by the Account Trustee for the benefit of each Insured Party. During a Default Period, the Insurance Trust Accounts, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of the Collateral Trustee and the Senior Lenders, provided that, upon receipt by the Account Trustee of a Change of Authorization Notice, the Insurance Trust Accounts, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of WDBA.
- (b) The Account Trustee shall not release, distribute or transfer any funds from the Insurance Trust Accounts other than in accordance with the terms of this Agreement.
- (c) Notwithstanding any other provision of this Agreement and subject to Section 2(a), the Collateral Trustee, WDBA, and Project Co agree that, if any of them either receives any Insurance Proceeds from an Insurance Trust Account or has the right to direct the Account Trustee to advance funds in respect of any Insurance Proceeds from an Insurance Trust Account to third parties, such funds shall be directed, used or advanced only for one of the following purposes in accordance with Section 31 (*Damage and Destruction*) of the Project Agreement:
  - (i) the repair, reinstatement, restoration or replacement of the Facility or any other assets, materials or goods necessary or desirable for the carrying out of the Project in respect of which such Insurance Proceeds have been paid;
  - (ii) the completion of the Project; or
  - (iii) to pay to the Insured Party the amount of any Loss suffered or incurred by the Insured Party for which the subject Insurance Proceeds were paid under the Insurance Policies.
- (d) The use of any Insurance Proceeds received in respect of a Claim by Project Co for delay in start-up, soft costs or business interruption may be applied in accordance with the terms of the Senior Lending Agreements to enable Project Co to carry out the Project.

## 3. INSURANCE POLICIES

The policyholder of each Insurance Policy shall deliver, or cause to be delivered, to the Account Trustee a full and complete copy of each such Insurance Policy. The Account Trustee shall hold the Insurance

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Policies in trust for the benefit of each of the Insured Parties, beneficiaries and loss payees, as the case may be, thereunder.

All of the Insurance Policies shall provide for the payment of Insurance Proceeds to the Proceeds Accounts through the Account Trustee.

#### 4. APPLICATION OF INSURANCE PROCEEDS

Subject to Section 2(d), the Account Trustee shall distribute any Insurance Proceeds that are paid over to it by any insurer, Project Co, the Collateral Trustee or WDBA as follows.

- (a) In the case of each Insurance Policy which provides first party property insurance coverage, that is required to be maintained under the Project Agreement:
  - (i) if the Account Trustee has not received a Default Notice and:
    - (A) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same Loss or Claim, is less than **[\$REDACTED]**, such Insurance Proceeds shall be deposited to the applicable Proceeds Account to be applied by Project Co to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid, in accordance with and subject to, the provisions of Section 31 (*Damage and Destruction*) of the Project Agreement; or
    - (B) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same Loss or Claim, is equal to or greater than **[\$REDACTED]**, such Insurance Proceeds shall be deposited to the applicable Insurance Account to be applied by the Collateral Trustee to reimburse Project Co for the costs of repairing, restoring or replacing the assets in respect of which such Insurance Proceeds have been paid, in accordance with and subject to, the provisions of Section 31 (*Damage and Destruction*) of the Project Agreement; or
  - (ii) if the Account Trustee has received a Default Notice such Insurance Proceeds shall be deposited to the applicable Insurance Trust Account to be distributed by the Account Trustee in such amounts and to such persons as the Collateral Trustee may at any time or from time to time direct in writing, provided that, if the Account Trustee has received a Change of Authorization Notice, the Account Trustee shall release such Insurance Proceeds from such Insurance Trust Account in such amounts and to such parties as WDBA may at any time or from time to time direct in writing, in each case, to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid.
- (b) The Account Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in this Section 4 have been made, including any Insurance Proceeds held in such Insurance Trust Account:
  - (i) if the Account Trustee has not received a Default Notice and the Account Trustee has not received a Change of Authorization Notice, to the Insured Parties entitled to the Insurance Proceeds pursuant to the Insurance Policies; and
  - (ii) if the Account Trustee has received a Default Notice, to such persons as the Collateral Trustee, or, following receipt by the Account Trustee of a Change of

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Authorization Notice, WDBA, may at any time or from time to time direct in writing.

## 5. DISTRIBUTION OF INSURANCE PROCEEDS ON REINSTATEMENT WORK

### 5.1 Rights of Collateral Trustee

If a Default Notice has been given and has not been withdrawn, no application or payment of Insurance Proceeds in excess of **[\$REDACTED]** may be made pursuant to this Section 5, without the prior written consent of the Collateral Trustee, which may be withheld in its sole discretion. The provisions of this Section 5 shall not limit the rights of the Collateral Trustee under any other section of this Agreement, including Section 4 and Section 8.

### 5.2 Payments to Project Co or Third Parties

Where Project Co undertakes Reinstatement Work in accordance with the provisions of Section 31 (*Damage and Destruction*) of the Project Agreement, and the Account Trustee or WDBA has the right to direct the application or payment of the Insurance Proceeds pursuant to Section 4, then the following procedure shall apply only in respect of Insurance Proceeds in excess of **[\$REDACTED]** per claim.

- (a) Where Project Co has already completed the Reinstatement Work in respect of the damage or destruction that gave rise to the payment of the Insurance Proceeds in accordance with Section 31.3 (*Conduct of Reinstatement Work*) of the Project Agreement and WDBA has not required Project Co to prepare a Reinstatement Plan or where an advance payment from an insurer has been received in respect of Reinstatement Work to be undertaken, the Insurance Proceeds shall be paid directly to Project Co by the Account Trustee or WDBA, as applicable.
- (b) If Project Co has, in accordance with the provisions of a Reinstatement Plan consented to by WDBA in accordance with Section 31.2 (*Reinstatement Plan*) of the Project Agreement, entered into a contract with a third party for the purpose of carrying out the Reinstatement Work in respect of the damage or destruction that gave rise to the Insurance Proceeds and, in accordance with such contract, Project Co is required to make a payment to such third party for such purpose, and if such work has been completed in accordance with Section 31.3 (*Conduct of Reinstatement Work*) of the Project Agreement and WDBA has no objection to the payment of Insurance Proceeds to Project Co, then subject to Section 5.2(d), WDBA shall, not later than the latest of:
  - (i) the date that is 15 Business Days after receipt by WDBA of a copy of an invoice from such third party to Project Co accompanied by a confirmation of Project Co addressed to WDBA that the amount of the invoice is payable in accordance with the relevant contract and that Project Co requires such invoice to be paid out of the Insurance Proceeds;
  - (ii) the date that is 7 Business Days prior to the due date for payment of such invoice by Project Co under the terms of the relevant contract; and
  - (iii) the date that is 15 Business Days after receipt of the Insurance Proceeds by the Account Trustee in respect of such Reinstatement Work,

instruct the Account Trustee to pay, or pay itself, as applicable, to the relevant third party an amount equal to the lesser of such Insurance Proceeds and the amount of the invoice from the third party. Upon acceptance of the relevant Reinstatement Work in accordance with Section 31.3 (*Conduct of Reinstatement Work*) of the Project Agreement, WDBA shall instruct the Account Trustee to pay or shall pay itself, as applicable, the balance of

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any such Insurance Proceeds to Project Co within 20 Business Days of receipt of request for such payment from Project Co. If, after the balance of the Insurance Proceeds is paid to Project Co, WDBA receives a demand from the relevant insurer for all or any part of such balance, Project Co shall pay the amount demanded to the relevant insurer within the time period stated in such demand.

(c) If Project Co in accordance with the provisions of a Reinstatement Plan, carries out itself, (including through its Prime Contractors who are responsible to carry such work out pursuant to the Prime Contracts), the Reinstatement Work in respect of which the Insurance Proceeds have been paid to the Account Trustee, and as such work or portions thereof have been completed in accordance with Section 31.3 (*Conduct of Reinstatement Work*) of the Project Agreement and WDBA has no objection to the payment of Insurance Proceeds to Project Co, then subject to Section 5.2(d), WDBA shall, on date that is 15 days after the later of:

- (i) receipt by WDBA of a certificate from Project Co addressed to WDBA confirming the amount of the Insurance Proceeds claimed by Project Co from the Account Trustee, based on the cost of the Reinstatement Work carried out by Project Co for the period in question; and
- (ii) receipt of the Insurance Proceeds by the Account Trustee in respect of the relevant Reinstatement Work for the period in question,

instruct the Account Trustee to pay Project Co an amount equal to the lesser of such Insurance Proceeds and the amount claimed in such certificate. Upon completion of the relevant Reinstatement Work and its acceptance in accordance with Section 31.3 (*Conduct of Reinstatement Work*) of the Project Agreement, WDBA shall, within 20 Business Days of receipt of a request from Project Co for payment, instruct the Account Trustee to pay the balance, if any, of such Insurance Proceeds to Project Co. If, after the balance of the Insurance Proceeds is paid to Project Co, WDBA receives a demand from the relevant insurer for all or any part of any balance of Insurance Proceeds that have been paid by a relevant insurer for amounts that are equivalent to agreed deductibles or uninsured retentions as provided in Schedule 29 that Project Co is responsible for pursuant to the terms of the Project Agreement, Project Co shall pay the amount demanded to the relevant insurer within the time period stated in such demand.

(d) Where WDBA does object to the payment of Insurance Proceeds to Project Co as provided in Section 5.2(e), WDBA shall provide its reasons for objecting to Project Co's claim within the period within which but for the absence of such objection WDBA would be required to instruct the Account Trustee to make payment pursuant to Section 5.2(b) or Section 5.2(c).

(e) WDBA may object to the amount claimed or to the Reinstatement Work in respect of which the claim is made in the following cases if:

- (i) the cost of the Reinstatement Work completed is less than the amount claimed;
- (ii) Project Co has not completed all of the Reinstatement Work in compliance with the Reinstatement Plan; or
- (iii) the balance of the Insurance Proceeds remaining in the hands of the Account Trustee following payment of the amount claimed would be insufficient to cover the estimated remaining cost to complete the Reinstatement Work (in which case the terms and conditions applicable pursuant to Section 31.5 of the Project Agreement in respect of a Reinstatement Funds Deficiency shall apply).

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Any Dispute under this Section 5.2(e) may be submitted by either WDBA or Project Co for resolution pursuant to the Dispute Resolution Procedure.

- (f) Each of WDBA and Project Co shall ensure that the terms of all Insurance Policies that it is required to take out and maintain in force in accordance with the Project Agreement including Schedule 29 [*Insurance Requirements*], are taken out and maintained in force upon terms which give effect to the provisions of this Section 5.
- (g) WDBA agrees that, subject to compliance by Project Co with its obligations under Section 31 (*Damage and Destruction*) of the Project Agreement and this Section 5, and provided that Project Co carries out and completes the Reinstatement Work in accordance with the requirements of the Project Agreement and the Reinstatement Plan, it shall not exercise any termination rights it might otherwise have under the Project Agreement by virtue of the event which gave rise to a claim for Insurance Proceeds in respect of the relevant damage or destruction.

## 6. ACCOUNT AGREEMENT

- (a) The Account Trustee hereby agrees to promptly provide to the Collateral Trustee all monthly statements and other information with respect to the Insurance Trust Accounts provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Accounts as the Collateral Trustee may from time to time request in writing.
- (b) The Account Trustee shall promptly provide to Project Co and WDBA all monthly statements and other information with respect to the Insurance Trust Accounts provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee shall make such requests to the Bank for additional information with respect to the Insurance Trust Accounts as WDBA or Project Co may from time to time request in writing.

## 7. THE ACCOUNT TRUSTEE

- (a) The Account Trustee shall ensure that during the term of this Agreement it shall not be a related person (as that term is defined in the *Income Tax Act (Canada)* on the date hereof) to Project Co, any Project Co Person, WDBA, any Affiliate of WDBA, any Senior Lender or any Affiliate of a Senior Lender and if it should become a related person to any one or more of any of them, it shall, at the request of WDBA resign as trustee hereunder and the remaining parties shall appoint a replacement Account Trustee to serve under this Agreement as provided in Section 9(b). If the Account Trustee requires access to Confidential Information or sensitive information to perform its duties hereunder it shall comply with the security requirements set forth in Section 56.3 (*Security Requirements*) of the Project Agreement.
- (b) The Account Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with any part of the Trust Property except as expressly provided by the terms of this Agreement. The Account Trustee shall carry out all written directions given by the Collateral Trustee, WDBA or Project Co, as applicable, in accordance with this Agreement and shall not be required to exercise any discretion in exercising any of its duties under this Agreement in pursuance of such written directions. The Account Trustee shall not be bound to do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof and has received instruction, advice or direction from the Collateral

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Trustee, WDBA or Project Co, as applicable, as to the action to be taken (except with respect to actions specifically set out herein to be performed by the Account Trustee).

- (c) The Account Trustee will exercise its powers and carry out its obligations hereunder as account trustee honestly, in good faith and in the best interests of the beneficiaries hereunder and in connection therewith will exercise that degree of care, diligence, and skill that a reasonably prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Account Trustee will not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No provision of this Agreement shall be construed to relieve the Account Trustee from liability for its own dishonesty, fraud, negligence (including negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (d) The Account Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise in connection with the Trust Property or the carrying out of its duties under this Agreement to the Collateral Trustee, the Senior Lenders, Project Co or any other person for any action taken or permitted by it to be taken, or for its failure to take any action, or for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Account Trustee, provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of duty by the Account Trustee. The Account Trustee in doing anything or permitting anything to be done in respect of the Trust Property or the carrying out of its duties under this Agreement is, and will be conclusively deemed to be, acting as trustee for the beneficiaries hereunder and not in any other capacity. Except to the extent provided in this Section 7(d), the Account Trustee will not be subject to any liability for debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Property, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of its duties hereunder and resort will be had solely to the Trust Property for the payment or performance thereof, and no other property or assets of the Account Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.
- (e) The Account Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, or in acting at the request or direction of the Collateral Trustee on behalf of the Senior Lenders, unless it shall have received adequate indemnity or security against such risk or liability satisfactory to it.
- (f) Notwithstanding the foregoing, the Account Trustee shall be liable for any action or failure to act arising from or in connection with the dishonesty, fraud, negligence (including negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder by the Account Trustee or any of its directors, officers or employees, or the failure to comply with the standard of care referred to in Section 7(c).
- (g) Except as otherwise provided in Sections 7(d), 7(e) and 7(f):
  - (i) the Account Trustee may rely and shall be protected in acting or refraining from acting upon any signature, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties; and

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- (ii) the Account Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Account Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Account Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Agreement.
- (h) Project Co shall pay, indemnify and hold harmless the Account Trustee from and against any and all loss, liability, cost, claim and expense incurred by the Account Trustee with respect to the performance of this Agreement by the Account Trustee or any of the Account Trustee's directors, officers or employees, unless arising from its or their own dishonesty, fraud, negligence (including negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (i) Subject to the terms and conditions set forth in the Account Trustee's fee letter, the Account Trustee shall receive from the Trust Property reasonable compensation for its services hereunder and shall be reimbursed by Project Co for its reasonable fees and expenses (including the disbursements and reasonable fees of counsel).
- (j) The Account Trustee shall look solely to Project Co, and not, except as expressly set forth herein, to the Collateral Trustee or the Senior Lenders, for any claim for indemnification which may arise under this Agreement. WDBA shall not in any circumstance have any indemnity obligation to the Account Trustee under this Agreement.
- (k) The Account Trustee shall be responsible for keeping all appropriate books and records relating to the receipt and disbursement of all money which it receives hereunder.
- (l) If at any time the Account Trustee 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 Trust Property held by it hereunder (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Property) (each, an "**Order**"), the Account Trustee is authorized to comply therewith in any manner as it or legal counsel of its own choosing deems appropriate. The Account Trustee shall in no way be bound to call for further evidence (whether as to due execution validly or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Account Trustee complies with any Order, the Account Trustee shall not be liable to any of the parties hereto or to any other person or entity even though such Order may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Account Trustee is served with any Order, it shall forthwith and, in any event, within 3 Business Days, deliver a copy of such Order to each of the Collateral Trustee, WDBA and Project Co.
- (m) Unless otherwise specifically set forth herein, the Account Trustee shall proceed as soon as practicable to collect any cheques or other collection items at any time deposited hereunder. All such collections shall be subject to the Account Trustee's usual collection practices or terms regarding items received by the Account Trustee for deposit or collection. Except and to the extent provided herein, the Account Trustee shall not be required, or have any duty, to notify any person of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce

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payment of any cheque, note or security deposited hereunder, or to exercise any right or privilege which may be afforded to the holder of any such security.

- (n) In the event that the Account Trustee determines that any direction, instruction, notice or other communication given under this Agreement by Project Co or the Collateral Trustee or, where the Account Trustee has received a Change of Authorization Notice, WDBA, is ambiguous or uncertain, the Account Trustee may, in its sole discretion, refrain from taking any action other than retaining possession of the Trust Property, unless the Account Trustee has received written instructions, signed by the Collateral Trustee or, if the Account Trustee has received a Change of Authorization Notice, WDBA, which resolve such ambiguity or uncertainty, provided that the Account Trustee shall, forthwith upon determining that such direction, instruction, notice or other communication is ambiguous or uncertain, seek clarification from Project Co or the Collateral Trustee, or where the Account Trustee has received a Change of Authorization Notice, WDBA, to resolve such ambiguity or uncertainty.
- (o) Prior to receipt of a Change of Authorization Notice by the Account Trustee, any instruction, notice or other communication delivered to the Account Trustee by the Collateral Trustee shall be paramount to and supersede any direction, instruction, notice or other communication from any other party to this Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from the Collateral Trustee. After the Account Trustee has received a Change of Authorization Notice, any instruction, notice or other communication delivered to the Account Trustee by WDBA shall be paramount to and supersede any direction, instruction, notice or other communication from any other party to this Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from WDBA.
- (p) Each of the Collateral Trustee and WDBA shall provide to the Account Trustee an incumbency certificate setting out the names and sample signatures of individuals authorized to give instructions to the Account Trustee hereunder. The Account Trustee shall be entitled to rely on each such incumbency certificate until a revised or replacement incumbency certificate is provided to the Account Trustee by the Collateral Trustee or WDBA, as applicable. The Account Trustee shall refuse to act upon any instruction given by the Collateral Trustee or WDBA which is signed by any person other than an individual named in the incumbency certificate provided to the Account Trustee by the Collateral Trustee or WDBA, as applicable, pursuant to this Section 7(p), as any such incumbency certificate may be amended, supplemented or replaced from time to time.
- (q) The Account Trustee shall be entitled to rely on, and act upon, any direction, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission, provided that any such direction, instruction, notice or other communication is signed by an individual named in the incumbency certificate delivered to the Account Trustee by the Collateral Trustee or WDBA, as applicable, pursuant to Section 7(p).
- (r) The Account Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Account Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Account Trustee, in its sole judgment, determine at any time that its acting under this Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on 10 days' written notice to the parties, or any shorter period of time as agreed to by the parties, notwithstanding the provisions of Section 7(a) of this Agreement, provided that (i) the Account Trustee's

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written notice shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Account Trustee's satisfaction within such 10 day period, then such resignation shall not be effective.

## 8. COLLATERAL TRUSTEE AND WDBA RIGHTS TO DIRECT

- (a) Until all amounts owing by Project Co to the Senior Lenders have been paid in full, (a **"Change of Authorization Event"**), the Collateral Trustee shall, subject to Sections 2 and 3 of this Agreement, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Accounts, the Insurance Policies and the Insurance Proceeds.
- (b) Upon the occurrence of a Change of Authorization Event:
  - (i) the Collateral Trustee shall cease to be entitled, and WDBA shall then be entitled, to direct the Account Trustee with respect to the Insurance Trust Accounts, the Insurance Policies and the Insurance Proceeds; and
  - (ii) the Collateral Trustee and WDBA shall jointly provide notice to the Account Trustee (a **"Change of Authorization Notice"**) that WDBA shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Accounts, the Insurance Policies and the Insurance Proceeds.
- (c) Notwithstanding the foregoing, no Change of Authorization Event shall occur and no Change of Authorization Notice shall be delivered to the Account Trustee where a WDBA Event of Default has occurred and is continuing. Where a WDBA Event of Default has occurred and is continuing, upon receipt by the Collateral Trustee and Senior Lenders of all amounts owing by Project Co to the Collateral Trustee and Senior Lenders, the Account Trustee shall release all amounts in the Insurance Trust Accounts, the Insurance Policies and the Insurance Proceeds to Project Co or as Project Co may otherwise direct from time to time.

## 9. TERMINATION

- (a) Subject to the provisions of Section 9(b), this Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until the later of:
  - (i) the obligations of Project Co to the Collateral Trustee and the Senior Lenders under the Senior Lending Agreements have been paid and performed in full and the Senior Lenders have no further obligation to make any further advances or other credit accommodations under the Senior Lending Agreements; and
  - (ii) the obligations of Project Co to WDBA and WDBA to Project Co in respect of Insurance Proceeds have been paid and performed in full.
- (b) The Account Trustee may terminate this Agreement at any time upon 60 days prior written notice to the other parties hereto, provided that no termination of this Agreement by the Account Trustee shall be effective until such time as the Collateral Trustee, WDBA, and Project Co have entered into a replacement insurance trust agreement on the same terms and conditions as this Agreement with a replacement account trustee satisfactory to the Collateral Trustee, the Senior Lenders and WDBA.

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## 10. ASSIGNMENT

### 10.1 Binding on Successors and Assigns

This Agreement shall enure to the benefit of, and shall be binding upon parties and their respective successors and permitted assigns.

### 10.2 General Restriction on Assignment

No party to this Agreement may Assign this Agreement or its rights hereunder except as permitted by this Section 10. Any assignment which is permitted under this Section 10 is conditional upon the assignee assuming all obligations of the assignor under this Agreement.

### 10.3 Assignment by Project Co

Project Co may assign this Agreement to any person to whom Project Co assigns its interest in the Project Agreement pursuant to Section 55.1 (*Assignment by Project Co*) of the Project Agreement.

### 10.4 Assignment by WDBA

WDBA may assign this Agreement to any person to whom WDBA assigns its interest in the Project Agreement pursuant to Section 55.2 (*Assignment by WDBA*) of the Project Agreement.

### 10.5 Restriction on Assignment by Account Trustee

The Account Trustee may assign this Agreement and its rights hereunder to a successor account trustee, provided that the Account Trustee delivers to WDBA not less than 10 Business Days prior to such assignment, a notice setting out such contact information regarding the successor account trustee as WDBA may reasonably require. However, Account Trustee may not assign this Agreement to a successor account trustee who is:

- (a) a Restricted Person;
- (b) a person whose standing or activities are inconsistent with WDBA's role in or outside Canada or may compromise the reputation or integrity of WDBA or of the United States, Michigan or Canada;
- (c) a person who does not meet the Security Requirements; or
- (d) a person who is not in compliance with the Integrity Provisions,

each an ("**Ineligible Person**") and

unless such person enters into a new agreement with WDBA and Project Co to the same effect as this Agreement.

### 10.6 Restriction on Assignment by Collateral Trustee

The Collateral Trustee shall not (i) Assign this Agreement to any person, or (ii) undergo a Change in Control, except as permitted by the Lenders' Direct Agreement.

### 10.7 Security Interest

The Account Trustee and WDBA acknowledge that Project Co has granted a security interest over its rights under this Agreement to the Collateral Trustee.

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**11. NOTICES**

**11.1 Requirement for Writing**

Wherever in this Agreement provision is made for the giving, making or issuing of any notice, consent, confirmation, request, approval, or other report or determination (a “**Notice**”) by any person, unless otherwise specified, such Notice shall be in writing.

**11.2 Addresses**

- (a) Any Notice shall be deemed duly given if it is (i) signed by a duly authorized representative of the person giving the Notice, or by a person acting on its behalf, and (ii) personally delivered, sent through a secure document-sharing site approved by WDBA, sent by a recognized courier service (with delivery receipt requested), or sent by confirmed facsimile or e-mail transmission, to the following addresses:

To WDBA

100 Ouellette Avenue, Suite 400  
Windsor, Ontario N9A 6T3

**[REDACTED]**

With a copy to:

100 Ouellette Avenue, Suite 400  
Windsor, Ontario N9A 6T3

**[REDACTED]**

To Project Co:

**[REDACTED]**

With a copy to:

**[REDACTED]**

With a copy to:

**[REDACTED]**

To the Account Trustee:

With a copy to:

**[REDACTED]**

To the Account Trustee:

**[REDACTED]**

To the Collateral Trustee:

**[REDACTED]**

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- (b) Where any Notice is sent to a party through a secure document-sharing site, or by facsimile or email, an original of the Notice, if requested by the addressee, shall also be personally delivered or sent by a recognized courier service (with delivery receipt requested) within 5 Business Days of such request by the addressee.

### **11.3 Change of Address**

Any party may change its address for Notice to a new address, a new facsimile number or a new email address by Notice to the other parties.

### **11.4 Deemed Receipt**

Any Notice shall be deemed to have been received:

- (a) if sent by personal delivery or by a courier service, upon delivery;
- (b) if sent through a secure document-sharing site, by facsimile or e-mail:
  - (i) on a Business Day prior to 4:00 p.m., upon sending;
  - (ii) on a Business Day after 4:00 p.m. or on a day which is not a Business Day, at 9:00 a.m. on the next Business Day; and

in the case of a Notice set by facsimile or email, subject to:

- (iii) confirmation of transmission or acknowledgement of receipt; and
- (iv) there having been no telephonic communication by the recipient to the sender (any such telephonic communication to be confirmed in writing) that the facsimile or the email has not been received in legible form:
  - (A) within three hours after sending, if sent on a Business Day before 2:00 p.m.; or
  - (B) by noon on the following Business Day if sent after 2:00 p.m. on a Business Day or if sent on a day which is not a Business Day.

## **12. GENERAL**

### **12.1 Waiver**

Failure by any party at any time to enforce any provision of this Agreement or to require performance by any other party of any of the provisions of this Agreement shall not be construed as a waiver of any such provision and shall not affect the validity of this Agreement or any part thereof or the right of any party to enforce any provision in accordance with its terms.

### **12.2 Amendments**

This Agreement may not be varied, amended or supplemented except by an agreement in writing signed by the duly authorized representative of each of the parties hereto and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Agreement.

### **12.3 Entire Agreement**

Subject to the provisions of the Project Agreement, this Agreement constitutes the entire agreement between the parties in connection with the subject matter of this Agreement. This

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Agreement and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement.

#### **12.4 Further Assurances**

The parties shall do, execute and deliver, or shall cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the parties' respective obligations under this Agreement.

#### **12.5 Cumulative Remedies**

Except as otherwise set forth in this Agreement, the rights, powers and remedies of each party set forth in this Agreement are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such party under this Agreement.

#### **12.6 Relationship Between the Parties**

- (a) The parties are independent contractors. This Agreement is not intended to and does not create or establish between the parties any relationship as partners, joint venturers, employer and employee, master and servant, or of principal and agent.
- (b) Except as expressly provided in this Agreement, no party shall be, or be deemed to be, an agent of any other party, and no party shall have authority to represent that it is an agent of any other party, or to accept any order, or enter into any contract or agreement, or make any representations or warranties of any kind to any person, or to assume or create any obligation, express or deemed, on behalf of or binding, or purportedly binding upon, such other party.
- (c) Except as otherwise expressly provided in this Agreement, each party shall be free from the control of each other party as to the manner in which it shall perform its obligations, or cause such obligations to be performed, under this Agreement.

#### **12.7 Costs**

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Agreement.

#### **12.8 Disputes**

- (a) Any Dispute between any of the parties with respect to any of the subject matters of this Agreement will be resolved in accordance with, and the parties will comply with, the Dispute Resolution Procedure. Schedule 23 [*Dispute Resolution Procedure*] of the Project Agreement is incorporated, with the necessary alterations, into this Agreement.
- (b) The parties agree to consolidate any arbitration procedure instituted pursuant hereto with any other arbitration procedure instituted by WDBA or Project Co arising from a Dispute that raises common, identical or similar issues of fact or law.

#### **12.9 Governing Law and Jurisdiction**

- (a) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, without regard to any

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Applicable Laws or choice of Law rules that might direct the application of the Applicable Laws of another jurisdiction.

- (b) Subject to Section 12.8 of this Agreement, the courts of the Province of Ontario shall have exclusive jurisdiction (subject to any court or tribunal of federal jurisdiction in Canada) with respect to any matter or issue which the Dispute Resolution Procedure permits to be submitted to the courts.

#### **12.10 Counterparts**

This Agreement is executed in one or more counterparts, each of which contains one original signature. Any single counterpart or a set of counterparts executed, in either case, by all of the parties shall constitute a full, original and binding agreement for all purposes.

#### **12.11 Electronic Execution**

To evidence the fact that a party has executed this Agreement, such party may send a copy of its executed counterpart to the other party by facsimile, or by email, in portable document format (PDF) format. That party will be deemed to have executed this Agreement on the date that its facsimile or email is deemed to be received in accordance with Section 11.4. In such event, such sending party will forthwith deliver to the other party the originally executed counterpart of this Agreement to the other party.

#### **12.12 Security**

This Agreement including the rights of any person deriving any benefit under this Agreement, are subject to, and such rights shall be exercised at all times in accordance with, the Security Requirements.

#### **12.13 Confidentiality**

The Account Trustee shall comply with the obligations of Project Co contained in the Project Agreement in relation to all Confidential Information received from any other party.

#### **12.14 Compliance by Project Co with Project Agreement**

Nothing in this Agreement shall relieve Project Co from complying with the provisions of Section 31 [*Damage and Destruction*] of the Project Agreement or Schedule 29 [*Insurance Requirements*] of the Project Agreement.

### **13. INTERPRETATION**

#### **13.1 Construction and Interpretation**

This Agreement will be interpreted according to the following provisions, save to the extent that the context or the express provisions of this Agreement otherwise require.

- (a) The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.
- (b) The table of contents, headings and sub-headings, marginal notes and references to them in this Agreement are for convenience of reference only, do not constitute a part of this Agreement, and will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement.

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- (c) Each reference in this Agreement to a Section is to a section of this Agreement.
- (d) Each reference to an agreement, document, standard, principle or other instrument include (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, restated, substituted, novated or assigned.
- (e) Each reference to a statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and include any orders, regulations, by-laws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute.
- (f) Each reference to time of day is a reference to local Windsor, Ontario time.
- (g) Words importing the singular include the plural and vice versa. Words importing a particular gender include all genders.
- (h) Each reference to a public organization is deemed to include a reference to any successors to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization.
- (i) Each reference to "parties" means the parties to this Agreement and each reference to a "party" means any one of the parties to this Agreement, provided however that a reference to a third party does not mean a party to this Agreement.
- (j) All monetary amounts are expressed in Canadian dollars.
- (k) Time is of the essence of each provision of this Agreement.
- (l) The words "include", "includes" and "including" are to be construed as meaning "include without limitation", "includes without limitation" and "including without limitation", respectively.
- (m) Any consent contemplated to be given under this Agreement must be in writing.
- (n) General words are not to be given a restrictive meaning:
  - (i) if they are introduced by the word "other", by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
  - (ii) by reason of the fact that they are followed by particular examples intended to be embraced by those general words.
- (o) All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with Canadian generally accepted accounting principles, consistently applied.
- (p) Acronyms, abbreviations and terms that are technical terms or terms of art in an industry which are not defined in this Agreement will be interpreted consistent with Good Industry Practice appropriate to that industry.
- (q) If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day.

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**TO EVIDENCE THEIR AGREEMENT**, the parties have executed this Agreement as of the day and year first above written.

**WINDSOR-DETROIT BRIDGE AUTHORITY**

By:  
[REDACTED]

By:  
[REDACTED]

**BRIDGING NORTH AMERICA GENERAL PARTNERSHIP**

By:  
[REDACTED]

By:  
[REDACTED]

**BNY TRUST COMPANY OF CANADA as Collateral Trustee**

By:  
[REDACTED]

By:  
[REDACTED]

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**BNY TRUST COMPANY OF CANADA as Account  
Trustee**

By: [REDACTED]

By: \_\_\_\_\_  
[REDACTED]

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**SCHEDULE 34**

**PROPOSAL**

**[REDACTED]**

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**SCHEDULE 35****LAND RESTRICTIONS****1. DEFINITIONS**

Unless defined specifically in this Schedule or unless the context otherwise requires, capitalized but otherwise undefined terms in this Schedule will have respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of this Project Agreement. Each Appendix to this Schedule forms an integral part of this Schedule.

In this Schedule, the following terms have meanings set out in this Section 1.

**Construction Easement** has the meaning set out in Appendix 35-1.

**Existing Works Easement** has the meaning set out in Appendix 35-1.

**Land Restrictions** has the meaning set out in Section 2.

**Schedule** means this Schedule 35 [*Land Restrictions*] unless such term clearly refers to another schedule of this Project Agreement.

All references to a Section number in this Schedule means a Section number of this Schedule unless such Section number clearly refers to a Section of the body of this Project Agreement or of another schedule or part of a schedule of this Project Agreement.

**2. LAND RESTRICTIONS**

This Schedule sets out the encumbrances and restrictions affecting the Site, Lands and/or Infrastructure located thereon and the rights and obligations thereunder ("**Land Restrictions**") that Project Co must have regard to in its completion of the Project Work. Land Restrictions affecting the Canadian Lands are described in Appendix 35-1 [*Canadian Land Restrictions*] and Appendix 35-2 [*Canadian Land Restrictions Drawing*]. Land Restrictions affecting the US Lands are described in Appendix 35-3 [*US Land Restrictions*].

This Schedule must be read in conjunction with Schedule 4 [*Lands and Site*], Schedule 20 [*WDBA Early Works*] and Schedule 43 [*Canadian Roads*].

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**APPENDIX 35-1**

**[REDACTED]**

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**APPENDIX 35-2  
[REDACTED]**

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**APPENDIX 35-3  
[REDACTED]**

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**APPENDIX 35-3-1  
[REDACTED]**

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**SCHEDULE 36****COMMUNITY BENEFITS****1. DEFINITIONS**

Unless defined specifically in this Schedule or unless the context otherwise requires, capitalized but otherwise undefined terms in this Schedule will have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*].

In this Schedule, the following terms have the meanings set out in this Section 1:

**Canadian Indigenous Peoples** means indigenous peoples resident in Canada in and around the City of Windsor, Essex County, Ontario, and Walpole Island, Ontario.

**Community Benefits** means initiatives that provide for measurable and positive results that are, and accomplish, workforce-based (Workforce Development and Participation Strategy) and infrastructure-based (Neighbourhood Infrastructure Strategy) results for the host communities, and enable the host communities to leverage the opportunities presented as a result of the Project.

**Community Benefits Committee** has the meaning set out in Section 6.

**Community Benefits Coordinators** has the meaning set out in Section 6.

**Community Benefits Plan** means a plan developed and implemented by Project Co, which shall be overseen and approved by WDBA, with respect to the delivery of Community Benefits.

**Community Benefits Working Group** has the meaning set out in Section 6.

**Consultation Report** has the meaning set out in Section 4.5.

**Detroit** means the City of Detroit.

**DRIC Study** means the Canada-United States study presented in January 2004 identifying a long-term strategy to meet the needs of the transportation network serving the border between Southeastern Michigan and Southwestern Ontario, available at: <http://www.partnershipborderstudy.com/>.

**Local Canadian Workforce** means:

- (a) workers/contractors/suppliers headquartered/based in the City of Windsor;
- (b) workers/contractors/suppliers headquartered/based in Canada, within 100 kilometres of the City of Windsor;
- (c) Canadian Indigenous Peoples; and
- (d) contractors/suppliers owned by Canadian Indigenous Peoples.

**Local Canadian Workforce Goal** means the goal that at least \$[REDACTED] of the total value of the DB Work in Canada will be performed by, contracted to, or supplied by the Local Canadian Workforce.

**Local Community Group** has the meaning set out in Section 6.

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**Neighbourhood Infrastructure Strategy** has the meaning set out in Section 2.

**Schedule** means this Schedule 36 [*Community Benefits*] unless such term clearly refers to another schedule of this Project Agreement.

**Unintended Consequences and Unanticipated Events** means uninsurable consequences and events occurring either within or outside of the Project Site which are not otherwise addressed as part of the Environmental Assessments, Environmental Impact Statement for the Project, or the other Schedules to this Agreement, which are identified through stakeholder consultation and which can be directly and demonstrably linked to having been caused as a result of construction or operation of the Facility within the first five years following Substantial Completion.

**Unintended Consequences Fund** means a \$[REDACTED] fund made available by Project Co for the period commencing at Substantial Completion and ending on the date that is five years after the Substantial Completion Date to be applied to resolve Unintended Consequences and Unanticipated Events, the use of which is subject to the approval of WDBA through the Community Benefits Committee.

**Windsor Region** means local residents, businesses, educational institutions, and labour in Windsor, Ontario, and in Canada within 100 kilometres of the City of Windsor and Canadian Indigenous Peoples and businesses, organizations and groups that are owned or operated by Canadian Indigenous Peoples within the City of Windsor, Essex County, Ontario and Walpole Island, Ontario.

**Workforce Development and Participation Strategy** has the meaning set out in Section 3.1.

All references to a Section number in this Schedule means a Section number of this Schedule, unless such Section number clearly refers to a Section of the body of this Project Agreement or to another schedule or part of a schedule of this Project Agreement.

## 2. COMMUNITY BENEFITS OVERVIEW

Creating positive community opportunities are critical to a successful outcome for the Project and shall be achieved through the delivery of a Community Benefits Plan by Project Co and overseen by WDBA.

There are two components to the Community Benefits Plan for the Project, both subject to the principles, governance and reporting detailed in this Schedule:

- (a) The Workforce Development and Participation Strategy; and
- (b) The Neighbourhood Infrastructure Strategy.

The Workforce Development and Participation Strategy is focused on workforce development and participation and is the corresponding strategy submitted by Project Co as part of its Technical Submission in response to Schedule 6 [*Technical Submission Requirements*] of the RFP.

The second component, the Neighbourhood Infrastructure Strategy, is a community infrastructure strategy focused on priorities identified by WDBA through consultation that took place over 2015, 2016 and 2017 with communities, businesses and other stakeholders in both Windsor, Ontario and Detroit, Michigan. An initial list of initiatives was developed by Proponents during the RFP Open Period and this strategy will be more fully developed and refined by Project Co through consultation in accordance with the process set out in Section 4 (the final approved strategy, the "**Neighbourhood Infrastructure Strategy**").

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## 2.1 Principles

The Community Benefits Plan is required to satisfy the requirements of the Crossing Agreement and shall be based on the following principles, referred to as *the I-Care Framework*:

- (a) Integrated: Community Benefits shall be an integral component of the Project carried out during the DB Period and OMR Period.
- (b) Collaborative: Community Benefits shall reflect the input of the host communities and be delivered through partnerships, ensuring that the interests of the respective communities are taken into account.
- (c) Accessible: Community Benefits shall be easy to understand, easily accessible, regularly measured and publicly reported.
- (d) Regional: Community Benefits shall be reflective of the character of the region, tailored specifically for the region and provide value to the region.
- (e) Enterprising: Community Benefits shall be comprised of new methods, ideas and innovative approaches to engage and benefit the neighbouring communities.

The requirements set out in this Schedule 36 and the requirements of the Community Benefits Plan are in addition to the other requirements set out in the Project Agreement including other Schedules to the Project Agreement and not in satisfaction of those other requirements.

Project Co shall be bound by and be required to deliver the commitments made in the Community Benefits Plan.

## 3. WORKFORCE DEVELOPMENT AND PARTICIPATION

### 3.1 Workforce Development and Participation Strategy

There is an expectation that residents and businesses within the region will participate in the economic opportunities made possible as a result of the Project.

Project Co shall develop and implement a strategy geared toward engaging businesses and providing employment opportunities ("**Workforce Development and Participation Strategy**") that meets the requirements of this Schedule and that is comprised of the strategy submitted by Project Co as part of the RFP technical submission to WDBA and which will form part of the Proposal extracts and/or this Schedule.

The Workforce Development and Participation Strategy shall focus on (i) workforce, (ii) training and (iii) pre-apprenticeships/apprenticeships.

The Workforce Development and Participation Strategy shall include a section with respect to the Local Canadian Workforce Goal and how Project Co intends it to be met.

The Local Canadian Workforce Goal is anticipated to be achieved through labour, contracting and project supplies. Measurement of Project Co's achievement of that goal will be based on a comparable market-based assessment of:

- (a) wages paid to the Local Canadian Workforce directly hired by Project Co;
- (b) wages paid to Local Canadian Workforce hired by sub-contractors not headquartered/based in the City of Windsor or within 100 km of the City of Windsor;

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- (c) total contract value awarded to businesses that are part of the Local Canadian Workforce; and
- (d) total value of supplies from businesses that are part of the Local Canadian Workforce.

This section of the Workforce Development and Participation Strategy shall meet the following minimum requirements:

- (a) information on how Project Co will initiate and maintain ongoing communication with the residents, communities, businesses, educational institutions, and labour in the Windsor Region regarding employment opportunities, training and pre-apprenticeship/apprenticeship opportunities, as well as on business and contracting opportunities during the DB Period;
- (b) information on how Project Co will offer assistance or training to workforce and contractors in the Windsor Region to help position them to successfully participate in work opportunities associated with the Project, including: engaging in training programs available in Ontario and Canada; engaging in English as a Second Language programs; providing information sessions for smaller contractors on the bidding process; and tendering lower-value contracts;
- (c) information on how Project Co will adhere to fair labour hiring and contracting practices provisions, including prompt payment, timely resolution of employment issues and timely negotiation and resolution of contract issues and claims;
- (d) information on how businesses within the Windsor Region will be engaged for the DB Period, and setting of a target for such engagement, including how Project Co means to achieve the target;
- (e) information on how Project Co will partner with educational institutions to implement co-operative/work placement programs, mentoring and job shadowing opportunities, focusing on women and minorities in the Windsor Region; and
- (f) include information with respect to the engagement of the Windsor Region during the OMR Period for employment opportunities, training, contracting and sourcing. Labour, contracting and project supplies procured during the OMR Period do not contribute to the Local Canadian Workforce Goal.

The hiring of Canadian Indigenous Peoples and the contracting of businesses owned by Canadian Indigenous Peoples will contribute to the Local Canadian Workforce Goal. The Workforce Development and Participation Strategy shall include a section with respect to Canadian Indigenous Peoples and shall meet the following minimum requirements:

- (a) outline how Project Co will initiate and maintain ongoing communication and engagement with Canadian Indigenous Peoples regarding workforce/ employment opportunities, training and pre-apprenticeship/apprenticeship opportunities, as well as business and contracting opportunities during the DB Period and OMR Period;
- (b) contain a list of qualified Canadian Indigenous Peoples who are skilled tradespersons, which shall be updated as required, and identify how this list will be used during the hiring process;
- (c) contain a list of qualified Canadian Indigenous Peoples who are contractors, which shall be updated as required, and identify how this list will be used during the contracting process;

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- (d) coordinate with existing programs to facilitate apprenticeship opportunities for Canadian Indigenous Peoples including establishing a list of Canadian Indigenous Peoples who are apprentices and who are interested in becoming apprentices;
- (e) identify how Project Co will implement co-operative/work placement programs, mentoring and job shadowing opportunities for Canadian Indigenous Peoples, with particular emphasis on women; and
- (f) integrate employment and contracting provisions consistent with the Ontario Human Rights Commission's "Statement on Impact and Benefit Agreements and Human Rights."

The Workforce Development and Participation Strategy shall include a section with respect to Detroit residents and Detroit-based and Detroit-headquartered businesses and shall meet the following minimum requirements:

- (a) outline how Project Co intends to engage Detroit residents for job training, pre-apprenticeship/apprenticeship and employment opportunities and how Project Co will initiate and maintain ongoing communication with the Detroit residents, communities, educational institutions, and labour regarding training, pre-apprenticeship/apprenticeship, and employment opportunities for Detroiters for both the DB Period and OMR Period;
- (b) outline how Project Co intends to engage Detroit-based and Detroit-headquartered businesses for initiatives that will offer assistance or training to workforce and contractors to help position them to successfully participate in work opportunities associated with the Project for both the DB Period and OMR Period;
- (c) outline specifically how Project Co will engage with existing agencies and programs to enhance the likelihood of qualified Detroit residents obtaining employment as a result of the project for both the DB Period and OMR Period, including but not limited to: Detroit Employment Solutions Corporation; the Access for All Apprenticeship Readiness Program; English as a Second Language programs; providing information sessions for smaller contractors on the bidding process; and tendering lower-value contracts; and
- (d) information on how Project Co will engage the Detroit community concerning any demolition that is required to be conducted by Project Co.

In addition to the above, the DBE goal established for this Agreement is [REDACTED]% of the cost of the construction and engineering work needed to complete the Michigan Interchange and the portion of the Bridge that is located in Michigan.

### 3.2 Proposal Requirements

As part of their Technical Submissions in response to the RFP, Proponents included their Workforce Development and Participation Strategy and included at a minimum the following information to demonstrate basic capability:

- (a) the Proponent's assessment of the social, environmental and political challenges the Project is facing on both the Canadian and US sides/ the region;
- (b) the Proponent's approach to the manner in which stakeholders and community are to continue to be involved;
- (c) the Proponent's approach to the manner in which the host community input relating to community benefits and stakeholder involvement are to be factored;

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- (d) the Proponent’s approach to working with local institutes of higher learning, unions and others;
- (e) the Proponent’s approach to the manner in which job training and local job development will be encouraged during both the DB Period and OMR Period by fulfilling requirements for the Workforce Development and Participation Strategy, while ensuring the hiring of legal residents without discrimination of nationality, including a table that addressed:
  - (i) objectively quantifiable and measureable initiatives with clearly defined deliverables;
  - (ii) consistency with the Community Benefits Plan principles;
  - (iii) targets or anticipated outcomes ;
  - (iv) the type and level of effort to be made by the Proponent to achieve proposed outcomes and identify any specific activities that are to be performed in achieving such outcomes; and
  - (v) timelines for delivery/completion.

Quantifiable/measurable initiative	How the initiative is consistent with the Crossing Agreement and the I-Care Framework	Targets or anticipated outcome	The means/process/approach to delivery	Timeline for delivery or completion

**3.3 Evaluation**

The Workforce Development and Participation Strategy was evaluated in accordance with the provisions set out in the RFP.

**4. NEIGHBOURHOOD INFRASTRUCTURE STRATEGY**

**4.1 Neighbourhood Infrastructure Strategy**

Through consultation undertaken by WDBA and Michigan, residents, business owners and community leaders on both sides of the border have identified the top priorities the Project should address. As of November 2017, WDBA has received more than 230 suggestions for community benefits from both Detroit and Windsor representatives. Many of these requests fall within 5 themes:

- (a) Community partnerships – creative approaches to engaging with organizations and foundations and identifying how those partnerships will be leveraged to maximize the measurable results of the Community Benefits Plan. These opportunities could include: programs and/or funds that seek to plant trees or provide for vacant lot improvements or building partnerships to enhance the use of grant opportunities, opportunities for Project Co to partner with local services and agencies to provide enhanced services to the region’s residents or businesses or promote the region.

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- (b) Lessening the effects of construction and operation issues for nearby residents, schools, businesses and community facilities – opportunities to build upon the mandatory mitigation measures required pursuant to the Agreement to further address these and other potential activities, including:
- (i) air quality;
  - (ii) dust and debris;
  - (iii) diesel emissions;
  - (iv) the noise level;
  - (v) odour;
  - (vi) restricting the access of construction vehicles on neighbourhood streets;
  - (vii) restricting truck traffic on neighborhood streets and ensuring the use of proper truck and haul routes, including engaging police services for enforcement;
  - (viii) hours of construction operations;
  - (ix) wayfinding, detour, business and other construction-related signage;
  - (x) thorough and timely clean-up during and upon completion of construction; and
  - (xi) lessening the effects of construction operations on residents, schools, businesses, ways to minimize construction traffic and detours and maintaining access for residents to avoid isolating the community and ensuring truck and haul routes and detours are in good condition and working order.
- (c) Community safety and connections – opportunities to improve how residents safely move about the community by foot or vehicle and access churches, schools, businesses and health centres without compromising their physical safety both during and after construction related to the Project. It also reflects local road improvements, sidewalk improvement/expansion, installation of additional street lighting, expanded trails and trail connections for pedestrians and cyclists.
- (d) Economic benefits - incorporating economic development activities and tourism.
- (e) Aesthetics and landscaping – opportunities to provide noise curtains, barriers, walls and berms and the implementation of landscaping at sensitive receptors and at areas adjacent to the Project Site.

Initiatives under the Neighbourhood Infrastructure Strategy which are construction activities will be part of the CPP regime, require the same details as required in Technical Requirements, require the same details as Design requirements, require complete solutions (ie. OMR considerations) where appropriate and are subject to the quality regime as outlined in Schedule 7 [*Quality Management*].

## 4.2 Proposal Requirements

As part of their technical submission in response to the RFP, based on the provided list of infrastructure-based top priorities, Proponents submitted a list of general initiatives, including considerations for OMR as appropriate, consistent with these priorities along with a consultation

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plan consistent with the requirements identified in Section 4.4 and in accordance with the process set out in the RFP.

#### 4.3 Evaluation

The initiatives list and consultation plan were not scored as part of the technical submission.

#### 4.4 Approach to Consultation for Neighbourhood Infrastructure Component

In a manner consistent with Schedule 18, Project Co is required to undertake further consultation in accordance with the requirements of this Schedule with the community and relevant authorities, including municipalities, during the Infrastructure Component Consultation Period.

Project Co will present a final consultation plan to WDBA within 14 days of Financial Close and begin consultation within one month of Financial Close. The consultation plan will include:

- (a) *Consultation methods and activities:*
- (i) a minimum of two public participation activities on each side of the border;
  - (ii) targeted stakeholder outreach with key organizations and individuals with an interest in the Project and in Community Benefits;
  - (iii) discussions about Community Benefits at existing stakeholder meetings hosted by WDBA with attendance by Project Co;
  - (iv) a dedicated webpage on wdbridge.com where people can submit ideas and suggestions; and
  - (v) email blasts to WDBA mailing list (issued by WDBA) promoting Community Benefits and soliciting input.
- (b) *Public notification procedures undertaken in accordance with, and described in, Schedule 18 [Communications Protocol] including:*
- (i) Newspapers: A notice will be placed in newspapers on both sides of the border no less than 15 days in advance of the meetings. In Canada, a notice in English will be placed in the Windsor Star and a notice in French will be placed in Le Rempart. In Michigan, a notice in English will be placed in the Detroit Free Press and a notice in Spanish will be placed in Latino Detroit.
  - (ii) WDBA website: A notice will be posted 30 days in advance of the meetings. The notices will be in English, French and Spanish.
  - (iii) Invitation to local elected officials: An invitation will be sent to Canadian and US local elected officials no less than 15 days in advance of the meetings advising them of the meetings, providing them with a copy of the public notice and inviting them to attend.
  - (iv) Social media: Twitter, Facebook and LinkedIn will be employed to advertise the meetings. Tweets will commence the same date as the meeting notice is published on the website and reminders will be tweeted each week until the meeting date. The meeting notice will be published on Facebook and LinkedIn at the same time as the notice is published on the website.

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- (v) Email blasts: Will be sent to all addresses on WDBA mailing list approximately two weeks prior to the meetings.
  - (vi) Invitation to key stakeholders: An invitation will be sent to key stakeholders no less than 15 days in advance of the meetings advising them of the meeting and inviting them to attend. Where appropriate, stakeholder will be asked to promote the meetings through their own connections.
- (c) *External agency and Canadian Indigenous Peoples consultation:*
- (i) Given the scope of Community Benefits, it is expected that external agency consultation will primarily involve meetings and discussions with the Cities of Windsor and Detroit.
  - (ii) WDBA will continue to engage the Walpole Island First Nation to address any issues or concerns that may arise from this component of the Project.

#### 4.5 Submission of Final Plan

Project Co shall submit the Neighbourhood Infrastructure Strategy of the Community Benefits Plan meeting the requirements of this Schedule, addressing stakeholder concerns and identifying, where appropriate, approaches to OMR, to WDBA by a date that is no later than 20 days following the last day of the Infrastructure Component Consultation Period, which submission shall be a Review Submittal and be subject to the Review Procedure. The Neighbourhood Infrastructure Strategy will be accompanied by a consultation report outlining how consultation was undertaken, how input received was assessed and how decisions to incorporate input were made along with any necessary supporting documentation (the “**Consultation Report**”). The Consultation Report will include a listing of all comments received. Following the finalization of the Neighbourhood Infrastructure Strategy, it will form part of the Community Benefits Plan. The final Community Benefits Plan, comprised of the Workforce Development and Participation Strategy and the Neighbourhood Infrastructure Strategy, will then be presented to the public by WDBA and at WDBA’s request jointly by Project Co in accordance with a communications plan developed by WDBA and determined in accordance with the Communications Procedure set out in Schedule 18 [*Communications Protocol*].

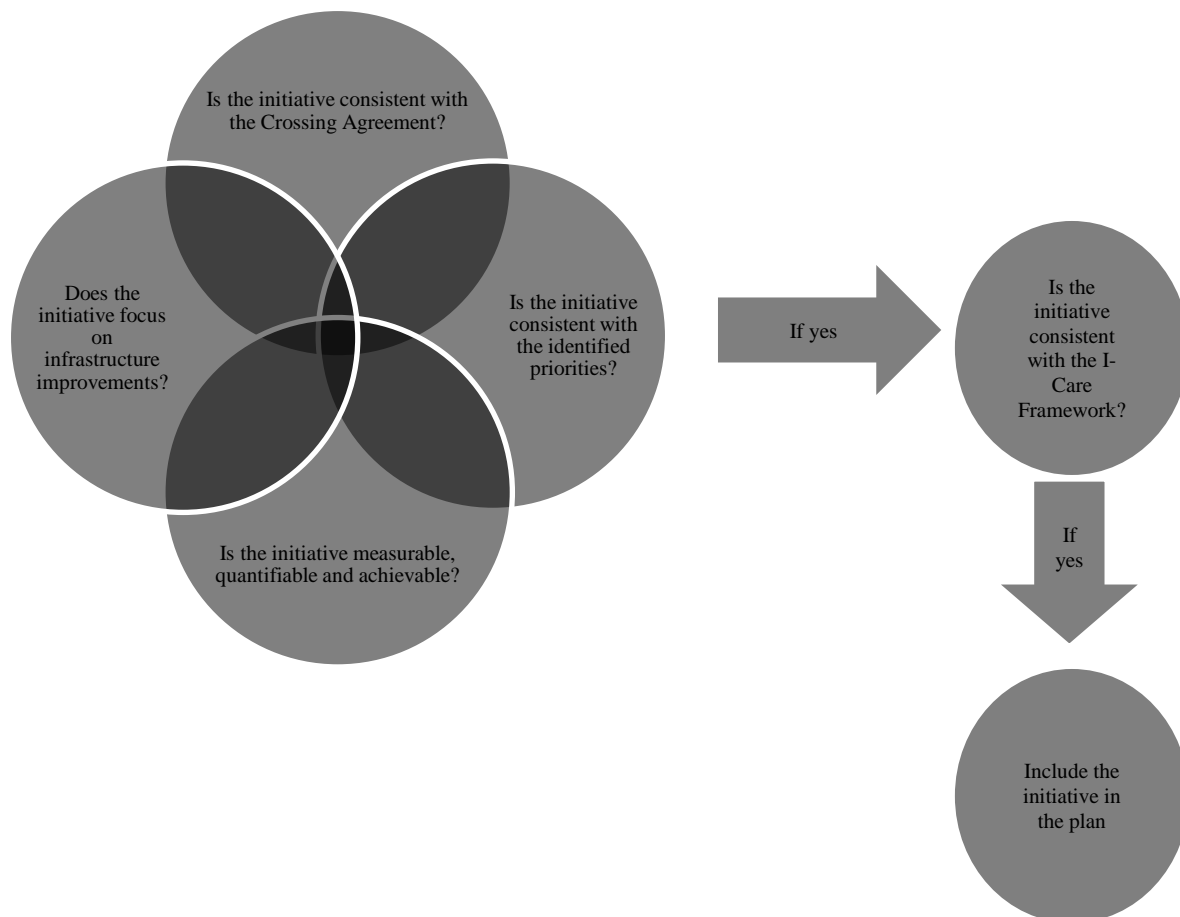
The Neighbourhood Infrastructure Strategy of the Community Benefits Plan will be valued at **[\$REDACTED]** with **[\$REDACTED]** set aside for each of Windsor, Ontario (including Canadian Indigenous Peoples) and Detroit, Michigan. Payments for completion of the Neighbourhood Infrastructure Strategy will be made as per the provisions of Schedule 25 [*Payment Mechanism (OMR)*] and Schedule 26 [*Construction Period Payments*].

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**4.6 Initiative Filter**

In assessing what initiatives Project Co will include in the final Neighbourhood Infrastructure Strategy, Project Co will utilize the following filter.



**5. UNINTENDED CONSEQUENCES FUND**

As part of Community Benefits, Project Co shall make available the Unintended Consequences Fund that will be managed in accordance with Section 6. The Unintended Consequences Fund will only be used to address Unintended Consequences and Unanticipated Events as determined by the Community Benefits Committee and with the approval of WDBA. Project Co may not draw upon the Unintended Consequences Fund to address consequences or events it has identified as part of the Community Benefits Plan or for initiatives such as property acquisition outside of the Project Site and not acquired by WDBA as part of the Project. WDBA shall reimburse Project Co directly for amounts withdrawn from the Unintended Consequences Fund by Project Co to pay for the costs of Unintended Consequences and Unanticipated Events in accordance with the Change Procedure. Any interest earned on any balance in the Unintended Consequences Fund shall be applied against principal, interest and other Unintended Consequences Fund Fees.

**6. ROLES AND RESPONSIBILITIES AND GOVERNANCE**

- (a) Project Co shall implement the Community Benefits Plan, with WDBA overseeing the delivery and effectiveness of the Community Benefits Plan.

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- (b) Project Co and WDBA shall monitor and assess the implementation of Community Benefits, including both measurable and non-measurable outcomes.
- (c) During the DB Period and for the first five years of the OMR Period, Project Co shall assign at least one individual to act as champions for the Project with respect to Community Benefits ("**Community Benefits Coordinators**"). The Community Benefits Coordinator(s) shall be dedicated to the delivery of Community Benefits and, at a minimum, the management of data collection, management of proper tracking tools, conducting detailed assessments and regular reporting with respect to Community Benefits.
- (d) The Community Benefits Coordinators shall work in close coordination with a designated WDBA Representative.
- (e) During the DB Period and for the first five years of the OMR Period, a governance structure with respect to Community Benefits will be implemented as follows:
  - (i) A committee composed of senior WDBA, MDOT and Project Co staff whose mandate is to (I) approve of any changes to the approved Community Benefits Plan, (II) approve public reporting, and (III) approve of Changes resulting from any Unintended Consequences and Unanticipated Events claimed against the Unintended Consequences Fund ("**Community Benefits Committee**"). With WDBA as the lead, the Community Benefits Committee shall provide direct oversight for the delivery of Community Benefits and ensure program alignment. The Community Benefits Committee shall meet semi-annually.
  - (ii) A working group composed of the Community Benefits Coordinators and the designated WDBA representative shall be responsible for the monitoring, assessment and reporting with respect to the delivery of Community Benefits ("**Community Benefits Working Group**") and making recommendations to the Community Benefits Committee regarding Changes resulting from any Unintended Consequences and Unanticipated Events claimed against the Unintended Consequences Fund. Both Project Co and WDBA shall conduct their own monitoring and assessment exercises. The Community Benefits Working Group shall report to the Community Benefits Committee on a bi-monthly basis (and present at semi-annual meetings) and will meet, at a minimum, on a monthly basis.
  - (iii) A community group composed of stakeholders representing Windsor-Essex County, the community of Delray, municipalities, Bridge user groups, institutions of higher education, economic development organizations and Canadian Indigenous Peoples ("**Local Community Group**") will be identified by WDBA and invited to participate by the Community Benefits Working Group. The Local Community Group shall work directly with the Community Benefits Working Group as informal partners in the implementation of collaborative activities, providing formal linkages into the region and providing input into the implementation of Community Benefits. The Local Community Group will meet quarterly and meetings will be led by the Community Benefits Working Group. The Community Benefits Working Group will present updates to the Local Community Group and solicit feedback.
- (f) The governance structure with respect to Unintended Consequences and Unanticipated Events will be implemented as follows:

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- (i) Upon identification of potential Unintended Consequences and Unanticipated Events, the resolution of such event and/or consequence will be designated a Change and the procedures in Schedule 22 [*Change Procedure*] will be used to address such Change.
- (ii) Agreed upon costs of a Change set out in a WDBA Change Confirmation, resulting from any Unintended Consequences and Unanticipated Events, will be claimed against the Unintended Consequences Fund.
- (iii) Any Change that will cause an overage of the Community Benefits Fund will be managed in accordance with Schedule 22 [*Change Procedure*].

The governance structure described above at Section 6(e) (and illustrated in Figure 1: Governance Structure) will allow for enhanced dialogue and communications, with the Community Benefits Working Group acting as the liaison between communities and appropriate Project Co personnel.

- (g) Following the first 5 years of the OMR Period and for the remainder of the OMR Period, resources dedicated to Community Benefits from Project Co and WDBA will continue to meet in a manner consistent with the Community Benefits Working Group and will convene the Local Community Group and the Community Benefits Committee only as required.

**FIGURE 1: GOVERNANCE STRUCTURE**



## **7. MONITORING, MEASUREMENT, ASSESSMENT AND REPORTING DURING THE DB PERIOD AND THE OMR PERIOD**

- (a) The Community Benefits Plan shall include a robust documenting, tracking and reporting structure that demonstrates accountability to WDBA and the region. The Community Benefits Plan shall be posted on the Project Website. The Community Benefits Coordinator shall be responsible for monitoring, measuring and assessing the effectiveness of Community Benefits, which shall include the collection and documentation of measurements with anticipated and real outcomes with respect to Community Benefits. Through the designated WDBA Representative, WDBA will monitor and assess the effectiveness of Community Benefits for the purpose of (i) tracking

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progress on the delivery of Community Benefits and (ii) documenting the anticipated and real impacts of Community Benefits.

- (b) During the Term, Project Co shall submit to WDBA monthly reporting on the status, progress and measurements of the Community Benefits Plan; quarterly reports in the form prescribed by WDBA, which shall be made available on the Project Website and distributed by WDBA as appropriate to the public and stakeholders; and an annual evaluation report and adjustments to the plan as necessary.
- (c) As the delivery of Community Benefits is to be quantifiable and measurable, Project Co shall report, at a minimum, the following:
  - (i) a summary of meetings held;
  - (ii) progress achieved;
  - (iii) measureable targets achieved;
  - (iv) forward looking activities;
  - (v) persons served;
  - (vi) labour participation activities, accomplishments and outcomes;
  - (vii) contracting and business activities, accomplishments and outcomes;
  - (viii) training and apprenticeship activities, accomplishments and outcomes;
  - (ix) an accounting of both new and all-inclusive funds expended to reach the Local Canadian Workforce Goal and the number of Windsor Region residents and businesses engaged on the Project (both for the month and an ongoing tally);
  - (x) the number of Detroit residents and the number of Detroit-based and headquartered businesses engaged on the Project (both for the month and an ongoing tally);
  - (xi) the number of Canadian Indigenous Peoples, the number of companies owned and operated by Canadian Indigenous Peoples and the number of Canadian Indigenous Peoples who are skilled tradespersons engaged on the Project (both for the month and an ongoing tally);
  - (xii) accomplishments related to Project priorities;
  - (xiii) status and outcomes related to partnerships with institutes of higher learning; and
  - (xiv) other measurable outcomes.
- (d) As the delivery of Community Benefits will also include non-quantifiable outcomes, such as stories, anecdotes, narratives and case studies, Project Co shall report, to the extent possible, such outcomes.
- (e) If during the DB Period, the Independent Certifier determines that Project Co has not fully implemented any initiative in the Community Benefits Plan by the deadline set out in that plan, WDBA may:

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- (i) implement that initiative at the sole cost and expense of Project Co, which costs shall be the higher of (1) the costs budgeted by Project Co for that initiative in the Community Benefits Plan and (2) WDBA's costs incurred in implementing that initiative; or
  - (ii) implement an alternative initiative in lieu of the initiative set out in the Community Benefits Plan that was not fully implemented at the sole cost and expense of Project Co, which costs shall not exceed the costs budgeted by Project Co for that initiative in the Community Benefits Plan.
- (f) If during the OMR Period, WDBA, acting reasonably, determines that Project Co has not fully implemented any initiative in the Community Benefits Plan by the deadline set out in that plan, WDBA may:
  - (i) implement that initiative at the sole cost and expense of Project Co, which costs shall be the higher of (1) the costs budgeted by Project Co for that initiative in the Community Benefits Plan and (2) WDBA's costs incurred in implementing that initiative; or
  - (ii) implement an alternative initiative in lieu of the initiative set out in the Community Benefits Plan that was not fully implemented at the sole cost and expense of Project Co, which costs shall not exceed the costs budgeted by Project Co for that initiative in the Community Benefits Plan.

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**APPENDIX 36-1  
COMMUNITY BENEFITS PLAN**

**Note: To be delivered by Project Co within 6 months of the Commencement Date.**

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**SCHEDULE 37**

**SUSTAINABILITY**

**[REDACTED]**

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**SCHEDULE 38**

**ENERGY MANAGEMENT**

**[REDACTED]**

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**SCHEDULE 39**

**FORM OF CUSTODY AGREEMENT**

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**CUSTODY AGREEMENT**

**THIS AGREEMENT** is made as of the 28th day of September, 2018.

**BETWEEN:**

**WINDSOR-DETROIT BRIDGE AUTHORITY** a corporation incorporated under the *International Bridges and Tunnels Act (Canada)*

("WDBA")

- and-

**BRIDGING NORTH AMERICA GENERAL PARTNERSHIP**, a general partnership under the laws of Ontario

("Project Co")

- and-

**BNY TRUST COMPANY OF CANADA**, a trust company duly constituted under the laws of Canada, acting for the parties as custodian

(the "Custodian")

- and-

**BNY TRUST COMPANY OF CANADA**, a trust company duly constituted under the laws of Canada, acting as Collateral Trustee for and on behalf of the Senior Lenders

(the "Lenders' Agent")

**BACKGROUND**

- A. WDBA and Project Co have entered into the Project Agreement. The Financial Model forms part of the Project Agreement.
- B. Pursuant to the terms of the Project Agreement, WDBA and Project Co wish to appoint the Custodian to perform certain custody services with respect to the Financial Model Media and the Custodian wishes to accept such appointment.
- C. Project Co has entered into the Senior Lending Agreements with the Senior Lenders to finance a portion of its obligations under the Project Agreement.
- D. WDBA, Project Co and the Lenders' Agent have entered into the Lenders' Direct Agreement pursuant to which the Senior Lenders have certain rights with respect to the Project Agreement.
- E. The Project Agreement provides that this Agreement will be entered into by the parties on Financial Close.

**IN CONSIDERATION** of the mutual covenants of the parties and of other consideration, the receipt and sufficiency of which are hereby acknowledged, WDBA, Project Co, the Lenders' Agent and the Custodian agree with one another as follows.

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## 1. DEFINITIONS

Unless defined specifically in this Agreement or unless the context otherwise requires, capitalized but otherwise undefined terms in this Agreement will have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of this Project Agreement.

In this Agreement, the following terms have meanings set out in this Section 1.

**Agreement** means this custody agreement, as it may be supplemented, amended or restated from time to time.

**Appointee** has the meaning set out in Section 6.2.

**Assign** means to sell, convey, transfer, assign, subcontract, dispose of, or otherwise alienate or encumber an agreement or rights under an agreement and Assignment shall have a similarly extended meaning.

**Change in Control** has the meaning set out in the Project Agreement.

**Custodian** means BNY Trust Company of Canada, a corporation constituted under the laws of Canada.

**Digital Storage Device** means a physical device for storing information in an electronic form, such as a CD-ROM, USB flash drive, or other devices which serve the same purpose.

**Financial Model Media** means (i) a printed paper copy of the Financial Model, (ii) a Digital Storage Device containing the Financial Model, (iii) all copies thereof and (iv) each paper copy or Digital Storage Device containing corrected, updated or replacement copies of the Financial Model, which are deposited with the Custodian pursuant to this Agreement.

**Financial Model** means the information, data and algorithms in an excel spreadsheet format (or equivalent format should excel software no longer be supported), including the Schedule of Values, relating to the Project prepared by Project Co and delivered to WDBA and the Senior Lenders and which forms part of the Project Agreement, as such financial model may be corrected, updated or replaced from time to time in accordance with the terms of the Project Agreement.

**Ineligible Person** has the meaning set out in the Project Agreement.

**Notice** has the meaning set out in Section 13.1.

**Project Agreement** means the project agreement dated as of September 28, 2018 between WDBA and Project Co.

**Project Co Signatory** has the meaning given in Section 4.1(b).

**WDBA Signatory** has the meaning given in Section 4.1(a).

## 2. FINANCIAL MODEL MEDIA AND FINANCIAL MODEL

### 2.1 Delivery of Financial Model Media

- (a) WDBA will, together with Project Co, verify the content and authenticity of two copies of the Financial Model Media, which shall be delivered by Project Co to the Custodian on the date of this Agreement.

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- (b) Project Co shall at all times ensure that the Financial Model Media delivered to the Custodian is capable of being used to generate the latest version of the Financial Model issued to WDBA and shall deliver further copies of the Financial Model Media to the Custodian as and when necessary.
- (c) Upon creation of any new versions of the Financial Model and within 30 days from receipt of a notice served upon it by the Custodian under the provisions of Section 3.1(e), a replacement copy of the Financial Model Media containing the new version of the Financial Model shall be verified by WDBA and Project Co in accordance with this Section 2.1 and delivered by Project Co to the Custodian.

## **2.2 Representations and Warranties of Project Co**

Project Co represents and warrants to the other parties that:

- (a) it owns the Intellectual Property Rights in the Financial Model and has authority to enter into this Agreement;
- (b) the use of the Financial Model Media by WDBA under the terms of this Agreement shall not infringe any Intellectual Property Rights of any person; and
- (c) the Financial Model Media delivered under Section 2.1 contains all data and information in human-readable form to enable a reasonably skilled programmer or analyst to understand, maintain and/or correct the Financial Model without the assistance of any other individual.

## **2.3 Payment**

In consideration of the Custodian performing the services contemplated by this Agreement, Project Co shall pay the Custodian's fees as set out in Schedule 1 to this Agreement.

## **3. CUSTODIAN'S DUTIES**

### **3.1 Safe Custody**

The Custodian shall:

- (a) hold in safe custody all versions of the Financial Model Media delivered to it pursuant to the terms of this Agreement;
- (b) hold the Financial Model Media in a safe and secure environment;
- (c) inform Project Co and WDBA of the receipt of any copy of the Financial Model Media;
- (d) at all times retain a copy of the latest verified deposit of the Financial Model Media; and
- (e) promptly notify Project Co and WDBA if it becomes aware at any time during the term of this Agreement that any copy of the Financial Model Media held by it has been lost, damaged or destroyed.

The Custodian shall not be responsible for procuring the delivery of the Financial Model Media in the event of the failure by Project Co to do so.

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### 3.2 Audit of Financial Model

In accordance with Section 6, the Custodian shall allow WDBA, Project Co, the Lenders' Agent and the auditor retained by the Lenders' Agent to inspect and audit the Financial Model from time to time.

### 3.3 Records

WDBA and Project Co shall be entitled, at reasonable hours and upon giving the Custodian reasonable notice, to inspect any records kept by the Custodian in accordance with this Agreement.

## 4. RELEASE EVENTS

### 4.1 Release of Copies of Financial Model Media

The Custodian shall hold the Financial Model Media to the order of WDBA and Project Co and shall honour the instructions and signatures of:

- (a) the President & CEO and designated signing officers of WDBA or such other person nominated by WDBA and notified to the Custodian and Project Co in writing (the "**WDBA Signatory**"); and
- (b) the President & CEO and designated signing officers of Project Co or such other person nominated by Project Co and notified to the Custodian and WDBA in writing (the "**Project Co Signatory**");

and shall, subject to Section 4.2, upon receiving signed joint instructions from the WDBA Signatory and the Project Co Signatory, release one copy of the Financial Model Media to the person named in such instructions or previously identified in writing by the WDBA Signatory and the Project Co Signatory.

### 4.2 Release on Joint Instructions

WDBA and Project Co shall give joint instructions to the Custodian for the release of the Financial Model Media, in accordance with Section 4.1, on each occasion that the Financial Model Media is required to be released pursuant to the Project Agreement or that the Financial Model Media must be released to allow the Financial Model Media and Financial Model to be updated, maintained and/or corrected.

### 4.3 Release on Termination of Project Agreement

The Custodian shall release the Financial Model Media to a duly authorized representative of WDBA on any termination of the Project Agreement prior to the Expiry Date.

## 5. CONFIDENTIALITY

### 5.1 Confidentiality Obligations

- (a) The Financial Model Media and the Financial Model shall remain the confidential property of Project Co and, in the event that the Custodian provides a copy of the Financial Model Media to WDBA, WDBA shall be permitted to use the Financial Model and Financial Model Media only in accordance with the provisions of Part G of the Project Agreement [*Intellectual Property, Confidentiality and Personal Information*].

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- (b) The Custodian agrees for itself, its directors, officers, employees, sub-contractors and agents, to maintain all information and/or documentation in whatever form coming into its possession or to its knowledge under or in connection with this Agreement in strictest confidence and secrecy. The Custodian further agrees not to make use of such information and/or documentation other than for the purposes of this Agreement and will not disclose or release it other than in accordance with the terms of this Agreement.
- (c) In the event that the Financial Model Media is released to WDBA under Section 4, WDBA shall:
  - (i) use the Financial Model Media only for the purpose of understanding, maintaining updating and correcting the Financial Model exclusively on behalf of WDBA;
  - (ii) not use the Financial Model Media for any other purpose nor disclose the Financial Model to any person, except those of its employees contractors or agents who need to review the Financial Model Media in order to understand, maintain, update and/or correct the Financial Model as provided in Section 5.1(c)(i);
  - (iii) hold the Financial Model Media in a safe and secure environment when not in use; and
  - (iv) forthwith destroy the Financial Model Media should WDBA cease to be entitled to use the Financial Model.

## 5.2 Intellectual Property Rights

The release of the Financial Model Media to WDBA and to the Custodian will not act as an assignment of any Intellectual Property Rights that Project Co possesses in the Financial Model.

## 6. STEP-IN RIGHTS

### 6.1 Performance by WDBA

If a Project Co Event of Default occurs under the Project Agreement, then WDBA may give notice of such occurrence to the Custodian and thereafter, until such Project Co Event of Default ceases to exist, WDBA shall have the right to perform or discharge the covenants and obligations of Project Co contained in this Agreement, for, on behalf of, and in the name of, Project Co.

### 6.2 Step-In Right of Lenders' Agent

During any Step-In Period under the Lenders' Direct Agreement, the Lenders' Agent may give notice to the Custodian and WDBA, that it will, or another person specified in such notice ("**Appointee**") will, with effect from the date specified in such notice, perform and discharge all the covenants and obligations of Project Co under this Agreement. In such event (i) the Lenders' Agent or Appointee shall have the benefit of and be entitled to enforce against the Custodian any and all of the Custodian's covenants and obligations to Project Co under this Agreement (ii) the Custodian undertakes to perform and discharge such obligations in favour of the Lenders' Agent or such Appointee during the Step-In Period and (iii) the Lenders' Agent shall be bound by the obligations of Project Co pursuant to this Agreement during such Step-In Period.

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### 6.3 Step-Out Date

When the Step-Out Date under the Lenders' Direct Agreement occurs, notice of such occurrence shall be given by either WDBA or the Lenders' Agent to the Custodian and thereafter the Lenders' Agent and/or the Appointee shall be automatically released from all obligations of Project Co assumed by the Lenders' Agent pursuant to Section 6.2, except for any which have fallen due for performance or discharge on or before the Step-Out Date and which have not been fully and unconditionally performed or discharged. The occurrence of the Step-Out Date shall not affect the continuation of Project Co's obligations towards the Custodian under this Agreement.

### 6.4 Rights and Obligations of Lenders' Agent

If any of the Lenders' Agent, the Appointee or any of their respective directors, officers, employees, sub-contractors and agents comes into possession of any copy of the Financial Model Media or examines or inspects the Financial Model contained in such Financial Model Media the Lenders' Agent shall, and it shall cause any such Appointee, director, officer, employee, subcontractor or agent shall to:

- (a) maintain the Financial Model Media and the Financial Model in strictest confidence and secrecy;
- (b) not release the Financial Model Media or disclose the Financial Model to any other person, other than those of its directors, officers, employees, sub-contractors and agents who need to have access to the Financial Model Media and to review the Financial Model as permitted by this Agreement, the Lenders' Direct Agreement and the Senior Lending Agreements; and
- (c) not make use of such information and/or documentation other than for the purposes of this Agreement, the Lenders' Direct Agreement and the Senior Lending Agreements.

## 7. RIGHTS OF INSPECTION

### 7.1 Inspection and Audit

WDBA or Project Co shall be entitled to inspect and audit the Financial Model in accordance with this Section 7.

- (a) Such inspection shall be authorized by a notice signed by each of WDBA and Project Co. Such notice shall contain the date of the proposed inspection and the name of the individuals who will be attending at the Custodian's office to perform such inspection and audit and on whose behalf (WDBA or Project Co) such individuals will be acting. Such notice must be given at least 1 Business Day prior to date of the proposed inspection.
- (b) Upon receipt of such notice, the Custodian shall provide facilities for the individual identified in such notice to inspect and audit the Financial Model.
- (c) The Custodian shall maintain a record of any inspection and audit made pursuant to this Section 7 including details of the individuals who made the inspection and audit and the date of the inspection and audit.

## 8. CUSTODIAN'S LIABILITY AND RIGHTS

### 8.1 Limitations on Liability of Custodian

- (a) Subject to the following provisions of this Section 8, the Custodian shall bear no obligation or responsibility to any person to determine the existence, relevance,

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completeness, accuracy, effectiveness or any other aspect of the Financial Model Media or the Financial Model.

- (b) The Custodian shall not be liable for any loss or damage caused to Project Co or WDBA either jointly or severally except to the extent that such loss or damage is caused by the negligent acts or omissions of or a breach of any contractual duty by the Custodian, its employees, agents or sub-contractors, and in such event, the Custodian's total liability in respect of all claims arising under or by virtue of this Agreement shall not (except in the case of claims for personal injury or death) exceed the sum of [REDACTED]. The Custodian shall in no circumstances be liable to Project Co or WDBA for indirect or consequential loss of any nature whatsoever whether for loss of profit, loss of business or otherwise.
- (c) Subject to complying with the provisions of Section 4, and save in the case of manifest error, the Custodian shall be protected in acting upon any written request, waiver, consent, receipt or other document furnished to it pursuant to this Agreement, not only in assuming its due execution and the validity and effectiveness of its provisions but also as to the truth and acceptability of any information contained in it, which the Custodian in good faith believes to be genuine and what it purports to be.
- (d) The duties, responsibilities and obligations of the Custodian shall be limited to those expressly set out herein and no duties, responsibilities or obligations shall be inferred or implied. The Custodian shall not be subject to, nor required to comply with, any other agreement between or among any or all of the other parties or to which any such other party is a party, even though reference to such agreement may be made in this Agreement, or to comply with any direction or instruction (other than those contained in this Agreement or delivered in accordance with this Agreement). The Custodian shall not be required to expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder except ordinary corporate costs incurred in the performance of such duties.
- (e) The Custodian shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility under this Agreement by reason of any occurrence beyond the control of the Custodian (including any act or provision of any present or future law or regulation or Governmental Authority, any act of God or war, or the unavailability of any wire or communication facility).

## 8.2 Other Rights of Custodian

- (a) If at any time the Custodian 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 Financial Model Media or the Financial Model (including orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of property), the Custodian is authorized to comply in any manner as it or its legal counsel deems appropriate, acting reasonably. The Custodian, when so served, shall promptly notify Project Co and WDBA, in writing, of such process and the Custodian's intended action in order to provide Project Co and WDBA a reasonable opportunity to intervene or challenge such process in a court or tribunal of competent jurisdiction.
- (b) The Custodian may consult with legal counsel at the expense of Project Co and WDBA as to any matter relating to this Agreement, and the Custodian shall not incur any liability in acting in good faith in accordance with any advice from such counsel. All reasonable fees and disbursements incurred by the Custodian shall be paid by Project Co.

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- (c) In the event of any ambiguity or uncertainty in this Agreement or in any notice, instruction or other communication received by the Custodian under this Agreement, the Custodian shall notify Project Co and WDBA in writing of such ambiguity or uncertainty and request instructions so that such ambiguity or uncertainty is eliminated. The Custodian may, acting reasonably, refrain from taking any action other than to retain possession of the Financial Model Media, unless the Custodian receives written instructions, signed by Project Co and WDBA, which eliminates such ambiguity or uncertainty.
- (d) Each of Project Co and WDBA shall provide to the Custodian an incumbency certificate setting out the names and sample signatures of the individuals authorized to give instructions on its behalf to the Custodian. The Custodian shall be entitled to rely on such certificate until a revised certificate is provided to it. The Custodian shall be entitled to refuse to act upon any instructions given by a party which are signed by any individual not identified in such incumbency certificates.
- (e) The Custodian shall be entitled to rely and act upon, on any direction, order, instruction, notice or other communication provided to it hereunder which is sent to it by Electronic Transmission.

### **8.3 Disputes and Conflicting Claims**

In the event of any dispute between or conflicting claims by or among WDBA and Project Co and/or any other person with respect to the Financial Model Media or the Financial Model, the Custodian shall be entitled, acting reasonably, to refuse to comply with any and all such claims, demands or instructions so long as such dispute or conflict shall continue and the Custodian shall promptly notify Project Co and WDBA of its intention to do so. In such circumstances, the Custodian shall not be or become liable in any way to Project Co or WDBA for failure or refusal to comply with such conflicting claims, demands or instructions. The Custodian shall be entitled to refuse to act until, acting reasonably, either (i) such conflicting or adverse claims or demands shall 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 writing satisfactory to the Custodian or (ii) the Custodian shall have received security or an indemnity satisfactory to it acting reasonably sufficient to hold it harmless from and against any and all losses which it may incur by reason of so acting. The Custodian may, in addition elect, acting reasonably, to commence an interpleader action or seek other judicial relief or orders as it may deem, acting reasonably, necessary, including depositing all or any part of the Financial Model Media and any copies of the Financial Model Media into court. The costs and expenses (including reasonable attorneys' fees and expenses of legal counsel) incurred in connection with such proceeding shall be paid by, and shall be deemed a joint and several obligation of, Project Co and WDBA.

## **9. INDEMNITY**

### **9.1 Indemnity by Project Co**

Save for any claim falling within the provisions of Section 8.1(b), Project Co shall be liable for and shall indemnify and hold harmless the Custodian, from and against any and all claims, losses, liabilities, costs, damages or expenses (including reasonable attorneys' fees and expenses) suffered or incurred by it, arising from or in connection with or related to this Agreement or acting as Custodian hereunder, except for losses caused by its negligence or willful misconduct.

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## 10. TERMINATION

### 10.1 Termination Right of Custodian,

- (a) The Custodian may terminate this Agreement for failure by Project Co to pay any amount owed by Project Co to the Custodian within 30 days after notice of such failure has been given by the Custodian to Project Co and WDBA.
- (b) Upon termination under the provisions of Sections 10.1(a), the Custodian will deliver the Financial Model Media to Project Co. If after such termination, the Custodian is unable to trace Project Co within 60 days of writing to the last registered address notified by Project Co to the Custodian, the Custodian will deliver the Financial Model Media to WDBA.

### 10.2 Other Termination Events

- (a) This Agreement shall terminate upon release of the Financial Model Media to WDBA in accordance with Section 4.3.
- (b) The Agreement shall terminate on the Expiry Date. Project Co will then notify the Custodian to release of the Financial Model Media to it. The Custodian agrees that it will notify WDBA of Project Co's request and, failing receipt of any notice of objection from WDBA within 30 days of the receipt of the notice by WDBA, it shall release the Financial Model Media to Project Co.

### 10.3 Project Co Liable for Payment

On any termination of this Agreement or any resignation of the Custodian pursuant to Section 11.1, Project Co shall remain liable to the Custodian for payment in full of any fee which has become due but which has not been paid as at the date of termination.

## 11. RESIGNATION OF CUSTODIAN

### 11.1 Notice of Resignation

The Custodian may resign and be discharged from all of its obligations in this Agreement, except for those accrued to the date of resignation, by giving Project Co and WDBA 120 days prior notice or such shorter notice as they may accept. If the Custodian resigns, a new custodian shall be appointed by mutual agreement of WDBA and Project Co. Failing such agreement by the 60<sup>th</sup> day after the giving of such notice of resignation, the Dispute shall be resolved pursuant to Schedule 23 [*Dispute Resolution Procedure*] of the Project Agreement. If such replacement custodian has not been appointed by the expiry of such 120 day period, the Custodian shall be entitled to apply to a court of competent jurisdiction for leave to deliver the Financial Model Media and all related records and documents into the custody of such court or of an officer thereof and the resignation of the Custodian shall become effective upon such delivery.

### 11.2 Replacement of the Custodian

WDBA and Project Co may at any time, on 60 days prior notice to the Custodian, replace the Custodian by giving notice to the Custodian jointly signed by them appointing a new custodian as the Custodian hereunder.

### 11.3 Obligations of the Custodian When Changed

Each new custodian shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named herein as Custodian, without any further assurance, conveyance, act or deed. The former Custodian will, upon payment of any outstanding amounts owed to it

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hereunder, deliver custody of the Financial Model Media to the new custodian as soon as it has been advised of the appointment of such custodian. However the new Custodian shall, if requested by WDBA and Project Co, sign a counterpart of this Agreement and agree to become bound by all of the obligations of the Custodian hereunder.

#### **11.4 Consent of Lenders' Agent**

The Lenders' Agent consents to the appointment of any new custodian made in accordance with the terms of Section 11.2

### **12. ASSIGNMENT**

#### **12.1 Binding on Successors and Assigns**

This Agreement shall enure to the benefit of, and shall be binding upon, the Custodian, Project Co and WDBA and their respective successors and permitted Assignees.

#### **12.2 General Restriction on Assignment**

No party to this Agreement may Assign this Agreement or its rights hereunder except as permitted by this Section 12. Any assignment which is permitted under this Section 12 is conditional upon the assignee assuming all obligations of the assignor under this Agreement.

#### **12.3 Assignment by Project Co**

Project Co may assign this Agreement to any person to whom Project Co assigns its interest in the Project Agreement pursuant to Section 55.1 (*Assignment by Project Co*) of the Project Agreement.

#### **12.4 Assignment by WDBA**

WDBA may assign this Agreement and any of its rights hereunder to any person to whom WDBA assigns its interest in the Project Agreement pursuant to Section 55.2 (*Assignment by WDBA*) of the Project Agreement.

#### **12.5 Restriction on Assignment by Custodian**

The Custodian may assign this Agreement and its rights hereunder to a successor custodian, provided that the Custodian delivers to WDBA not less than 10 Business Days prior to such assignment, a notice setting out such contact information regarding the successor custodian as WDBA may reasonably require and unless such person enters into a new agreement with WDBA and Project Co to the same effect as this Agreement. However, the Custodian may not assign this Agreement to a successor custodian who is an Ineligible Person.

#### **12.6 Restriction on Assignment by Lenders' Agent**

The Lenders' Agent shall not assign this Agreement or its rights hereunder to any person, except to any replacement lenders' agent appointed pursuant to the terms of the Senior Lending Agreements, provided that the assignee must not be an Ineligible Person.

#### **12.7 Security Interest**

The Custodian and WDBA acknowledge that Project Co has granted a security interest over its rights under this Agreement to the Lenders' Agent.

#### **12.8 Change in Control**

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- (a) The Custodian shall not undergo a Change in Control without the prior written consent of WDBA, not to be unreasonably withheld, provided that the person or group of persons acquiring Control must not be or include a person who is an Ineligible Person.
- (b) The Lenders' Agent may undergo a Change in Control without the prior written consent of WDBA, provided that the person or group of persons acquiring Control must not be or include a person who is an Ineligible Person.

### 13. NOTICES

#### 13.1 Requirement for Writing

Wherever in this Agreement provision is made for the giving, making or issuing of any notice, consent, confirmation, request, approval, or other report or determination (a "**Notice**") by any person, unless otherwise specified, such Notice shall be in writing.

#### 13.2 Addresses

- (a) Any Notice shall be deemed duly given if it is (i) signed by a duly authorized representative of the person giving the Notice, or by a person acting on its behalf, and (ii) personally delivered, sent through a secure document-sharing site approved by WDBA, sent by a recognized courier service (with delivery receipt requested), or sent by confirmed facsimile or e-mail transmission, to the following addresses:

To WDBA

100 Ouellette Avenue, Suite 400  
Windsor, Ontario N9A 6T3

**[REDACTED]**

Attention:

**[REDACTED]**

With a copy to:

100 Ouellette Avenue, Suite 400  
Windsor, Ontario N9A 6T3

**[REDACTED]**

Attention:

**[REDACTED]**

To Project Co:

**[REDACTED]**

Attention:

**[REDACTED]**

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With a copy to:

**[REDACTED]**

**[REDACTED]**

Attention:

**[REDACTED]**

With a copy to:

**[REDACTED]**

**[REDACTED]**

Attention:

**[REDACTED]**

With a copy to:

**[REDACTED]**

Attention:

**[REDACTED]**

To the Custodian:

**[REDACTED]**

**[REDACTED]**

Attention:

**[REDACTED]**

To the Lenders' Agent:

**[REDACTED]**

**[REDACTED]**

Attention:

**[REDACTED]**

- (b) Where any Notice is sent to a party through a secure document-sharing site, or by facsimile or email, an original of the Notice, if requested by the addressee, shall also be personally delivered or sent by a recognized courier service (with delivery receipt requested) within 5 Business Days of such request by the addressee.

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### 13.3 Change of Address

Any party may change its address for Notice to a new address, a new facsimile number or a new email address by Notice to the other parties.

### 13.4 Deemed Receipts

Any Notice shall be deemed to have been received:

- (a) if sent by personal delivery or by a courier service, upon delivery;
- (b) if sent through a secure document-sharing site, by facsimile or e-mail:
  - (i) on a Business Day prior to 4:00 p.m., upon sending;
  - (ii) on a Business Day after 4:00 p.m. or on a day which is not a Business Day, at 9:00 a.m. on the next Business Day; and

in the case of a Notice set by facsimile or email, subject to:

- (iii) confirmation of transmission or acknowledgement of receipt; and
- (iv) there having been no telephonic communication by the recipient to the sender (any such telephonic communication to be confirmed in writing) that the facsimile or the email has not been received in legible form:
  - (A) within three hours after sending, if sent on a Business Day before 2:00 p.m.; or
  - (B) by noon on the following Business Day if sent after 2:00 p.m. on a Business Day or if sent on a day which is not a Business Day.

## 14. GENERAL

### 14.1 Exercise of Discretion by WDBA

- (a) Except as otherwise required by Applicable Law, when WDBA has,
  - (i) the choice to take or not take an action including to give or grant an agreement, approval, confirmation, acceptance, waiver, permission or consent,
  - (ii) the right or obligation to make an election, determination, designation, rejection, requirement or stipulation, to reserve a right, to make a request, to exercise an option, to make a decision, or
  - (iii) the right to consider or to come to a judgment, view or an opinion,

with respect to any matter under this Agreement, it means that WDBA has the sole, subjective, absolute and unfettered discretion with respect to the matter in question, with no requirement to act reasonably or to provide reasons, unless there is a specific requirement in this Agreement for WDBA to act reasonably with respect to such matter. In the exercise of any such unfettered discretion, WDBA shall act in good faith but shall be entitled to have regard solely to what it considers to be in its own best interests and where relevant, in the best interests of any affected WDBA Person.

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- (b) When the exercise of WDBA's discretion is subject to an 'acting reasonably' standard, WDBA shall without limitation be deemed to be acting reasonably if the exercise of such discretion is consistent with the obligations of WDBA under the Crossing Agreement and other Applicable Law.

#### **14.2 Waiver**

Failure by any party at any time to enforce any provision of this Agreement or to require performance by any other party of any of the provisions of this Agreement shall not be construed as a waiver of any such provision and shall not affect the validity of this Agreement or any part thereof or the right of any party to enforce any provision in accordance with its terms.

#### **14.3 Amendments**

This Agreement may not be varied, amended or supplemented except by an agreement in writing signed by the duly authorized representative of each of the parties hereto and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Agreement.

#### **14.4 Entire Agreement**

Except to the extent that provisions of other Project Documents are incorporated in this Agreement by reference, this Agreement constitutes the entire agreement between the parties in connection with the subject matter of this Agreement. This Agreement and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement.

#### **14.5 Further Assurances**

The parties shall do, execute and deliver, or shall cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the parties' respective obligations under this Agreement.

#### **14.6 Remedies Cumulative**

Except as otherwise set out in this Agreement, the rights, powers and remedies of each party set out in this Agreement are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such party under this Agreement.

#### **14.7 Relationship Between the Parties**

- (a) The parties are independent contractors. This Agreement is not intended to and does not create or establish between the parties any relationship as partners, joint venturers, employer and employee, master and servant, or of principal and agent.
- (b) Except as expressly provided in this Agreement, no party shall be, or be deemed to be, an agent of any other party, and no party shall have authority to represent that it is an agent of any other party, or to accept any order, or enter into any contract or agreement, or make any representations or warranties of any kind to any person, or to assume or create any obligation, express or deemed, on behalf of or binding, or purportedly binding upon, such other party.

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- (c) Except as otherwise expressly provided in this Agreement, each party shall be free from the control of each other party as to the manner in which it shall perform its obligations, or cause such obligations to be performed, under this Agreement.

#### **14.8 Costs**

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Agreement.

#### **14.9 Security**

This Agreement including the rights of any person deriving any benefit under this Agreement, are subject to, and such rights shall be exercised at all times in accordance with, the Security Requirements.

#### **14.10 Disputes**

- (a) Any Dispute between any of the parties with respect to any of the subject matters of this Agreement will be resolved in accordance with, and the parties will comply with, the Dispute Resolution Procedure. Schedule 23 [*Dispute Resolution Procedure*] of the Project Agreement is incorporated, with the necessary alterations, into this Agreement.
- (b) The parties agree to consolidate any arbitration procedure instituted pursuant hereto with any other arbitration procedure instituted by WDBA or Project Co arising from a Dispute that raises common, identical or similar issues of fact or law.

#### **14.11 Governing Law and Jurisdiction**

- (a) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, without regard to any Applicable Laws or choice of Law rules that might direct the application of the Applicable Laws of another jurisdiction.
- (b) Subject to Section 14.10 of this Agreement, the courts of the Province of Ontario shall have exclusive jurisdiction (subject to any court or tribunal of federal jurisdiction in Canada) with respect to any matter or issue which the Dispute Resolution Procedure permits to be submitted to the courts.

#### **14.12 Counterparts**

This Agreement is executed in one or more counterparts, each of which contains one original signature. Any single counterpart or a set of counterparts executed, in either case, by all of the parties shall constitute a full, original and binding agreement for all purposes.

#### **14.13 Electronic Execution**

To evidence the fact that a party has executed this Agreement, such party may send a copy of its executed counterpart to the other party by facsimile, or by email, in portable document file (PDF) format. That party will be deemed to have executed this Agreement on the date that its facsimile or email is deemed to be received in accordance with Section 13.4. In such event, such sending party will forthwith deliver to the other party the originally executed counterpart of this Agreement to the other party.

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## 15. INTERPRETATION

### 15.1 Construction and Interpretation

This Agreement will be interpreted according to the following provisions, save to the extent that the context or the express provisions of this Agreement otherwise require.

- (a) The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of such agreement.
- (b) The table of contents, headings and sub-headings, marginal notes and references to them in this Agreement are for convenience of reference only, do not constitute a part of this Agreement, and will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement.
- (c) Each reference to an agreement, document or other instrument includes (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document or other instrument) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned.
- (d) Each reference to a statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute.
- (e) Each reference to time of day is a reference to local Windsor, Ontario time.
- (f) Time is of the essence of each provision of this Agreement.
- (g) Words importing the singular include the plural and vice versa. Words importing a particular gender include all genders.
- (h) References to persons shall include their respective heirs, executors, administrators, personal representatives successor and assigns. References to a public organization shall include its successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.
- (i) Each reference to "parties" means the parties to this Agreement and each reference to a "party" means any one of the parties to this Agreement, provided however that a reference to a third party does not mean a party to this Agreement.
- (j) All monetary amounts are expressed in Canadian Dollars.
- (k) In this Agreement, the words "including" and "includes", when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set out or to similar items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.

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- (l) Generic words are not to be given a restrictive meaning:
  - (i) if they are introduced by the word “other”;
  - (ii) if they are preceded by words indicating a particular class of act, matter or thing; or
  - (iii) if they are followed by particular examples intended to be embraced by those general words.
- (m) References containing terms such as “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set out but instead refer to the Agreement taken as a whole;
- (n) Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement which is not material to a right or obligation of a party is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the parties shall promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.
- (o) Any consent contemplated to be given under this Agreement must be in writing.
- (p) The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of a party means the taking in good faith and with due diligence, of all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit.
- (q) All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with the Accounting Principles, consistently applied.
- (r) If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day.
- (s) Where this Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (t) Where this Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (u) Where this Agreement provides that a document is to be “certified”, that means that an authorized officer or director of the relevant legal entity shall certify that such document (i)

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is a true and complete copy of the original document and (ii) such original document is in full force and effect unamended as of the date of the certification.

**TO EVIDENCE** their agreement, the parties have executed this Agreement as of the date and year written on the first page hereof.

**WINDSOR-DETROIT BRIDGE AUTHORITY**

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

Name:

Title:

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

Name:

Title:

We have authority to bind the corporation.

**BRIDGING NORTH AMERICA GENERAL PARTNERSHIP**

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

Name:

Title:

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

Name:

Title:

We have authority to bind the corporation.

**[CUSTODIAN]**

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

Name:

Title:

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

Name:

Title:

We have authority to bind the corporation.

**BNY TRUST COMPANY OF CANADA**

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

**[REDACTED]**

Vice-President

We have authority to bind the corporation.

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**SCHEDULE 1**  
**CUSTODIAN FEES**

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**SCHEDULE 40****CERTAIN US REQUIREMENTS**

1. Project Co shall comply with all obligations under Section 4 of the Project Agreement. As provided in Section 4.2:
  - (a) Project Co shall comply with the Required Contract Provisions on Federal-Aid Construction Contracts contained within FHWA Form 1273 as follows:
    - (i) Section VIII (False Statements Concerning Highway Projects) and Section X (Compliance with Government-wide Suspension and Debarment Requirements) shall apply to all Facility Components and all activities and works relating to the Project;
    - (ii) Section VI (Subletting or Assigning the Contract) and Attachment A (Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts) shall not apply to any of the Facility Components; and
    - (iii) all other sections of the FHWA Form 1273 shall apply only to Federal Aid Highway Project Activities.
  - (b) Project Co shall ensure that all iron and steel used in the Federal Aid Highway Project Activities, the US Border Services Plaza, and the Canadian portion of the Bridge (not including the Canadian Bridge Approach or the Canadian POE) are produced in only the US and Canada. FHWA granted a public interest Buy America waiver which contains restrictions for the use of American and Canadian steel and iron products (See 77 Fed. Reg. 74,048). Other materials required for the construction of the Facility are not restricted as to country of origin.
  - (c) Project Co shall comply with Attachment 4 Special DBE Provision even if such requirements may be deemed for any reason to discriminate in favour of the US over Canada. Otherwise, Project Co shall not discriminate in favour of the US over Canada or in favour of Canada over the US with respect to any products, materials, supplies, labour or services under this Schedule.
  - (d) Project Co shall ensure that all requirements under this Schedule are met until the later to occur of (i) the date that the Facility is open to transportation by the public or (ii) the date of rectification of all Minor Deficiencies related to Section Appendix 40-14.1 and Section Appendix 40-14.2 of this Project Agreement.
2. The "Required Contract Provisions, Federal Aid Construction Contracts, Form 1273," are included in this Agreement as Attachment 1 to this Schedule 40, provided that:
  - (a) Whenever in such Required Contract Provisions references are made to:
    - (i) "contract" or "prime contract", such references shall be construed to mean this Project Agreement unless the context otherwise requires;
    - (ii) "contracting agency" or "contacting agency" such reference shall be construed to mean WDBA;
    - (iii) "contracting officer", such reference shall be construed to mean the WDBA Representative;

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- (iv) "contractor", "prime contractor", "design-builder", "bidder", or such references shall be construed to mean Project Co;
  - (v) "department", "agency" or "department or agency entering into this transaction", such references shall be construed to mean WDBA, except where a different department or agency is specified;
  - (vi) "State", such reference shall be construed to mean the State of Michigan;
  - (vii) "State DOT," such reference shall be construed to mean the Michigan Department of Transportation;
  - (viii) "subcontractor", "supplier", or "lower tier subcontractor", such references shall be construed to mean, as appropriate, Subcontractor.
- (b) The requirements of SECTION VI - SUBLETTING OR ASSIGNING THE CONTRACT and ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS are inapplicable to this Agreement.
3. The Federal Highway Administration ("**FHWA**") "Buy America Requirement" in 23 CFR 635.410 is not applicable to this Agreement. In lieu of the FHWA Buy America Requirement, all steel and iron used in Federal Aid Highway Project Activities shall be sourced in accordance with THE SPECIAL PROVISION FOR SOURCE OF STEEL AND IRON (BUY AMERICA OR CANADIAN) set forth in Attachment 2 to this Schedule.

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**APPENDIX 40-1**

**FHWA FORM 1273  
REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

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**ATTACHMENTS**

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

**1. GENERAL**

Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

- (a) Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor’s own organization and with the assistance of workers under the contractor’s immediate

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superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

- (b) A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.
- (c) Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

## 2. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the *Rehabilitation Act* of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the *Rehabilitation Act* of 1973, as amended (29 USC 794), and Title VI of the *Civil Rights Act* of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

### 2.1 Equal Employment Opportunity

Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the *Americans with Disabilities Act* of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

- (a) The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

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(b) The contractor will accept as its operating policy the following statement:

“It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training.”

## 2.2 EEO Officer

The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

## 2.3 Dissemination of Policy

All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum.

- (a) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
- (b) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
- (c) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.
- (d) Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
- (e) The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

## 2.4 Recruitment

When advertising for employees, the contractor will include in all advertisements for employees the notation: “An Equal Opportunity Employer.” All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

- (a) The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such

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identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

- (b) In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal non-discrimination provisions.
- (c) The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

## 2.5 Personnel Actions

Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed.

- (a) The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- (b) The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- (c) The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- (d) The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

## 2.6 Training and Promotion

- (a) The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
- (b) Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

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- (c) The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- (d) The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

## 2.7 Unions

If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below.

- (a) The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
- (b) The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
- (c) The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.
- (d) In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

## 2.8 Reasonable Accommodation for Applicants / Employees with Disabilities

The contractor must be familiar with the requirements for and comply with the *Americans with Disabilities Act* and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

## 2.9 Selection of Subcontractors, Procurement of Materials and Leasing of Equipment

The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure non-discrimination in the administration of this contract.

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- (a) The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.
- (b) The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

### **2.10 Assurance Required by 49 CFR 26.13(b)**

- (a) The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.
- (b) The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

### **2.11 Records and Reports**

The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

- (a) The records kept by the contractor shall document the following:
  - (i) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
  - (ii) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
  - (iii) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.
- (b) The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

## **3. NONSEGREGATED FACILITIES**

- (a) This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.
- (b) The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends

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further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

#### 4. DAVIS-BACON AND RELATED ACT PROVISIONS

- (a) This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.
- (b) The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

##### 4.1 Minimum wages

- (a) All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the *Secretary of Labor under the Copeland Act* (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.
- (b) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the *Davis-Bacon Act* on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1(d) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (b) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
  - (i) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification

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and wage rate and fringe benefits therefore only when the following criteria have been met:

- (A) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (B) The classification is utilized in the area by the construction industry; and
  - (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
  - (iii) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
  - (iv) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (ii) or (iii) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
  - (d) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the *Davis-Bacon Act* have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## 4.2 Withholding

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The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

#### 4.3 Payrolls and Basic Records

- (a) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the *Davis-Bacon Act*), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the *Davis-Bacon Act*, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (i) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the

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prime contractor for its own records, without weekly submission to the contracting agency.

- (ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
  - (A) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
  - (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
  - (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 4.1(b)(ii) of this section.
- (iv) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (b) The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4.4 Apprentices and Trainees

- (a) Apprentices (programs of the USDOL).
  - (i) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State

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Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

- (ii) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.
  - (iii) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
  - (iv) In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (b) Trainees (programs of the USDOL).
- (i) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.
  - (ii) The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.
  - (iii) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless

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the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

- (iv) In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (c) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- (d) Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

#### **4.5 Compliance with Copeland Act Requirements**

The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

#### **4.6 Subcontracts**

The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

#### **4.7 Contract Termination: Debarment**

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

#### **4.8 Compliance with Davis-Bacon and Related Act Requirements**

All rulings and interpretations of the *Davis-Bacon and Related Acts* contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

#### **4.9 Disputes Concerning Labor Standards**

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Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### **4.10 Certification of Eligibility**

- (a) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the *Davis-Bacon Act* or 29 CFR 5.12(a)(1).
- (b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the *Davis-Bacon Act* or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

### **5. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the *Contract Work Hours and Safety Standards Act*. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

#### **5.1 Overtime Requirements**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

#### **5.2 Violation; Liability for Unpaid Wages; Liquidated Damages**

In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

#### **5.3 Withholding for Unpaid Wages and Liquidated Damages**

The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the *Contract Work Hours and Safety Standards Act*, which is held by

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the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

#### **5.4 Subcontracts**

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

### **6. SUBLETTING OR ASSIGNING THE CONTRACT**

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

- (a) The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).
  - (i) The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:
    - (A) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
    - (B) the prime contractor remains responsible for the quality of the work of the leased employees;
    - (C) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
    - (D) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.
  - (ii) "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.
- (b) The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

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- (c) The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.
- (d) No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.
- (e) The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## 7. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

- (a) In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
- (b) It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the *Contract Work Hours and Safety Standards Act* (40 U.S.C. 3704).
- (c) Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the *Contract Work Hours and Safety Standards Act* (40 U.S.C.3704).

## 8. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar

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acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

“Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the *Federal-aid Roads Act* approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both.”

## **9. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

- (a) that any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the *Clean Water Act* or Section 306 of the *Clean Air Act*; and
- (b) that the contractor agrees to include or cause to be included the requirements of paragraph 9.1 of this Section 9 in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

## **10. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

### **10.1 Instructions for Certification – First Tier Participants:**

- (a) By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

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- (b) The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- (c) The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- (d) The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (e) The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- (f) The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- (g) The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- (h) h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

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- (i) Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (j) Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**10.2 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

- (a) The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:
  - (i) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
  - (ii) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (iii) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and
  - (iv) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (b) Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**10.3 Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

- (a) By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- (b) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or

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agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

- (c) The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- (d) The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “participant,” “person,” “principal,” and “voluntarily excluded,” as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- (e) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- (f) The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- (g) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- (h) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (i) Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

- (a) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
- (b) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**11. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

- (a) The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
  - (i) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - (ii) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (b) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- (c) The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

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**APPENDIX 40-2****SOURCE OF STEEL AND IRON (BUY AMERICA OR CANADIAN)**

(AS ALSO SET OUT IN APPENDIX 7-1-8 OF PART 1 [GENERAL] OF SCHEDULE 7 [QUALITY MANAGEMENT])

**Delete subsection 105.10, on page 53 of the MDOT 2012 Standard Specifications for Construction, in its entirety and replace with the following:**

- (a) Source of Steel and Iron. Provide steel and iron materials and products for permanent incorporation into the work which were produced in whole only in the United States (per Title 23 of the Federal Code of Regulations (CFR) Section 635.410, Buy America Requirements), or which were produced in whole only in Canada under Canadian requirements as applicable, or from a combination of U.S. and Canadian sources.
- (b) All steel and iron products and manufacturing processes of the steel and iron material in a product, including but not limited to the following steps; smelting, melting, rolling, extruding, machining, bending, grinding, drilling, welding, galvanizing, and coating, must occur within the United States or Canada.
- (c) Examples of products that are subject to this coverage include, but are not limited to, the following:
  - (i) Steel or iron products used in pavements, bridges, tunnels, buildings/facilities, or other structures, which include, but are not limited to, the following: fabricated structural steel, reinforcing steel, piling, high strength bolts, anchor bolts, dowel bars, permanently incorporated sheet piling, bridge bearings, cable wire/strand, pre-stressing/post-tensioning wire, motor/machinery brakes and other equipment for moveable structures;
  - (ii) Guardrail, guardrail posts, end sections, terminals, cable guardrail;
  - (iii) Steel fencing material, fence posts;
  - (iv) Steel or iron pipe, conduit, grates, manhole covers, risers;
  - (v) Mast arms, poles, standards, trusses, supporting structural members for signs, luminaires, or traffic control systems;
  - (vi) Steel or iron components of precast concrete products, such as reinforcing steel, wire mesh and pre-stressing or post-tensioning strands or cables; and
  - (vii) Steel or iron building/facilities components.
- (d) Provide Step Certification for all steel and iron related pay items, materials, products, and components as specified on the Department website. The Department will maintain a list of these pay items, materials, products, and/or components on the following website.  
[http://www.michigan.gov/mdot/0,1607,7-151-9622\\_11044\\_11367---,00.html](http://www.michigan.gov/mdot/0,1607,7-151-9622_11044_11367---,00.html)
- (e) Step certification is defined as the certification by the respective manufacturer or fabricator for their specific process (step) that the product, material, or component was fabricated, manufactured, and/or processed in the United States or Canada. The step certification documentation for these pre-defined pay items, materials, products, and/or

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components is to be submitted to WDBA in a package covering each step prior to delivery or concurrent with material delivery on-site. Approved certification is required prior to incorporation of the materials into the project. Canadian steel/iron used must meet Technical Requirements.

- (f) Certification documentation for American products and materials designated as fully compliant with these requirements on the MDOT Qualified Products List, Approved Manufacturers, and Tested Stock Suppliers Lists will be maintained by the MDOT Construction Field Services Division. Certification for these fully compliant items does not need to be submitted by Project Co, but a bill of lading, product label, or shipping record to document that the products are from the respective source is to be provided to WDBA. Certification documentation for American products and materials that are partially compliant will be required to be submitted prior to delivery or concurrent with material delivery and prior to incorporation, noting the value of foreign steel/iron. Canadian products and materials will be reviewed by WDBA for compliance. The use of MDOT maintained lists and notations for American products and materials does not relieve Project Co from responsibility of ensuring compliance. Project Co is ultimately responsible for compliance with this special provision.
- (g) The above requirements do not preclude a minimal use of non-American or non-Canadian steel and iron, provided the total invoice cost of non-American or non-Canadian material permanently incorporated into the project does not exceed 0.1 percent of the total contract amount or \$2,500 whichever is greater. The total invoice cost is defined as the total value of the non-American or non-Canadian steel and iron materials delivered to the project. The total contract is defined amount to be the total of the contract unit prices for items of facilities work, road work and bridge work, any adjustments as provided for in the contract, and any assessment of incentive, disincentive or liquidated damages as provided for in the contract.
- (h) WDBA fabrication facility inspectors will not approve incorporation of non-American or non-Canadian steel/iron prior to fabrication. It is the responsibility of the fabricator to notify and coordinate with Project Co all potential inclusion of non-American or non-Canadian steel/iron in fabricated products.
- (i) The minimal use of non-American or non-Canadian steel and iron can be approved by the managing office. The following documentation must be provided by the Contractor to verify this value and placed in the project files to ensure that the threshold is not exceeded:
  - (i) description of associated non-American or non-Canadian steel/iron material, product, or component
  - (ii) cost of associated non-American or non-Canadian steel/iron material, product or component
  - (iii) cumulative list of all non-compliant items with the total dollar amount.

The use of non-American or non-Canadian steel/iron under the minimal usage amount does not need to be approved by WDBA. This amount is not considered a waiver to the requirements. Project Co must ensure that the minimal usage amount is not exceeded.

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**APPENDIX 40-3****FEDERAL PREVAILING WAGE RATE  
(Subject to Change)**

Through the date of rectification of all Minor Deficiencies related to Section 4.1 and 4.2 of the Project Agreement, the prevailing wage rates shall be those set forth under the general wage decision for construction projects in the county in which the Project is located as published on the Davis-Bacon wage determination website on the date that is [ten] days before the Financial Submission Deadline. Such prevailing wage rates are incorporated herein.

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**APPENDIX 40-4****SPECIAL DBE PROVISION****A. DBE GOAL & GENERAL INFORMATION**

*The DBE goal established for this contract is [REDACTED] of the cost of the DB Work needed to complete the Michigan Interchange and the portion of the Bridge that is located in Michigan. While the DBE goal is based on construction and engineering work needed to complete the Michigan Interchange and the portion of the Bridge located in Michigan, the DBE goal can be satisfied by a subcontractor that is a Michigan Unified Certification Program (MUCP) certified DBE that performs work on any portion of the Project.*

*Project Co must understand and follow the requirements in this Agreement and Applicable Law including, but not limited to, 49 CFR Part 26.*

*With matters relating to the DBE goal on the Project, WDBA will follow the Michigan Department of Transportation's DBE program and procedures. Therefore, Project Co shall comply with the Michigan Department of Transportation's DBE program procedures.*

*Project Co may establish individual contract goals for each contract, subcontract, and each consultant, subconsultant and supply and service provider agreement in amounts to ensure the overall contract goal is met.*

*The DBE goal may be attained by means of an approved DBE Participation form 0178 or 0182 with a MUCP certified DBE. The amount of goal attainment is dependent on the amount actually paid to DBEs for work performed, per the agreement.*

*Project Co shall make good faith efforts to include DBE contractors, subcontractors, consultants, subconsultants, suppliers and service providers in the Project Co's team. Furthermore, Project Co shall also make every reasonable effort to subcontract work to DBEs through good faith negotiations and/or solicitations in advance of the Price Proposal due date.*

*In order to fulfill a DBE goal, the firms utilized as DBE subcontractors, consultants, sub-consultants, suppliers, or service providers must be certified as DBEs by the MUCP prior to Financial Close, or the selection of any new subcontractors, consultants, subconsultants, suppliers or service providers during the project. Requests for approval by the MDOT OBD are required before contracts with DBEs are executed. The MUCP Disadvantaged Business Enterprise (DBE) Directory contains the names and addresses of all firms that are certified to perform the type of work the Proposer is intending to subcontract. The MUCP DBE Directory can be accessed at the following website:*

[www.michigan.gov/mucp](http://www.michigan.gov/mucp)

*Firms certified by other local jurisdictions do not count toward the DBE goal. If there are questions concerning the MUCP certification status of a firm, the MUCP certification process or to obtain a copy of the MUCP DBE Directory, please call the MUCP Office of Business Development at (517) 373-3277 or visit the Office on-line at the following website:*

<http://www.michigan.gov/mdotdbe>

*Project Co, sub recipients or subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Design-Builder shall carry out applicable*

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requirements of 49 CFR part 26 in the award and administration of this contract. Failure by the Project Co to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as WDBA deems appropriate, which may include, but is not limited to:

- (a) Withholding progress payments;
- (b) Assessing sanctions;
- (c) Liquidated damages; and/or
- (d) Disqualifying the contractor from future bidding

## B. SUBMITTAL OF DOCUMENTATION

Project Co acknowledges that:

- (a) DBE Participation Sheets were provided with its Financial Submission during the RFP Process. This information was required to be submitted using MDOT Form 0178 and/or Form 0182. Submission of the DBE Participation Sheets constituted a written commitment to use the firms listed therein following Financial Close;
- (b) a Good Faith Effort Plan was provided to WDBA with the Financial Submission during the RFP Process. The requirements of the Good Faith Effort Plan are set out in this Appendix;
- (c) a Good Faith Effort Plan that is acceptable and approved by WDBA was a pre-condition to Financial Close.

## C. CONTINUING GOOD FAITH EFFORTS

Project Co must continue to make good faith efforts to meet the goal throughout the life of the Project.

During the term of the Project, Project Co shall continue to make good faith efforts to ensure that DBEs have maximum opportunity to successfully perform on the Project, and that the Project Co meets its DBE goal. These efforts shall include but not be limited to the following:

- (a) Negotiating in good faith to obtain DBE participation both prior to and during the life of the project;
- (b) Continuing to provide assistance to DBE subcontractors, consultant, subconsultant, suppliers, and service providers in obtaining bonding, insurance, etc., if required by the Contract;
- (c) Notifying WDBA and a DBE in writing of any potential problem and attempting to resolve the problem prior to formally requesting approval from WDBA to obtain a substitute DBE or a DBE participation modification;
- (d) Ensuring all vendors, including DBEs, are paid promptly for the satisfactory completion of items or partial items of work associated with the subcontract on a monthly basis, for work satisfactorily completed within the previous thirty (30) days.
- (e) Timely quarterly submission of either the "Prime Contractor Statement of DBE Subcontractor Payments (MDOT Form 0164) or the "Prime Consultant Statement of DBE Subconsultant Payments (MDOT Form 0165), as applicable. Credit shall not be counted toward the DBE goal until each DBE is paid for their work.
- (f) Submission by the Project Co of an updated "Good Faith Effort Plan" to show ongoing efforts made to achieve the DBE participation goal. Updates to the Good Faith Effort Plan shall be submitted on a quarterly basis to WDBA for review and approval. Additionally, WDBA shall be notified in a timely manner of any problems which may adversely impact DBE goal attainment.
- (g) If Project Co or a subcontractor responsible for obtaining DBE participation requests a substitution of a DBE firm, the Design-Builder or subcontractor must exert good faith efforts to replace the DBE firm with another DBE. If Project Co seeks to terminate a DBE or substitute the

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work from a DBE firm to a different DBE or non-DBE firm, the Design-Builder must provide written notice (by using MDOT Form 0196) to the DBE firm, and to WDBA of Project Co's intent and include the reason for the request. The DBE firm shall be provided 5 days to respond to Project Co and WDBA, and indicate if they object to their termination/substitution. WDBA will either approve or reject the termination and/or substitution of the DBE firm within 5 days after receiving the DBE firm's response.

#### D. GOOD FAITH EFFORT PLAN

At a minimum, the Good Faith Effort Plan must include the following information:

- (a) A cover letter describing the efforts to date to identify DBE firms. Include any steps taken by the Project Co to engage firms, identify work areas for DBE firms, the reason why the DBE goal has yet to be obtained, and the anticipated level of DBE participation that is anticipated to be obtained through continuous good faith efforts.
- (b) DBE Plan: The DBE Plan must include the Project Co's plan to obtain DBE participation after the Project is Awarded. The plan must include the areas of work anticipated to utilize DBE firms and the anticipated time frames for engaging the DBE firms.
- (c) MDOT Form 0188: Provide a completed form 0188. If areas of the form are not able to be completed, provided a detailed description of why it cannot be completed.
- (d) Provide justification if a DBE subcontractor, consultant, subconsultant, supplier, and service provider's quote is not used.

When reviewing an Good Faith Effort Plan, WDBA may, at its sole discretion, take any of the following actions:

- (a) Approve the plan as originally submitted.
- (b) Require additional information to be provided prior to approving or rejecting the plan.
- (c) Require additional commitments or activities to be made by Project Co prior to approving or rejecting the plan.
- (d) Approve a modification to the DBE Goal.
- (e) Make no modifications to the original DBE Goal until after all good faith efforts have been made by Project Co.
- (f) Reject the plan as originally submitted or as submitted with modifications.

The Good Faith Effort Plan must be updated and submitted to WDBA every 3 months after Financial Close. At a minimum, updated plans must

- (a) document the efforts taken during the previous 3 months to obtain DBE participation,
- (b) document the DBE firms brought under contract during the period and the dollar value of their work,
- (c) document the total amount of DBE firms under contract to date,
- (d) describe future good faith efforts that will be used to meet the DBE goals of the project,
- (e) document and any item that should be considered by WDBA regarding the efforts to meet the DBE goals of the project.

If Project Co is unable to meet the DBE participation goal, additional information will be required relating to their initial Request for Modification/Waiver submittal as specified in subsection 102.18 of the 2012 MDOT Standard Specifications for Construction in accordance with current MDOT DBE Program Procedures.

#### E. DBE CONTRACTS

Whenever a DBE is selected as a subcontractor, consultant, subconsultant, supplier, or service provider and the DBE participation has not been previously approved, the Design-Builder or his/her designated DBE Liaison Officer shall provide WDBA with executed MDOT DBE Participation Forms 0178

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*(construction version) or 0182 (consultant version) and all related forms for approval before the DBE begins work. Failure to ensure that a DBE commitment has been approved by WDBA before the DBE begins work on the project may result in the work being deemed ineligible for credit toward the DBE participation goal.]*

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Schedule 40 [Certain U.S. Requirements]

**APPENDIX 40-5****ON THE JOB TRAINING PROVISION**

**[Description.** As part of Project Co's equal employment opportunity (EEO) affirmative action program, on-the-job training shall be provided as follows:

*Project Co shall provide on-the-job training aimed at developing full journeyman in the type of trade involved. The requirement for this contract is to utilize 63 trainees. To be included in the number of trainees, the trainee must work a minimum of 1,000 hours in a calendar year, and at least 50% of an individual trainee's hours must be earned on the Project. In the event Project Co subcontracts a portion of the contract work, the training may be accomplished by the Subcontractor. Project Co shall ensure that 25 percent of apprentices or trainees in each occupation are in their first year of apprenticeship or training.*

**Distribution of Trainees.** The number of trainees shall be distributed among the work classifications on the following basis:

1. The Project Co's need for employees and (2) the availability of persons in the various classifications within a reasonable area of recruitment. **[At the preconstruction meeting<sup>1</sup>,** Project Co shall submit in writing, for approval by WDBA the proposed training program and the number of persons to be trained in each classification using MDOT Form 0181. Project Co shall specify the starting time for training in each of the classifications. Project Co will be credited for each trainee who is currently enrolled or becomes enrolled in an approved program. Each year Project Co shall submit an update Form 0181 (or approved equivalent) to WDBA for review.

**Training Requirements.** Training and upgrading minorities and women toward journeyman status is a primary objective of these requirements. Project Co shall make every effort to enroll minority and women trainees (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. Project Co shall be responsible for demonstrating the steps that have been taken in pursuance thereof, prior to determining whether Project Co is in compliance with these requirements. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which they have successfully (1) completed a training course leading to journeyman status or (2) been employed as a journeyman. The person cannot have experience in the training program in which he/she is to be placed. No person shall be employed as a trainee if he/she possess a degree in a construction related field or is on summer break from any college program. If the prospective trainee has a college degree in a non-construction related field, their eligibility will be determined on a case-by-case basis. No person within the second degree of consanguinity to an owner or officer of the contractor is eligible for participation in the training program. Project Co shall finish a declaration by the applicant that he or she has not been previously employed as a journeyman in the proposed occupation. Project Co shall also finish a statement by Project Co's EEO Officer that, to the best of the officer's knowledge, the applicant has not worked as a journeyman in the proposed occupation.

The minimum length and type of training for each classification will be as established in the training program selected by the Project Co and approved by WDBA. WDBA will approve a program if it is reasonable intended to meet the equal employment obligations of Project Co's and will qualify the average trainee for journeyman status in the classification of concern by the end of the training period. The apprenticeship programs registered with U.S. Department of Labor, Manpower Administration, and/or

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**<sup>1</sup> Note to Proponents: To be determined at which meeting this should be presented**

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*Bureau of Apprenticeship and Training will also be considered acceptable provided they are being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Training programs not previously approved must be approved by WDBA prior to commencing work on the classification covered by the program.*

*It is the intent of these provisions that training is to be provided in the construction crafts rather than clerk typist or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications, and should be designed to advance a trainee to the administrative equivalent of journey-level status. Training in the laborer classification may be permitted provided by the Project Co and approved by WDBA. Some off-site training is permissible as long as the training is an integral part of a training program approved for this project, takes place during the life of this project, does not comprise a significant part of the overall training, and can be identified by WDBA.*

*Project Co shall provide all required forms and reports, to WDBA, documenting the performance under these provisions. Employment and O.J.T Report (MDOT Form 0125, or approved equivalent) is to be used to report the experience record for trainees. Form 0125 shall be provided to WDBA on a monthly basis. Project Co's untimely submission of required documents may jeopardize processing of payment.*

*It is expected that a trainee shall begin the training on the project as soon as feasible after start of work. The trainee shall remain on the project as long as training opportunities exist in the work classification or until the training program has been completed or voluntarily terminated by the trainee. Project Co is responsible for replacing any trainee who voluntarily terminates employment or is terminated from employment before completing 50% of the hours of their training program. Project Co shall have fulfilled the responsibilities under these provisions when the required training as specified herein has been completed.*

*The trainee can remain an OJT for a contractor and their hours worked on the Project will be counted towards program completion and carried over to MDOT's On-the-Job Training Program*

*No payment will be made to the Project Co if either the failure to provide the required training hours, or the failure to train the trainee as a journeyman, is caused by the Project Co and evidences a lack of good faith on the part of the Project Co in meeting the requirements of these provisions.*

*Trainees will be paid at least 60 percent of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are already enrolled as trainees on this project. In that case, the appropriate rates approved by the contract in connection with the existing program will apply to all trainees being trained for the same classification who are covered by these provisions.*

*Failure to meet the requirements may result in WDBA assessing a penalty of [REDACTED] for each trainee that did not meet the requirements. Project Co will be required to perform additional work in Michigan, as identified by WDBA, totaling the sum of the penalty. Failure to meet the requirements may also result in Project Co, or any of its subcontractors, being debarred from bidding on Federal Aid projects or a modification of a contractor's MDOT prequalification ratings.*

*WDBA will provide MDOT access to all On the Job Training information provided by Project Co. MDOT will incorporate this information in MDOT's current process.<sup>2</sup>*

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<sup>2</sup> **Note to Proponents: OJT information will need to be kept by WDBA no less than 3 years after the project is completed and MDOT will need to have access to the data. MDOT and WDBA will coordinate OJT data and processes to ensure federal requirements are met.**

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**SCHEDULE 41****PAYMENT AND PERFORMANCE SUPPORT****1. DEFINITIONS**

Unless defined specifically in this Schedule or unless the context otherwise requires, capitalized but otherwise undefined terms in this Schedule shall have the respective meanings given to such terms in Schedule 1 [*Definitions and Interpretation*] of this Project Agreement.

**2. CONSTRUCTION CONTRACTOR PERFORMANCE SECURITY**

Project Co shall ensure that the Construction Contractor provides the following performance security:

- (a) On or before Financial Close:
  - (i) a guarantee pursuant to which **[REDACTED]** shall guarantee all of the joint and several obligations of its subsidiary under the Construction Contractor Agreement;
  - (ii) a guarantee pursuant to which **[REDACTED]** shall guarantee all of the joint and several obligations of its subsidiary under the Construction Contractor Agreement; and
  - (iii) a guarantee pursuant to which **[REDACTED]** shall guarantee all of the joint and several obligations of its subsidiary under the Construction Contractor Agreement.
- (b) On or before Financial close, letters of credit in the amounts set out in the Construction Contract in favour of Project Co and the Collateral Trustee, each such letter of credit securing the performance of the obligations of the Construction Contractor under the Construction Contract, to be increased, reduced and/or released in accordance with the Construction Contract.

**3. OMR CONTRACTOR PERFORMANCE SECURITY**

Project Co shall ensure that the OMR Contractor provides the following performance security:

- (a) On or before Financial Close:
  - (i) a guarantee pursuant to which **[REDACTED]** shall guarantee all of the joint and several obligations of its subsidiary under the OMR Contract;
  - (ii) a guarantee pursuant to which **[REDACTED]** shall guarantee all of the joint and several obligations of its subsidiary under the OMR Contract; and
  - (iii) a guarantee pursuant to which **[REDACTED]** shall guarantee all of the joint and several obligations of its subsidiary under the OMR Contract.
- (b) Upon the date that is 30 days before the Scheduled Substantial Completion Date, a letter of credit or multiple letters of credit, each meeting the requirements of Acceptable Credit Support (as such term is defined in the OMR Contract), or any other form of liquid security acceptable to Project Co and the Lenders, securing the performance of the obligations of the OMR Contractor under the OMR Contract, and in aggregate amount equal to 40% of the Service Fee Reference Amount (as such term is defined in the OMR

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Contract) payable to the OMR Contractor in the first 12 months following the Substantial Completion Date, which letter of credit shall be replaced or renewed no later than 30 days prior to each anniversary date of the delivery of such letter of credit by a letter of credit or letters of credit, each meeting the requirements of Acceptable Credit Support (as such term is defined in the OMR Contract), or any other form of liquid security acceptable to Project Co and the Lenders, securing the performance of the OMR Contractor under the OMR Contract, in an aggregate amount equal to 40% of the Service Fee Reference Amount for the immediately following 12 month period.

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Schedule 41 [Payment and Performance Support]

**SCHEDULE 42**

**LSI EQUIPMENT**

**[REDACTED]**

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**SCHEDULE 43**

**CANADIAN ROADS**

**[REDACTED]**

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