

# Maryland Transportation Authority

**BOARD MEETING** 

THURSDAY, AUGUST 26, 2021

MARYLAND TRANSPORTATION AUTHORITY 2310 BROENING HWY BALTIMORE, MD 21224



### MARYLAND TRANSPORTATION AUTHORITY BOARD MEETING 2310 BROENING HIGHWAY BALTIMORE, MD 21224

### AUGUST 26, 2021 9:00 AM

This meeting will be livestreamed on the MDTA Board Meeting Page

### **NOTES:**

- This is an In-Person Board Meeting being conducted at the Maryland Transportation Authority Headquarters located at 2310 Broening Highway, Baltimore MD 21224.
- This In-Person Open Meeting will be livestreamed. You are welcomed to watch the meeting at the link above.
- If you wish to comment on an agenda item please email your name, affiliation, and the agenda item to <a href="mailto:nhenson@mdta.state.md.us">nhenson@mdta.state.md.us</a> no later than 5:00 p.m. on Tuesday, August 24, 2021. You <a href="mailto:multi-multi

### **AGENDA**

### **OPEN SESSION – 9:00 AM**

### Call Meeting to Order

| 1. | <u>Approval</u> – Open Session and Closed Session Meeting Minutes of July 29, 2021   | Chairman      | 5 min.  |
|----|--|---------------|---------|
| 2. | <u>Resolutions</u> – <u>Years of Service Recognition</u> – Recognition for Five Retired Employees  | Jim Ports     | 10 min. |
| 3. | Approval – Canton Railroad - Approval of the Canton Railroad Board of Directors and Appointment of Proxy for Annual Meeting of Stockholders of the Canton Development Company  | Jim Ports     | 10 min. |
| 4. | Approval – Contract Awards  Contingent Approvals  ■ MR-3025-0000 – On Call Structural Repairs and Miscellaneous Modifications  ■ KB-3013-0000 – Police Training Center Site Development  Informational Update  ■ SV-3085-0000 – Maryland Travel Plaza Murals – Francis Scott Key in Front of U.S. Flag Panel Scene | Donna DiCerbo | 10 min. |
| 5. | <u>Update</u> – <u>Procurement Report on Open Contracts</u> – Verbal   | Donna DiCerbo | 5 min.  |
| 6. | <u>Approval</u> – <u>Board Resolution No. 21-05</u> – Amends Board Resolution No. 20-08 to Extend TIFIA Financing Deadline for the Nice/Middleton Bridge Project   | Allen Garman  | 5 min.  |
| 7. | <u>Approval</u> – <u>Debt Policy</u> – Annual Review of MDTA's Debt Policy which Establishes the Guidelines for the Financing Program  | Allen Garman  | 5 min.  |

### MDTA BOARD MEETING AUGUST 26, 2021 9:00 AM

### AGENDA PAGE 2

| 8.  | <u>Approval</u> – <u>Quarterly Review of the Investment Strategy and Performance</u> – Approval to Continue with Current Investment Strategy                                       | Allen Garman                | 5 min.  |
|-----|--|-----------------------------|---------|
| 9.  | <u>Approval</u> – <u>Investment Policy</u> – Update to MDTA's Investment Policy that Establishes Guidelines for the Safeguarding and Management of the MDTA's Cash and Investments | Allen Garman                | 5 min.  |
| 10. | <u>Approval</u> – <u>Financial Forecast for Fiscal Years 2022-2027</u> – Updated Approval of the Forecast Approved at the June 2021 Board Meeting                                  | Christina Thompson          | 5 min.  |
| 11. | Approval – Public-Private Partnership (P3) Financing  Documents – Approval of the Master Trust Agreement,  Supplemental Trust Agreement, and Amended Interagency  Agreement        | Jim Ports<br>Jaclyn Hartman | 15 min. |
| 12. | <u>Update</u> – <u>Phase 1 South: American Legion Bridge I-270 to I-370 Toll Setting Process</u> – Provide a Summary of Comments Received  | Carl Chamberlin             | 20 min. |
| 13. | <u>Update</u> – Third Generation Electronic Toll Collection<br>(3G ETC) System – Current Operations Update   | Will Pines                  | 15 min. |
| 14. | <u>Update</u> – <u>Human Resources Committee</u> – Verbal  | Member Gaines               | 10 min. |
| 15. | <u>Update</u> – <u>Executive Director's Report</u> – Verbal  | Jim Ports                   | 10 min. |
| Vo  | te to Adjourn Meeting  |                             |         |

# TAB 1

### MARYLAND TRANSPORTATION AUTHORITY BOARD MEETING

### THURSDAY, JULY 29, 2021 9:00 A.M.

### 2310 BROENING HIGHWAY, BALTIMORE MD 21224 IN-PERSON, LIVESTREAMED OPEN MEETING

### **OPEN SESSION**

Sean Powell, Acting Chairman

MEMBERS ATTENDING: Dontae Carroll

William H. Cox, Jr. William C. Ensor, III W. Lee Gaines, Jr. Mario J. Gangemi

Cynthia D. Penny-Ardinger, Esq.

Jeffrey S. Rosen John F. von Paris

STAFF ATTENDING: Col. Kevin Anderson

Carl Chamberlin Donna DiCerbo David Goldsborough Natalie Henson

Chris Imms

Kimberly Millender, Esq.

Ebony Moore Mary O'Keeffe Will Pines

James F. Ports, Jr.

Tim Sheets Eric Willison

OTHER ATTENDEES: Quentin Rice, Retired MDTA Employee

At 9:00 a.m. Acting Chairman Sean Powell called the meeting of the Maryland Transportation Authority (MDTA) Board to order. The meeting was held in-person at MDTA located at 2310 Broening Highway, Baltimore MD 21224 and was livestreamed on the MDTA Board Meeting web page.

### <u>APPROVAL – OPEN SESSION MEETING MINUTES OF JUNE 24, 2021</u>

Upon motion by Member Mario J. Gangemi and seconded by Member Dontae Carroll, the open session meeting minutes of the MDTA Board meeting held on June 24, 2021 were unanimously approved.

\*\* Acting Chairman Sean Powell requested, and the Members unanimously approved, to move Agenda Item # 2 – Resolutions – Years of Service Recognition to later in the agenda due to waiting for a recipient to arrive. \*\*

### <u>APPROVAL – CONTRACT AWARDS</u>

### • J01P1600023 - NetApp Storage Hardware

Ms. Donna DiCerbo requested approval from the MDTA Board to execute Contract No. J01P1600023 – NetApp Storage Hardware with CAS Severn in the bid amount of \$1,620,000.00.

The primary purpose of this contract is for the purchase of NetApp Storage Hardware for the MDTA Office of Information Technology. This contract also includes a Five-Year Extended Warranty and a Five-Year SupportEdge Premium 4 Hour Onsite Support Services. NetApp hardware is currently used in the MDTA Data Center to store all MDTA electronic data. The current NetApp storage is no longer under warranty and is reaching its end of life. The new NetApp storage will provide greater stability and faster data rates. This contract will be a one-time purchase in the amount of \$1,620,000.00. This contract was procured as a Purchase Order Request for Proposal (PORFP) under Functional Area I & V of the Department of Information Technology (DoIT) Hardware 2012 Master Contract. This contract was approved by the Board of Public Works on July 7, 2021.

Upon motion by Member William H. Cox, Jr. and seconded by Member W. Lee Gaines, Jr., the Members unanimously gave approval to execute Contract No. J01P1600023 – NetApp Storage Hardware.

### <u>UPDATE – THIRD GENERATION ELECTRONIC TOLL COLLECTION (3G ETC)</u> <u>SYSTEM</u>

Mr. Jim Ports and Mr. Will Pines updated the MDTA Board on the Third Generation Electronic Toll Collection (3G ETC) post-transition operations and traffic & revenue.

OPEN SESSION JULY 29, 2021 They explained that the TransCore and Kapsch systems went live on April 29, 2021 and post-transition and software development activities continue.

They also reported that MDTA maintained all its financial standards even though revenue underperformed the financial forecast by nearly \$91M. On a modified-accrual basis, MDTA exceeded its forecast by \$5.1M, indicating that had all Fiscal Year (FY) 2021 *E-ZPass*® transactions been posted in FY 2021, the MDTA would have achieved its forecast. Implementation of the plan to address the backlog of unprocessed transactions is ongoing.

### **RESOLUTIONS – YEARS OF SERVICE RECOGNITION**

Mr. Jim Ports read the Years of Service Recognition for retired employee Mr. Quentin E. Rice. Mr. Rice was presented his Resolution by Acting Chairman Sean Powell and Board Members.

Mr. Ports also read the Years of Service Recognition for retired employees Col. Woodrow W. "Jerry" Jones, Senior Officer Phillip McCutcheon, and Ms. Joanne Wilson.

On the occasion of their retirement from their distinguished careers of service, the Chairman and Members of the Maryland Transportation Authority hereby express to them their most sincere appreciation for their excellence and commitment.

### **UPDATE – EXECUTIVE DIRECTOR**

Mr. Jim Ports welcomed the Acting Chairman and Members back to MDTA in person. He also gave an update on: the July 7 Bay Bridge Reconstruction Advisory Group (BBRAG) Meeting; the Phase 1 South Toll Rate Range Setting Public Hearings that were held on July 12 in Rockville and July 14 Virtually and reminded everyone that the public comment period continues through August 12; that our Travel Plazas now offer Maryland-themed items, products from local companies, and armed services merchandise; and, the Chesapeake Bay Bridge Run/Walk is scheduled to take place on October 31.

In continuing to recognize MDTA's 50<sup>th</sup> Anniversary this year, Mr. Ports gave some fun facts highlighting MDTA's two tunnel crossings – The Baltimore Harbor Tunnel and the Fort McHenry Tunnel.

### **VOTE TO GO INTO CLOSED SESSION**

At 10:22 a.m., upon motion by Member Mario J. Gangemi and seconded by Member W. Lee Gaines, Jr., the Members voted unanimously to move into Closed Session under the Maryland Open Meetings Act, the MDTA Board will meet in Closed Session under the General Provisions Article, Sections 3-305(b)(10) to receive an overview and update on deployment of police staff and resources; and General Provisions Article, Sections 3-305(b)(8) to receive a status update on all litigation currently pending against the MDTA.

OPEN SESSION JULY 29, 2021 PAGE 4 OF 4 In attendance for Closed Session was Acting Chairman Sean Powell, Members Carroll, Cox, Ensor, Gaines, Gangemi, Penny-Ardinger, Rosen, and von Paris; and Jim Ports, Kim Millender, Col. Kevin Anderson, and Natalie Henson.

### **VOTE TO ADJOURN CLOSED SESSION**

At 11:08 a.m., a motion was made by Member William H. Cox, Jr. and seconded by Member John F. von Paris, which was unanimously approved, to adjourn the Closed Session and return to Open Session. There were no actions taken in Closed Session.

### **VOTE TO ADJOURN MEETING**

There being no further business, upon motion by Member Mario J. Gangemi and seconded by Member Dontae Carroll, the Members unanimously voted to adjourn the meeting at 11:10 a.m.

The next MDTA Board Meeting will be held on Thursday, August 26, 2021 at 9:00 a.m. at MDTA located at 2310 Broening Highway, Baltimore Maryland.

APPROVED AND CONCURRED IN:

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| Gragory Slotar Chairman        |
| Gregory Slater, Chairman       |
|                                |

# **TAB 2**

# Angela Brown

### MDTA Toll Collection Shift Supervisor

**WHEREAS**, Angela Brown began her career with the Maryland Transportation Authority as an MDTA Toll Collector I on November 13, 1985, and

**WHEREAS**, Ms. Brown continued to progress in the Toll Collector field and became an MDTA Toll Collector II on November 23, 1986, and to MDTA Toll Collector III on March 27, 1990, and

**WHEREAS**, With hard work and knowledge, Ms. Brown was promoted to MDTA Toll Collections Shift Supervisor on October 1, 2008, a title held until retirement, and

**WHEREAS,** In February 2010, she was commended by then-MDTA Executive Secretary Ronald L. Freeland, with a letter of appreciation for her outstanding efforts during the Intercounty Connector (ICC) 60-day public-comment period, and

**WHEREAS**, She is an invaluable member of the team, and her coworkers expressed the fact that her dedication, personality and calm demeanor will be missed, now

THEREFORE BE IT RESOLVED, On the occasion of Angela Brown's retirement from her distinguished career of exemplary service, the Chairman and Members of the Maryland Transportation Authority Board hereby express to Ms. Brown their most sincere appreciation for her excellence and commitment, and

**BE IT FURTHER RESOLVED**, That this Resolution be entered into the minutes of the MDTA Board meeting of August 26, 2021, and a copy, appropriately framed, be presented to Ms. Brown as an expression of the MDTA Board's appreciation and esteem.

## Timothy M. Caldwell

### Facility Maintenance Supervisor I

**WHEREAS**, Timothy M. Caldwell began his career with the Maryland Transportation Authority as an MDTA Maintenance Technician I on November 1, 1989, and

**WHEREAS**, Mr. Caldwell continued to progress in the maintenance field and became an MDTA Maintenance Technician II on November 14, 1990, an MDTA Maintenance Technician III on November 13, 1991, and an MDTA Facility Maintenance Technician IV on March 29, 1994, and

**WHEREAS**, Due to his knowledge and hard work, Mr. Caldwell was promoted to Facility Maintenance Supervisor I on September 8, 2005, a title held until retirement, and

**WHEREAS**, He is an invaluable member of the team, and his coworkers and managers expressed the fact that they could always count on him to see things through, and he sought to keep open lines of communication with contractors and consistently looked out for his team, now

**THEREFORE BE IT RESOLVED**, On the occasion of Timothy Caldwell's retirement from his distinguished career of exemplary service, the Chairman and Members of the Maryland Transportation Authority Board hereby express to Mr. Caldwell their most sincere appreciation for his excellence and commitment, and

**BE IT FURTHER RESOLVED**, That this Resolution be entered into the minutes of the MDTA Board meeting of August 26, 2021, and a copy, appropriately framed, be presented to Mr. Caldwell as an expression of the MDTA Board's appreciation and esteem.

### Senior Officer Jon S. Glossner

### **MDTA Police**

**WHEREAS**, Senior Officer Jon S. Glossner began his career with the Maryland Transportation Authority Police as an MDTA Police Officer I on June 10, 1991, and

**WHEREAS**, Due to his knowledge and determination, he was promoted to MDTA Police Officer II on June 10, 1992, and to MDTA Police Senior Officer on March 7, 2012, a title held until retirement, and

**WHEREAS**, He is an invaluable member of the team, and his coworkers expressed the fact that his dedication, personality and calm demeanor will be missed, now

**THEREFORE BE IT RESOLVED**, On the occasion of Senior Officer Glossner's retirement from his distinguished career of exemplary service, the Chairman and Members of the Maryland Transportation Authority Board hereby express to Senior Officer Glossner their most sincere appreciation for his excellence and commitment, and

**BE IT FURTHER RESOLVED**, That this Resolution be entered into the minutes of the MDTA Board meeting of August 26, 2021, and a copy, appropriately framed, be presented to Senior Officer Glossner as an expression of the MDTA Board's appreciation and esteem.

### **Russell Walto**

#### MDTA Administrator VI

**WHEREAS**, Russell Walto began his career with the Maryland Transportation Authority as an Engineer Associate I on May 28, 1980, and

**WHEREAS**, Mr. Walto continued to progress in the Engineer Field and became an Engineer Associate II on May 14, 1981, and an Engineer Associate III on May 14, 1982, and

**WHEREAS**, Continuing in the Engineering field, Mr. Walto held many titles over his forty-one year state career, including Engineering Technician and Highway Engineer, and progressed through the Transportation Engineer series from 1982 to 2005 respectively, and

**WHEREAS,** With knowledge and dedication, Mr. Walto was promoted to *Transportation* Engineering Manager I on January 30, 2008, and to MDTA Administrator VI on November 22, 2017, a title held until retirement, and

**WHEREAS**, He is an invaluable member of the team, one who managed countless planning projects throughout his career, and his coworkers expressed the fact that his thoughtfulness, dedication, jovial personality and calm demeanor will be missed, and they hope his retirement is filled with endless golf games on the links, now

**THEREFORE BE IT RESOLVED**, On the occasion of Russell Walto's retirement from his distinguished career of exemplary service, the Chairman and Members of the Maryland Transportation Authority Board hereby express to Mr. Walto their most sincere appreciation for his excellence and commitment, and

**BE IT FURTHER RESOLVED**, That this Resolution be entered into the minutes of the MDTA Board meeting of August 26, 2021, and a copy, appropriately framed, be presented to Mr. Walto as an expression of the MDTA Board's appreciation and esteem.

### Charles K. Weber

### MDTA Administrator VII

**WHEREAS**, Charles K. Weber began his career with the Maryland Transportation Authority as an Engineer Associate I on March 5, 1979, and

**WHEREAS**, Mr. Weber continued to progress in the Engineering Field and became an Engineer Associate II on March 6, 1981, and an Engineer Technician II on June 1, 1982, and advanced through the Technician series to Engineer Technician VI on August 23, 1989, and

**WHEREAS**, Continuing in the Engineering field, Mr. Weber held many titles over his forty-two year state career, including MDTA Engineering Specialist and Transportation Engineer, and progressed through the Transportation Engineer Manager series from 1989 to 2006 respectively, and

**WHEREAS,** With knowledge and hard work, Mr. Weber was promoted to MDTA Administrator VII on September 18, 2008, a title held until retirement, and

WHEREAS, He served as Construction Inspector, Project Engineer, Construction Manager, Area Engineer and Deputy Director of Construction for several major MDTA construction projects, including the Rehabilitation of the Bridge Deck and Strengthening of the Superstructure at the Nice/Middleton Bridge, the Tydings Bridge Deck Replacement, the Dualization of the North Approach at the Key Bridge, the Deck Rehabilitation of the Truss, Beam and Girder Spans on the Westbound Bay Bridge, and the Rewrapping, Dehumidification, and Shielding of Main Cables and Anchorages on the Bay Bridge.

**WHERAS**, He is an invaluable member of the team, and his coworkers expressed the fact that his dedication, personality and calm demeanor will be missed, now

**THEREFORE BE IT RESOLVED**, On the occasion of Charles K Weber's retirement from his distinguished career of exemplary service, the Chairman and Members of the Maryland Transportation Authority Board hereby express to Mr. Weber their most sincere appreciation for his excellence and commitment, and

**BE IT FURTHER RESOLVED**, That this Resolution be entered into the minutes of the MDTA Board meeting of August 26, 2021, and a copy, appropriately framed, be presented to Mr. Weber as an expression of the MDTA Board's appreciation and esteem.

# **TAB 3**



**Larry Hogan, Governor** Boyd K. Rutherford, Lt. Governor Gregory Slater, Chairman

#### **Board Members:**

Dontae Carroll
William H. Cox, Jr.
William C. Ensor, III
W. Lee Gaines, Jr
Wario J. Gangemi, P.E.
Cynthia D. Penny-Ardinger
Jeffrey S. Rosen
John F. von Paris

James F. Ports, Jr., Executive Director

### **MEMORANDUM**

**TO:** MDTA Board

**PRESENTED BY:** Mr. Jim Ports, Executive Director **PREPARED BY:** Ms. Tina Nagurski, Executive Officer

**SUBJECT:** Canton Development Corporation Board of Directors

**DATE:** August 26, 2021

### **PURPOSE OF MEMORANDUM**

The purpose of this agenda item is to seek approval from the Maryland Transportation Authority (MDTA) Board of the proposed Canton Development Corporation, Inc. (Canton) Board of Directors, the continuation of Mr. Bill Hellman as the Board Chairman, and to designate MDTA's Chief Financial Officer, or her designee, as a proxy to attend the Annual Meeting of Stockholders of Canton on September 29, 2021 to vote to approve the election of the Canton Board of Directors.

### **SUMMARY**

MDTA is the sole stockholder of Canton. The day-to-day operations of Canton are managed by Mr. John Magness, the President and CEO, with the oversight of a Board of Directors. Per the By-Laws of Canton, the stockholders are to gather annually and elect the members of the Board of Directors.

Mr. Magness has provided MDTA with proper notice of the upcoming Annual Meeting of Stockholders to be held on September 29, 2021. Per the By-Laws, the only matter in which the stockholders have authority to vote on is the election of the members to Canton's Board of Directors. Additionally, the By-Laws of Canton permit the stockholders to be represented by a proxy.

### **ANALYSIS**

As the sole stockholder of Canton, the MDTA must vote on the election of members of the Canton's Board of Directors at Canton's Annual Meeting. Currently, the Canton Board consists of seven Directors, including a MDTA Board Member who serves in an *ex officio* capacity. The Directors serve three-year terms that are staggered, resulting in the election of two to three Directors each year.

Canton Development Corporation Board of Directors Page Two

Ms. Lorrie Schenning and Mr. William Cox (*ex officio*) terms are slated to expire. The MDTA recommends the reappointment of Ms. Schenning and Mr. Cox. Their new term would expire in Fall 2024. Mr. Hellman strongly endorsed the reappointments of Ms. Schenning and Mr. Cox. He indicated "the MDTA Board has provided Canton with an extremely strong Board that includes the needed expertise that allows the Board to effectively discuss any matter." Mr. Cox also strongly endorsed Ms. Schenning and emphasized her strong financial background.

### **ATTACHMENTS**

- Attachment I: Letter from John Magness regarding the September 29, 2021 Meeting
- Attachment II: List of Directors and Summary of Qualifications of the Nominated Directors of Canton to serve for the upcoming year

### Canton Development Corporation Board of Directors Page Three Attachment I



July 23, 2021

James F. Ports, Jr.
Executive Director
Maryland Transportation Authority
2310 Broening Highway
Baltimore, MD 21224

Dear Mr. Ports:

The Board of Directors of the Canton Development Company (CDC) and its subsidiaries, Canton Railroad Company and Freestate Logistic Services, Inc. will be holding its Annual Stockholder's Meeting on Wednesday, September 29, 2021 at 9:30 a.m., at 1841 S. Newkirk Street, Baltimore, Maryland 21224.

Attached is the current list of Board Members with their appointment dates and term expiration dates. Mr. William H. Cox, Jr. and Ms. Lorrie A. Schenning terms expire this year.

Sincerely,

John C. Magness President & CEO

cc: William K. Hellmann, Chairman Diane I. Abate, Corporate Secretary David W. Bordner, Controller

### Attachment II

Canton Development Company Canton Railroad Company Freestate Logistic Services, Inc.

| Board of Director                | Action        | Originally<br>Appointed | Term<br>Expiration |
|----------------------------------|---------------|-------------------------|--------------------|
| William K. Hellmann, Chairman    | n/a           | 2017                    | 2023               |
| J. Robert Huber, Sr.             | n/a           | 2019                    | 2023               |
| William H. Cox, Jr. (ex officio) | Reappointment | 2017                    | 2021               |
| Lorrie A. Schenning              | Reappointment | 2018                    | 2021               |
| JoAnne Zawitoski                 | n/a           | 1999                    | 2022               |
| Benjamin Sunderland              | n/a           | 2016                    | 2022               |
| Stephen P. Kauffman              | n/a           | 2019                    | 2022               |

John C. Magness serves as a Member as well as President & CEO.

WILLIAM H. COX, Jr. – (*Reappointment*) – Nominated to serve on the Canton Board of Directors September 2017. Member of The Maryland Transportation Authority Board appointed by Governor Larry Hogan on July 1, 2016. President of William H. Cox, Jr., Real Estate, Inc. in Bel Air, MD, also served as a member of the Maryland House of Delegates from 1971 – 1991. Previously served as chairman of the Joint Committee on Transportation and the Greater Harford Committee, member of the Maryland Transportation Commission, vice chairman of the Conference of State Government and chairman of the Southern Legislative Conference's Federal State Affairs Committee.

LORRIE A. SCHENNING (*Reappointment*) – Elected to serve on the Canton Board of Directors in October of 2018. Resides in Belair, Maryland. Senior Vice President and Chief Lending Officer of Harford Bank. Master of Science in Finance, Loyola University Maryland. Bachelor of Science in Business Administration, Loyola University Maryland. Member of Harford Chamber of Commerce, Past President and member of Chesapeake Professional Women's network. Member of John Carroll's President Advisory Board. Board Member and Treasurer of Harford Day School. Board Member of Harford County Boys and Girls Clubs, and Board Member of Greater Bel Air Community Foundation.

# **TAB 4**



Larry Hogan, Governor Boyd K. Rutherford, Lt. Governor Gregory Slater, Chairman

#### **Board Members:**

Dontae Carroll
William H. Cox, Jr.
William C. Ensor, III
W. Lee Gaines, Jr.

Mario J. Gangemi, P.E.
Cynthia D. Penny- Ardinger
Jeffrey S. Rosen
John F. von Paris

James F. Ports, Jr., Executive Director

### **MEMORANDUM**

**TO:** MDTA Board

**FROM:** Ms. Donna DiCerbo, CPPO, CPPB, Director of Procurement **SUBJECT:** MR-3025-0000 – On-Call Structural Repairs and Miscellaneous

Modifications

**DATE:** August 26, 2021

### **PURPOSE**

To seek contingent approval to execute Contract No. MR-3025-0000 - On-Call Structural Repairs and Miscellaneous Modifications.

### **SUMMARY**

The scope of work includes providing labor, equipment, materials, etc. necessary to perform miscellaneous structural, concrete, and other types of repairs, upgrades, replacements, and new construction as directed by the Engineer. This work may be required on any portion (bridge, tunnel, highway, building, and all appurtenances) of any of the MDTA's facilities.

### **RECOMMENDATION**

To provide contingent approval to execute Contract No. MR-3025-0000 - On-Call Structural Repairs and Miscellaneous Modifications.

### **ATTACHMENT**

Project Summary



### **AUTHORITY BOARD PROJECT SUMMARY**

### MR-3025-0000 - On-Call Structural Repairs and Miscellaneous Modifications

PIN NUMBER 2537

CONTRACT NUMBER MR-3025-0000

**CONTRACT TITLE** On-Call Structural Repairs and Miscellaneous Modifications

PROJECT SUMMARY The scope of work includes providing labor, equipment, materials, etc. necessary to perform

miscellaneous structural, concrete, and other types of repairs, upgrades, replacements, and new construction as directed by the Engineer. This work may be required on any portion (bridge,

tunnel, highway, building, and all appurtenances) of any of the MDTA's facilities.

#### **SCHEDULE**

| ADVERTISEMENT         | DATE            |      | 4/29/2021       |                               | (\$)            |                  |
|-----------------------|-----------------|------|-----------------|-------------------------------|-----------------|------------------|
| ANTICIPATED NO        | TICE TO PROCEED | DATE | Dec-21          |                               | Advertised      | Proposed         |
| <b>DURATION (CALE</b> | NDER DAYS)      |      | 1,095           | MBE PARTICIPATION             | GOAL (%)        | GOAL (%)         |
|                       |                 |      |                 | OVERALL MBE                   | 19.00%          | 19.00%           |
|                       |                 |      |                 | AFRICAN AMERICAN              | 0.00%           | 2.00%            |
|                       |                 |      |                 | ASIAN AMERICAN                | 0.00%           | 0.00%            |
|                       |                 |      |                 | HISPANIC AMERICAN             | -               | 2.00%            |
|                       |                 |      |                 | WOMEN                         | 0.00%           | 15.00%           |
|                       |                 |      |                 | VSBE                          | 2.00%           | 2.00%            |
| ENGINEER'S ESTI       | MATE (EE)       |      | \$11,716,975.00 |                               |                 |                  |
|                       |                 |      |                 | BID RESULTS                   | BID AMOUNT (\$) | % VARIANCE TO EE |
| <b>BID PROTEST</b>    | YES 🗆           | NO☑  |                 | Brawner Builders, Inc.        | \$8,122,018.20  | -31%             |
|                       |                 |      |                 | M. D. Miller t/a The Marksmen | \$8,622,719.61  | -26%             |
|                       |                 |      |                 | Concrete General, Inc.        | \$10,512,618.60 | -10%             |
|                       |                 |      |                 |                               |                 |                  |



Larry Hogan, Governor Boyd K. Rutherford, Lt. Governor Gregory Slater, Chairman

#### **Board Members:**

Dontae Carroll
William H. Cox, Jr.
William C. Ensor, III
W. Lee Gaines, Jr.

Mario J. Gangemi, P.E.
Cynthia D. Penny- Ardinger
Jeffrey S. Rosen
John F. von Paris

James F. Ports, Jr., Executive Director

### **MEMORANDUM**

**TO:** MDTA Board

**FROM:** Ms. Donna DiCerbo, CPPO, CPPB, Director of Procurement **SUBJECT:** KB-3013-0000 – Police Training Center – Site Development

**DATE:** August 26, 2021

### **PURPOSE**

To seek contingent approval to execute Contract No. KB-3013-0000 - Police Training Center - Site Development.

### **SUMMARY**

This project includes site development work in preparation for a future MDTA Police Training Facility building. Contract work includes Storm Water Management, erosion sediment controls, landscaping, roadway, parking lot, water utility, and future gas utility services. Electric pathway provisions are included for future building utility service, parking lot lighting, electric security gates, and electrical vehicle charging stations.

### RECOMMENDATION

To provide contingent approval to execute Contract No. KB-3013-0000 - Police Training Center - Site Development.

### **ATTACHMENT**

Project Summary



### **AUTHORITY BOARD PROJECT SUMMARY**

### **KB-3013-0000 Police Training Center - Site Development**

PIN NUMBER 2521

CONTRACT NUMBER KB-3013-0000

**CONTRACT TITLE** Police Training Center - Site Development

PROJECT SUMMARY This project includes site development work in preparation for a future MDTA Police Training Facility building.

Contract work includes Storm Water Management, erosion sediment controls, landscaping, roadway, parking lot, water utility and future gas utility services. Electric pathway provisions are included for future building utility service,

parking lot lighting, electric security gates, & electrical vehicle charging stations.

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#### SCHEDULE

| ADVERTISEMENT D        | ATE           |                | 5/4/2021     |    |                                    | (\$)            |                  |
|------------------------|---------------|----------------|--------------|----|------------------------------------|-----------------|------------------|
| ANTICIPATED NOTI       | CE TO PROCEED | DATE           | Sep-21       |    |                                    | Advertised      | Proposed         |
| <b>DURATION (CALEN</b> | DER DAYS)     |                | 365          | M  | BE PARTICIPATION                   | GOAL (%)        | GOAL (%)         |
|                        |               |                |              |    | OVERALL MBE                        | 28.00%          | 28.02%           |
|                        |               |                |              |    | AFRICAN AMERICAN                   | 8.00%           | 8.12%            |
|                        |               |                |              |    | ASIAN AMERICAN                     | 0.00%           | 0.00%            |
|                        |               |                |              |    | HISPANIC AMERICAN                  | 0.00%           | 8.27%            |
|                        |               |                |              |    | WOMEN                              | 11.00%          | 11.63%           |
|                        |               |                |              |    | VSBE                               | 0.50%           | 2.50%            |
| ENGINEER'S ESTIMA      | ATE (EE)      | \$2            | 2,445,354.81 |    |                                    |                 |                  |
|                        |               |                |              | ВІ | O RESULTS                          | BID AMOUNT (\$) | % VARIANCE TO EE |
| BID PROTEST            | YES 🗆         | NO☑            |              |    | Old Line Construction, Inc.        | \$2,366,812.00  | -3%              |
|                        |               |                |              |    | Veterans Kitchen Maintenance, Inc. | \$2,394,994.00  | -2%              |
| <b>FUNDING SOURCE</b>  | 100.00%       | 6 TOLL REVENUE |              |    | Greenbridge Construction, Inc.     | \$2,398,139.00  | -2%              |
|                        |               |                |              |    | LEMS Contracting Company, Inc.     | \$2,469,151.00  | 1%               |
|                        |               |                |              |    |                                    |                 |                  |



Larry Hogan, Governor

Boyd K. Rutherford, Lt. Governor Gregory Slater, Chairman

#### **Board Members:**

Dontae Carroll Ma William H. Cox, Jr. Cy William C. Ensor, III Je

Mario J. Gangemi, P.E. Cynthia D. Penny- Ardinger

William C. Ensor, III Jeffrey S. Rosen W. Lee Gaines, Jr. John F. von Paris

James F. Ports, Jr., Executive Director

### **MEMORANDUM**

**TO:** MDTA Board  $\mathcal{D} \mathcal{D}$ 

**FROM:** Ms. Donna DiCerbo, CPPO, CPPB, Director of Procurement

**SUBJECT:** Former Maryland House Travel Plaza Mural Scene Francis Scott Key

Panel

**DATE:** August 26, 2021

### **PURPOSE**

This item represents an update to the Board on the request to recommend Board of Public Works (BPW) approval to transfer the remaining Former Maryland House Travel Plaza Mural scene panel depicting Frances Scott Key in front of U.S. Flag to the Maryland Commission on Artistic Property of the Maryland State Archives. This item was presented at the August 10<sup>th</sup> Finance Committee meeting.

| Mural panel scene    | Estimated | Estimated | Estimated Value | Proposed Recipient       |
|----------------------|-----------|-----------|-----------------|--------------------------|
|                      | As is     | Treatment | After Treatment |                          |
|                      | Value     | Cost      |                 |                          |
| Francis Scott Key in | \$15,000  | \$8,000-  | \$50,000        | Maryland Commission on   |
| front of U.S. Flag   |           | \$16,000  |                 | Artistic Property of the |
|                      |           |           |                 | Maryland State Archives  |

### **SUMMARY**

In 1966, the State Roads Commission, predecessor to the Maryland Transportation Authority ("MDTA"), contracted with Gladieux Corporation to make decorative improvements to the Maryland House Travel Plaza. Pennsylvania artist William A. Smith was commissioned to create several murals for the travel plaza. Depicting significant individuals and events of Maryland and US history, the murals were installed in the lobby of the Maryland House on April 2, 1968.

During a renovation in the late 80's the mural located on the first floor was damaged. The murals, originally three individual sections, included one section located on the first floor of the former Maryland House and removed from the building in March 1989, and two other sections located on the second floor, which were removed in September 2012 as part of the Travel Plazas Redevelopment P3 project, were cleaned and properly stored. These sections of mural vignettes were formerly on the second floor of the old Maryland House. The murals were appraised by a painting conservator in December 2013. MDTA has also been updating the family on the disposition of the mural panels.

Recipients of six of the eight murals previously approved for disposition at the October 3, 2018 Board of Public Works (BPW) meeting were the Baltimore Civil War Museum, Civic Works – The Clifton Museum, MD Commission on Artistic Property. The recipient of one of the murals previously approved for disposition at the June 22, 2016 BPW meeting was the Banneker Douglass Museum.

| Mural panel  | Recipient                               |
|--|---|
| Abraham Lincoln in front of the Emancipation         | Baltimore Civil War Museum              |
| Proclamation   |   |
| Baltimore & Ohio Railroad "Lafayette: steam engine   | Baltimore Civil War Museum              |
| Lord Baltimore in front of Royal Charter             | Maryland Commission on Artistic         |
|  | Property of the Maryland State Archives |
| Charles Willson Peale, American painter              | Maryland Commission on Artistic         |
|  | Property of the Maryland State Archives |
| General George Washington resigning his commission   | Maryland Commission on Artistic         |
| as commander-in-chief of the Continental Army in     | Property of the Maryland State Archives |
| 1783 to the Continental Congress in the Old Senate   |   |
| Chamber at the Maryland State House in Annapolis     |   |
| Daniel Coit Gilman, first President of Johns Hopkins | Civic Works                             |
| University, and Dr. William Henry Welch of Johns     |   |
| Hopkins  |   |
| Andrew Ellicott & Benjamin Banneker                  | Banneker Douglass Museum                |
| in from of a map of Washington, D.C.                 |   |

### **ATTACHMENT**

• Attachment A – Description and Image of the Frances Scott Key Mural panel

In 1966, the State Roads Commission, predecessor to the Maryland Transportation Authority ("MDTA"), the agency that operates and maintains the State's eight toll facilities, contracted with Gladieux Corporation to make decorative improvements to the Maryland House Travel Plaza on I-95 in Aberdeen, MD. Pennsylvania artist William A. Smith was commissioned to create several murals for the travel plaza. Depicting significant individuals and events of Maryland and US history, the murals were installed in the lobby of the Maryland House on April 2, 1968.

On September 16, 2012 the Maryland House Service Plaza was closed to the public. Olin Conservation, Inc. was contracted by Clark Construction to remove the murals located on the second floor of the Maryland House. On October 18, 2012 the murals were delivered to Page Conservation in Washington, D.C. for conservation assessment and to clean and prepare the murals for long term storage. The cleaning of the murals was completed in July 2013 and delivered to Bonsai Storage in Hanover, Maryland.

MARYLAND HOUST TRAVEL CENTER

North side

Francis Scott Key in front of U.S. flag

"Scene # 1" Francis Scott Key in front of U.S. flag

- Baltimore & Ohio Railroad "Lafayette" steam engine
- Abraham Lincoln in front of the Emancipation Proclamation
- Daniel Coit Gilman, first President of Johns Hopkins University, and Dr. William Henry Welch of Johns Hopkins

MDTA had an appraisal done by Eagle Associates, LLC to determine a value of the three murals. The family of William A. Smith is in agreement on the idea of separating the second-floor murals into individual scenes to make it easier to find suitable homes for the smaller sections.

Below is an excerpt from the report on this section of the mural:

Description of Work and Appraisal Details
Category
Oil on Canvas

Date of Property Valuation
Artist
November 25, 2013
William Arthur Smith
Second Floor - Key Mural

Date 1968

Medium Oil on Canvas Dimensions 66 1/4 x 95

Signature Signed on the upper left next to Francis Scott Key, William A

Smith 1968

Statement of

Authentication This work was created by William Arthur Smith

This mural, formerly installed on the second floor of the Maryland House, consisted of 4 vignettes of Maryland History; the artist's signature is to the left of the first vignette, Francis Scott Key.

<u>Francis Scott Key in front of the flag</u>. Areas of this vignette need complete painting and others need repair. The canvas seems to be stable. This section is in fair condition.

Provenance This work was created by the artist working under a contract issued by Gladieux Corporation in 1966 for the Maryland Transportation Authority.

Condition Francis Scott Key - fair

<u>Additional information</u>: Oil on canvas, signed: William A. Smith 1968 (upper left). There is a small window cut into the body of the picture at the lower left measuring H. 4 ½" x W. 4 ½" (presumably to accommodate a light switch). There are minor scattered interlayer cleavage paint losses across the surface. Some of these losses appear to have been locally consolidated using BEVA 371. The paint film remains in a good state of preservation. There is a thin varnish coating on the surface which has darkened with age, as well as a light deposit of accumulated airborne soot and grime.

# **TAB 5**

# **VERBAL**

# **TAB 6**



**Larry Hogan, Governor** Boyd K. Rutherford, Lt. Governor Gregory Slater, Chairman

**Board Members:** 

Dontae Carroll William H. Cox, Jr. William C. Ensor, III W. Lee Gaines, Jr. Mario J. Gangemi, P.E. Cynthia D. Penny-Ardinger Jeffrey S. Rosen John F. von Paris

James F. Ports, Jr., Executive Director

### MEMORANDUM

**TO:** MDTA Board

FROM: Mr. Allen W. Garman, Director of Treasury & Debt SUBJECT: MDTA Board Resolution 21-05, TIFIA Financing

**DATE:** August 26, 2021

### **PURPOSE OF MEMORANDUM**

Request approval of MDTA Board Resolution 21-05 that authorizes a TIFIA<sup>1</sup> loan to finance a portion of the Nice/Middleton Bridge replacement project. Resolution 21-05 amends Resolution 20-08 to extend the deadline from August 31, 2021 to December 31, 2021.

### **SUMMARY**

The TIFIA financing resolution authorizes a loan of \$220 million to finance approximately one-third of the Nice/Middleton Bridge project. Work is ongoing with USDOT Build America Bureau on the TIFIA loan, with expected USDOT Secretary final approval in late September or early October.

The MDTA submitted a Letter of Interest to the Build America Bureau in August 2019, received invitation into the Credit Review phase in December 2019, invitation to Submit Application in July 2021, and Credit Review Team and Credit Counsel approvals in August 2021. Remaining elements include OMB<sup>2</sup> apportionment funding, USDOT Secretary Approval, and the loan closing. Rate lock at prevailing treasury rates will occur at loan closing, with the loan proceeds scheduled to be drawn on January 1, 2023. The majority of the lengthy TIFIA loan process included the credit review and loan agreement terms negotiations.

The Executive Director and Chief Financial Officer (CFO) will have the authority to manage the loan closing, including the negotiation of terms with the Build America Bureau. The resolution also provides for authority to select other service providers and to prepare and execute all closing documents, certificates, and bond forms.

<sup>&</sup>lt;sup>1</sup> Transportation Infrastructure Finance and Innovation Act

<sup>&</sup>lt;sup>2</sup> U.S. Office of Management and Budget

MDTA Board Resolution, TIFIA Financing Page Two

### Resolution for TIFIA financing contains the following limiting provisions:

- 1. Par Amount Limited to \$220 million.
- 2. Loan Closing No later than December 31, 2021.

### **RECOMMENDATION**

Approve Board Resolution 21-05.

### **ATTACHMENTS**

• MDTA Board Resolution 21-05, TIFIA Financing

### MARYLAND TRANSPORTATION AUTHORITY RESOLUTION 21-05

A RESOLUTION REGARDING THE FINANCING, ACQUISITION, CONSTRUCTION, AND EQUIPPING OF THE GOVERNOR HARRY W. NICE MEMORIAL/SENATOR THOMAS "MAC" MIDDLETON BRIDGE PROJECT (THE "NICE BRIDGE PROJECT"); APPROVING THE PRELIMINARY BOND STRUCTURE AND FINANCING TERMS; APPROVING THE DRAFTING OF A SUPPLEMENTAL TRUST AGREEMENT; APPROVING THE EXECUTION AND DELIVERY OF A TERM SHEET, A LOAN AGREEMENT, AND A COMPLIANCE AGREEMENT; AND APPROVING CERTAIN OTHER MATTERS PERTAINING TO THE PLANNING AND STRUCTURING FOR AN ISSUANCE BY THE MARYLAND TRANSPORTATION AUTHORITY (THE "MDTA") OF ITS TRANSPORTATION FACILITIES PROJECTS REVENUE BONDS, SERIES 2021 (COLLECTIVELY, THE "TIFIA BONDS").

WHEREAS, the Maryland Transportation Authority, an agency of the State of Maryland (the "MDTA") previously adopted several resolutions authorizing the issuance of the TIFIA Bonds (including Resolution 19-03, Resolution 20-02, Resolution 20-04, Resolution 20-08) and the authorizations thereunder have expired or are set to expire; and

WHEREAS, the MDTA desires to extend such expiring Resolution 21-08; and

WHEREAS, the MDTA is authorized under Sections 4-101 through 4-405 of the Transportation Article of the Annotated Code of Maryland (2015 Replacement Volume, as supplemented) (the "Act") to finance "transportation facilities projects" (as defined in the Act), to issue revenue bonds for the purpose of financing the cost of transportation facilities projects, to issue revenue bonds for the purpose of refunding any of its outstanding revenue bonds and to perform any actions necessary or convenient to carry out the powers granted in the Act; and

WHEREAS, the MDTA has entered into the Second Amended and Restated Trust Agreement dated as of September 1, 2007 (as previously amended and supplemented, the "Master Trust Agreement"), with The Bank of New York Mellon (successor to The Bank of New York), as trustee (the "Trustee"); and

WHEREAS, Section 2.04 of the Master Trust Agreement provides that the MDTA may from time to time issue Additional Bonds (as defined in the Master Trust Agreement) in accordance with the terms and conditions set forth in the Master Trust Agreement for the purpose, among others, of (i) paying all or any part of the cost of any additional Transportation Facilities Projects (as defined in the Master Trust Agreement) or any Improvements (as defined in the Master Trust Agreement) or (ii) providing funds for refunding all or a portion of the bonds then outstanding of any or all series, whether or not such bonds are then subject to redemption, including providing for the payment of any redemption premium due or to become due thereon, interest to accrue to the selected redemption or maturity date, any serial maturities to become due prior to the selected redemption or maturity date and any expenses in connection with such refunding; and

WHEREAS, pursuant to the terms of Section 11.01 of the Master Trust Agreement, the MDTA desires to enter into a supplemental trust agreement supplementing the Master Trust

### **RESOLUTION 21-05**

Page Two

Agreement to provide for the issuance of Additional Bonds (the "TIFIA Bonds," as defined herein) to be secured by the Master Trust Agreement and a supplemental trust agreement equally and ratably with any portion of the Outstanding Prior Bonds that may remain outstanding after issuance of the TIFIA Bonds; and

WHEREAS, the MDTA desires to authorize the sale and issuance of the TIFIA Bonds for the purpose of financing the design, construction and equipping of any additions, improvements and enlargements to the Nice Bridge Project, provided that certain conditions set forth in this Resolution are met; and

WHEREAS, the Act authorizes MDTA to sell its bonds either public or private sale in the manner and price it determines; and

WHEREAS, the MDTA desires to negotiate the terms of a supplemental trust agreement supplementing the Master Trust Agreement to provide for the issuance and private placement of Additional Bonds; and

WHEREAS, MDTA authorizes the continuation of the process of submitting an Application for Credit Assistance under the Federal Highway Administration's Transportation Infrastructure Finance and Innovative Act Program (the "TIFIA Program") for the Nice Bridge Project; and

WHEREAS, the TIFIA Program is forecasted to make credit assistance available to the MDTA for the Nice Bridge Project under a secured loan agreement (the "Secured Loan Agreement") secured by the issuance by the MDTA of the TIFIA Bonds; and

WHEREAS, MDTA and United States Department of Transportation acting through the Federal Highway Administration ("FHWA") will negotiate and enter into a secured loan term sheet (the "Term Sheet"); and

WHEREAS, MDTA will negotiate the Secured Loan Agreement to be entered into between MDTA and FHWA and negotiate in consultation with Maryland Department of Transportation State Highway Administration ("MDOT-SHA"), a compliance agreement among the MDTA, MDOT-SHA and FHWA (the "Compliance Agreement"); and

WHEREAS, the MDTA will pledge the revenues generated by the Transportation Facilities Projects to secure payment of the TIFIA Bonds on a parity basis with all other outstanding bonds of the MDTA secured by the Master Trust Agreement, as detailed in the Master Trust Agreement, and as supplemented by a Tenth Supplemental Trust Agreement between the MDTA and The Bank of New York Mellon, as trustee, or as otherwise designated under the provisions of the Master Trust Agreement (the "TIFIA Trust Agreement").

NOW, THEREFORE, BE IT RESOLVED BY THE MARYLAND TRANSPORTATION AUTHORITY, as follows:

**Section 1.** The MDTA hereby authorizes the issuance of its Special Obligation Revenue Bonds, Series 2021 (the "**TIFIA Bonds**"), in one or more series as the bond issue may

### **RESOLUTION 21-05**

Page Three

be further designated by the Executive Director of the MDTA (the "Executive Director"), in an aggregate principal amount not to exceed Two Hundred Twenty Million Dollars (\$220,000,000) for the purpose of financing and refinancing the Nice Bridge Project, (iii) optionally depositing funds into a debt service reserve fund, and (iv) paying the costs related to the issuance of the TIFIA Bonds.

- Section 2. The MDTA approves negotiating the Term Sheet, the Secured Loan Agreement and the Compliance Agreement by MDTA's staff with the assistance of the MDTA's bond counsel and financial advisor, and authorize the execution and delivery by the Chairman of the MDTA (the "Chairman") and Executive Director of the Term Sheet, Secured Loan Agreement and Compliance Agreement and such other documents and agreements deemed appropriate by the Chairman or the Executive Director (collectively, the "Bond Documents") with deletions, additions and modifications they deem appropriate to comply with the purpose of this Resolution. The execution and delivery by them of the Bond Documents shall be conclusive evidence of their final approval.
- **Section 3.** The MDTA hereby approves the negotiation of a draft TIFIA Trust Agreement, and hereby authorizes its Executive Director, with the assistance of its other officers, counsel, bond counsel, financial advisor, and staff to take such actions or cause to be taken such actions as shall be necessary, proper and convenient for the purposes of negotiating and finalizing a final TIFIA Trust Agreement and to appoint The Bank of New York Mellon as trustee.
- **Section 4.** The TIFIA Bonds are special obligations of the MDTA payable, as to principal and interest, solely from the revenues and funds pledged thereto under the Master Trust Agreement, as amended and supplemented, and are not and shall not be deemed (i) to be general obligations of the MDTA, (ii) to constitute obligations of the Department of Transportation of Maryland, or (iii) to constitute a debt or a pledge of the faith and credit or the taxing power of the State of Maryland or any political subdivision thereof.
- Section 5. The MDTA hereby authorizes its Executive Director to sell the TIFIA Bonds in one or more sales as determined to by the Executive Director, with the advice of the Chief Financial Officer of the MDTA (the "Chief Financial Officer"), its bond counsel, its financial advisors and, as appropriate, other officers and staff of the MDTA, to be the most advantageous for the MDTA, provided that such sales must occur no later than December 31, 2021, unless a later sale date is approved by future resolution of the MDTA. The Executive Director is authorized to determine, with the advice of the Chief Financial Officer, its bond counsel, its financial advisors and, as appropriate, other officers and staff of the MDTA, the rate or rates of interest to be borne by the TIFIA Bonds or the method of determining the rates (such rates of all or a portion of the TIFIA Bonds may be fixed or variable), if all or a portion of the TIFIA Bonds will be sold with taxable or tax-exempt interest, the dates of principal and interest payments and final maturity of the TIFIA Bonds, provided that the date of final maturity of the TIFIA Bonds shall not exceed (i) the useful life of the assets financed with respect to the proceeds used for Nice Bridge Projects and (ii) the final maturity of the Refunded Bonds with respect to proceeds used to refund the Refunded Bonds. The Executive Director and the Chief Financial

#### **RESOLUTION 21-05**

Page Four

Officer shall each provide a report of the results of the any sale of the TIFIA Bonds at the first meeting of the MDTA Board occurring after the such sale of the TIFIA Bonds.

- **Section 6**. The Executive Director is hereby authorized to engage, as appropriate, the services of a trustee, a registrar, a paying agent, an escrow agent, a verification agent, a feasibility consultant, engineers, accountants, printers and such other service providers as the Executive Director deems appropriate from time to time with respect to the TIFIA Bonds and the Refunded Bonds.
- **Section 7.** The Chairman and the Executive Director are hereby authorized to specify, prescribe, determine, provide for or approve, all within the limitations of this Resolution and the Act, all other matters, details, forms, documents and procedures pertaining to the sale(s), security, issuance, delivery and payment of or for the TIFIA Bonds, including (without limitation) the execution, acknowledgment, sealing and delivery of Bond Documents by the Chairman, Executive Director or any other duly qualified employee, agent or officer of the MDTA as are or may be necessary or appropriate to consummate the transactions contemplated by this Resolution in accordance with the Act and this Resolution.
- **Section 8.** The MDTA hereby authorizes its Executive Director and all other proper officers of the MDTA to create, supplement, amend, execute, and deliver documents, notices and agreements related to the Refunded Bonds and to take such actions or cause to be taken such actions as shall be necessary, proper and convenient for carrying out the purposes of this Resolution, including expending funds and incurring costs.

**Section 9.** This Resolution shall be effective immediately upon its adoption.

| Dated as of:, 2021                               |                                   |
|--|-----------------------------------|
| WITNESS:   | MARYLAND TRANSPORTATION AUTHORITY |
| James F. Ports, Jr. Executive Director           | Gregory Slater<br>Chairman        |
| APPROVED AS TO FORM AND LEGAL SUFFICIENCY:       |                                   |
| Kimberly A. Millender Assistant Attorney General |                                   |

# **TAB 7**



Larry Hogan, Governor Boyd K. Rutherford, Lt. Governor Gregory Slater, Chairman

#### **Board Members:**

Dontae Carroll Mario J. Gangemi, P.E.
William H. Cox, Jr. Cynthia D. Penny-Ardinger
William C. Ensor, III Jeffrey S. Rosen
W. Lee Gaines, Jr. John F. von Paris

James F. Ports, Jr., Executive Director

#### **MEMORANDUM**

**TO:** MDTA Board

**FROM:** Mr. Allen W. Garman, Director of Treasury & Debt

**SUBJECT:** Debt Policy – Annual Review

**DATE:** August 26, 2021

# **PURPOSE OF MEMORANDUM**

Complete required annual review of the Debt Policy and request Maryland Transportation Authority (MDTA) Board approval. The unchanged policy was reviewed with the Finance Committee on August 10, 2021 and recommended to move forward to the full Board for approval.

# **SUMMARY**

Following the annual review by internal staff and an external municipal advisory firm, no changes to the Debt Policy are currently recommended.

The Debt Policy includes legal requirements within MD State Law and the Trust Agreement, as well as Board directives to ensure financial strength. These guidelines and mandates support credit quality and access to the capital markets at the lowest possible financing rates. The following table highlights key sections.

| Key Elements                  | Section |
|-------------------------------|---------|
| State Law References          | 1       |
| Unrestricted Cash Target      | 5       |
| Debt Limit                    | 9       |
| Debt Service Coverage Target  | 10      |
| Level Debt Service Goal       | 15      |
| Capitalization of Interest    | 17      |
| Variable Rate Debt            | 18      |
| Credit Ratings Goal           | 33      |
| Annual Policy Review Required | 36      |

## **ATTACHMENT**

Debt Policy



Policy No.: MDTA 7009

Effective Date: August 16, 2005

Ellective Date: August 111, 2003

Approved by: Approval Signature

Approved by: Kinkely Mullende

Form and Legal Sufficiency Review, Office of Attorney General

Date: 8/3//2020

Original Date: August 16, 2005

Revised: August 27, 2020

**Debt Management** 

## <u>Purpose</u>

The purpose of this Policy is to establish guidelines for the process by which the Maryland Transportation Authority (MDTA) issues and manages debt, and provides guidance to the MDTA Board and staff to ensure that a sound debt position and strong credit quality are maintained.

#### References

- Title 4 of the Transportation Article, Annotated Code of Maryland (Repl. Vol. 2008, as amended)
- §5-7B-02 of the State Finance and Procurement Article, Annotated Code of Maryland
- (Repl. Vol. 2009, as amended)
- Second Amended and Restated Trust Agreement between the Maryland Transportation
  Authority and The Bank of New York Mellon, as Trustee, dated as of September 1, 2007, as
  amended (2007 Trust Agreement)
- Code of Maryland Regulations (COMAR 11.07.09.09, Vehicle Parking Facilities)
- Governor's Executive Order 01.01.1998.07
- Securities and Exchange Commission (SEC)
- Municipal Securities Rulemaking Board (MSRB)
- Federal Tax Code and Regulations
- MDTA Board Policy: Investment Management
- MDTA Board Policy: Preparation of Financial Forecasts

#### Scope:

This Policy is applicable to MDTA Finance Division staff.

#### Responsible Party:

Implementation of the procedures is the responsibility of the CFO and MDTA Division of Finance staff. Any deviation from the procedures must be promptly reported to the MDTA Finance Committee and the MDTA Board.

Division of Finance to approve document change.

#### **Debt Management**

#### I. Purpose and Uses of Debt

a. **Policy Statement 1.** In accordance with Title 4 of the Transportation Article of the Annotated Code of Maryland, MDTA may issue revenue bonds, notes, or other evidences of obligation to finance the cost of:



- i. Transportation facilities projects as defined in said Article;
- ii. A vehicle parking facility located in a priority funding area as defined in §5-7B-02 of the State Finance and Procurement Article;
- iii. Any other project for transportation facilities that the MDTA Board authorizes to be acquired or constructed; and
- iv. Any additions, improvements, or enlargements to any of these projects, whenever authorized by the MDTA Board.
- b. **Policy Statement 2.** Debt will be used only to finance capital projects (including land) and capital equipment that are reasonably necessary for governmental purposes.
- c. **Policy Statement 3**. The MDTA will finance its projects with a prudent issuance of debt through the sale of revenue bonds, notes, or other evidences of indebtedness within the constraints of the MDTA Financial Forecast Policy.
- d. **Policy Statement 4.** Capital financing proposals received by MDTA that involve a pledge or extension of credit through sale of securities, loans or leases, shall be referred to the Division of Finance for review.
- e. **Policy Statement 5.** The MDTA Consolidated Transportation Program (CTP) will be funded through a combination of cash reserves, revenues and appropriate levels of debt in accordance with affordability guidelines.
  - i. To provide adequate liquidity, MDTA will maintain unrestricted cash balances at the end of each fiscal year of at least \$350 million.
  - ii. Unrestricted cash shall include funds on deposit in the following MDTA trust accounts: Operating (reserve portion), Capital (cash funded), General, and the Maintenance and Operating (M&O) Reserve.
- f. **Policy Statement 6.** The Chief Financial Officer (CFO), under the direction of the Executive Director, has the responsibility to oversee and coordinate the sale and issuance of MDTA debt.
  - The CFO shall make recommendations to the Executive Director and MDTA Board regarding necessary actions related thereto.
  - ii. The CFO and Executive Director shall obtain MDTA Board approval thereof as evidenced by authorizing MDTA Board Resolutions.
- g. **Policy Statement 7.** The MDTA shall endeavor to finance a portion of the CTP on a "pay-as-you-go" basis.
- h. **Policy Statement 8.** Debt financings will be limited to capital projects included in the CTP.

# II. Limitations on Indebtedness

- a. **Policy Statement 9.** The statutory ceiling on the level of outstanding toll revenue bond debt shall not exceed \$3,000,000,000 on June 30 of any year.
- b. Policy Statement 10. The amount of planned MDTA debt will be limited by affordability guidelines relating to debt service coverage, the rate covenant set forth below, and as further determined by the Executive Director and CFO in consultation with the municipal advisors. The amount of planned toll revenue-backed debt will be shown in the Financial Forecasts that are prepared at least twice per year.
  - i. The 2007 Trust Agreement requires that in each Bond Year (July 1 June 30, as defined in the Trust Agreement) net revenues (revenues less operating expenditures) must cover 120% of debt service requirements and 100% of the amount annually budgeted for deposit to the M&O Reserve Account.



ii. The MDTA will maintain a minimum annual debt service coverage level of 200% of debt service for planning purposes.

- iii. The MDTA will allow at least \$100 million in programmed bonding capacity in reserve for contingencies during Years 3 through 6 of the Financial Forecast planning period.
- iv. Planned debt issuances will be based on reasonable estimates of future toll adjustments and capital funding requirements.
- v. The period of planned debt issuances will coincide with the 6-year CTP, and may be done for additional (e.g., 10 years) for longer range strategic planning.
- c. **Policy Statement 11.** Debt service coverage for conduit debt (not backed by MDTA toll revenue) will be determined on a case by case basis for projects where MDTA is a conduit debt issuer.
  - Conduit financings shall generally have minimum debt service coverage requirements of 120% of debt service.
  - ii. An exception to this minimum for conduit financings may occur if there is a debt service "guarantee" from a rated municipality, authority, or entity with investment grade ratings.
  - iii. Conduit financings shall not pledge MDTA's toll revenues.
  - iv. The MDTA has a self-imposed outstanding debt limit on conduit financings of \$700 million, excluding GARVEE bonds (hereinafter defined).
- d. **Policy Statement 12.** Pursuant to §4-320 of the Transportation Article, and the statutory limits set forth therein, the aggregate principal amount of debt issued and secured by a pledge of future federal aid known as Grant and Revenue Anticipation (GARVEE) bonds will not exceed \$750 million, and the maturity date for such debt may not be later than 12 years after the date of issuance.
- e. **Policy Statement 13.** The MDTA must adhere to the Governor's Executive Order 01.01.1998.07 (Executive Order) which requires annual review and approval of planned State agency debt by the Department of Budget and Management (DBM) and the Governor.
  - i. Notice must be given to DBM at least 30 days in advance of any bond issuance of \$25 million or greater.
  - **ii.** The MDTA will comply with the annual reporting requirements as set forth in the Executive Order.

#### III. Debt Structural Features

- a. **Policy Statement 14.** The weighted average maturity (WAM) of the tax-exempt debt issued by MDTA cannot exceed the weighted average life of the improvements for any project.
  - i. The MDTA debt must not exceed a term of 40 years per Maryland law, §4-302(b) of the Transportation Article.
- b. **Policy Statement 15.** Debt will generally be structured to achieve the lowest possible net financing costs pursuant to MDTA's policies and objectives.
  - i. Whenever feasible, structuring debt with level debt service costs over the life of the issue is preferred.
  - ii. Backloading will be considered in order to match debt service requirements with project revenues during the early years of the project's operation.
  - iii. At the CFO's discretion, certain issuance costs and fees (e.g.



underwriter's discount, bond counsel, municipal advisors, rating agencies, feasibility consultants, Trustees, printers, auditors, etc.) may be paid from unrestricted cash instead of bond proceeds.

- iv. In accordance with the Code of Maryland Regulations 11.07.09.09, MDTA may charge an application fee or other fees reasonably related to the expenses it incurs in processing a financing proposal or issuing debt in connection with a Vehicle Parking Facility.
- v. As a conduit issuer, MDTA may charge the obligor an annual administrative fee to recapture its costs incurred over the life of the bonds.
  - 1. Examples of such costs include, but are not limited to, arbitrage rebate calculations, trustee fees and auditor expenses.
- c. **Policy Statement 16.** Optional redemption provisions will generally be included in MDTA bond issues upon the recommendation of the Executive Director, CFO and municipal advisors.
  - Depending upon market conditions, call provisions will be evaluated for each bond issue.
- d. **Policy Statement 17.** Capitalization of interest (borrowing funds to pay interest on a debt obligation) will generally be limited to the interest due on debt during construction of the facilities.
  - i. When deemed appropriate by the Executive Director, CFO and municipal advisors, capitalized interest may extend beyond the construction period, but in no event, will it extend beyond one year after project completion in accordance with Maryland law, §4-101(c) of the Transportation Article.
- e. Policy Statement 18. MDTA may issue variable rate securities with interest rates tied to an index according to a predetermined formula or based upon the results from a periodic remarketing of securities for toll revenue-backed or conduit debt.
  - The decision to issue variable rate debt must be approved by the MDTA Board upon the recommendation of the Executive Director, CFO and municipal advisors.
  - ii. MDTA has a self-imposed limit that at time of issuance, no more than 15% of its toll revenue-backed debt will be in variable rate mode.
  - iii. Limits on variable rate conduit debt will be determined on a case by case basis taking into consideration debt service coverage and obligor cash reserves.
- f. **Policy Statement 19.** Upon the approval of the MDTA Board, MDTA may enter into financing agreements involving interest rate swaps, floating/fixed rate auction securities, or other forms of debt bearing synthetically determined interest rates.
  - i. MDTA will consider the use of such financing agreements on a case by case basis and any use shall be consistent with the Trust Agreement, State policy and financial prudence.
- g. **Policy Statement 20.** When it is determined to be prudent by the Executive Director, CFO and municipal advisors, and subject to approval of the MDTA Board, MDTA may issue bond anticipation notes or other short-term indebtedness, in accordance with applicable statutory law and trust agreements, as a source of interim construction financing.

## IV. Method of Sale

a. Policy Statement 21. The MDTA shall sell and issue debt, subject to MDTA



Board approval, either through a competitive bidding process or by a negotiated sale (including a direct bank loan). A competitive bond sale is the preferred method unless it is determined by the Executive Director, CFO, the municipal advisors and legal counsel that this method is unlikely to produce the best sale results. Factors to consider in selecting the sale method include, but are not limited to, bond issue size and related issuance costs, repayment terms, market conditions, credit history and the timing of the need for funds.

- Competitive sales will be awarded to qualified bidder(s) based upon the lowest true interest cost method, with additional consideration of the probable call of the premium coupon securities through the lowest call option adjusted True Interest Cost Plus (TIC Plus) methodology.
- ii. In the event of a negotiated sale, the underwriting team for the negotiated sale will be selected through a competitive solicitation process and approved by the MDTA Board.
- iii. In the event of a direct bank loan, a competitive solicitation will be conducted and the bonds will be awarded based upon lowest true interest cost or TIC Plus unless the Executive Director and CFO determine that it is in the best interest of the MDTA to accept an alternative bid with more favorable terms and conditions.
- b. Policy Statement 22. Documentation of MDTA bond sales and closings will be prepared by bond counsel, municipal advisors, the MDTA Office of the Attorney General, the MDTA Division of Finance, and other applicable parties for approval by the MDTA Board, and in the case of conduit debt, the State Board of Public Works or other appropriate officials, as required.

### V. Refundings

- a. Policy Statement 23. The CFO and municipal advisors will periodically review MDTA outstanding debt to identify refunding opportunities. Refunding will be considered when there is net economic benefit or the refunding is advisable to modernize bond trust covenants essential to operations and management. The CFO, the Executive Director and staff from MDTA's Division of Finance shall consider additional factors that they deem appropriate in determining specific bonds that shall be refunded.
  - i. In general, refunding for economic savings will be considered when net present value (NPV) savings may be achieved. Projected NPV savings shall be discounted at the All-In True Interest Cost. Alternately, NPV savings may be calculated using discount factors from the funding yield curve for each individual maturity.
  - ii. In concert with NPV savings analysis, Refunding Efficiency shall be calculated for each individual maturity. Refunding Efficiency measures the percentage of the call option value captured through present value cash flow savings. Maturity refundings that are projected to capture more than 85% of the option value may be viewed favorably and worthy of consideration, though a calculated efficiency below 95% suggests that greater savings may be achieved by delaying the financing.
  - iii. A refunding is subject to MDTA Board approval, either for economic reasons or when existing bond trust covenants or other factors impinge on prudent and sound financial management, and such a restructuring is in MDTA's overall best financial interests.



VI. Disclosure/Arbitrage Compliance

a. **Policy Statement 24.** The MDTA is committed to full and complete financial disclosure, and will abide by the provisions of SEC Rule 15c2-12 concerning primary and secondary market disclosure.

- i. The MDTA Division of Finance, with the MDTA Office of the Attorney General and bond counsel, will determine the appropriate primary market disclosure that is required in connection with the offer and sale of bonds.
- ii. The CFO and the MDTA Division of Finance shall establish and maintain written procedures to follow for the collection, review and public dissemination of secondary market disclosure.
- **iii.** At a minimum, such disclosure procedures shall address responsibility for:
  - 1. Maintaining a record of all Continuing Disclosure Agreements and the requirements set forth therein;
  - Assigning staff to collect information and determine the method of disclosure, i.e. inclusion in the MDTA Financial Statements or by a separate posting to disseminate information, using the Electronic Municipal Market Access System (EMMA), or to such other approved national repository; and
  - 3. Setting guidelines to determine when a voluntary or significant event has occurred that warrants posting to EMMA, or to such other approved national repository.
- b. **Policy Statement 25**. The MDTA is committed to compliance with Federal arbitrage tax law and regulations which govern the issuance and management of tax exempt debt.
  - i. The MDTA Division of Finance is responsible for the system of record keeping and reporting necessary to meet the arbitrage rebate compliance requirements of the Federal tax code.

#### VII. Investment of Bond Proceeds

a. **Policy Statement 26.** Bond proceeds shall be invested in accordance with provisions of the applicable Trust Agreement and MDTA's Investment Management Policy.

#### VIII. Consultant Selection

- a. Policy Statement 27. The MDTA will retain municipal advisors who are registered with the SEC, to be selected for a term of up to six years through a competitive process administered by the MDTA Division of Finance and the Division of Procurement.
  - i. The Executive Director and CFO shall determine on a case by case basis, and pursuant to an applicable municipal advisory services contract, when to use the services of the municipal advisors for bond sales or other financial matters and related advice.
  - ii. To ensure independence and to avoid any potential conflicts of interest, when the MDTA engages the services of the municipal advisors for bond sales, it shall be with the understanding that neither the municipal advisors, their firms, or affiliates, will bid on or underwrite any MDTA debt issue, or perform any other services relating to the sale or issuance of such debt, unless specifically disclosed to the MDTA and authorized by



the Executive Director and CFO upon approval by the MDTA Board.

- iii. When the MDTA engages with services of the municipal advisors for general advice and work, including but not limited to, investments, cash modeling, forecasts, rating agency surveillance, legislative and regulatory updates and analyses, it shall be with the understanding that the municipal advisors, their firms or affiliates will provide the MDTA with written confirmation of their compliance with, and disclosure relating to, the fiduciary duties and standards imposed by the Dodd-Frank Act, and specifically the Municipal Advisor Rule (Release No. 34-70462) issued by the SEC and Rule G-42 issued by the MSRB.
- b. **Policy Statement 28.** The MDTA and the Maryland Attorney General will retain qualified bond counsel as required for debt issues. Bond counsel will issue an opinion as to the legality of the debt issuance and the tax-exempt status of any such obligations.
  - i. The Principal Counsel of the MDTA Office of the Attorney General (MDTA Principal Counsel) shall act as procurement officer on behalf of the Maryland Office of the Attorney General and procure competitive proposals from outside law firms.
  - ii. If necessary, the MDTA Principal Counsel shall form a review committee to evaluate written proposals and to conduct oral interviews of the proposers.
  - iii. After the review committee completes its evaluation, the MDTA Principal Counsel shall make recommendations to the Maryland Attorney General regarding the selection of one of more firms to serve as bond counsel.
  - iv. The solicitation and selection process for such services will be accomplished according to the legally appropriate procurement process utilized by the Maryland Attorney General. The Maryland Attorney General's Office shall make such selection, and the MDTA Principal Counsel shall notify the MDTA Board of the selection. The contract(s) shall be awarded, subject to available funding for the contract(s).
- c. **Policy Statement 29.** The MDTA Division of Finance shall be responsible for qualifying underwriting firms to provide services for debt issued in a negotiated sale.
  - i. Underwriters will be required to demonstrate sufficient capitalization, experience, and competitive pricing in order to qualify to underwrite debt.
  - ii. A review committee will be formed to evaluate written proposals and to conduct oral interviews if necessary.
  - iii. The formal selection of the qualified underwriting firms for all negotiated bond sales (except direct bank loans) will be presented to the MDTA Board for approval upon recommendation by the review committee.
- d. Policy Statement 30. The MDTA Division of Finance, in conjunction with the MDTA Office of the Attorney General, will approve the selection of the underwriter's counsel, in the event of a negotiated bond sale. The cost of the underwriter's counsel will be payable from bond proceeds of each specific issue and allocated to underwriter's costs.
- e. **Policy Statement 31**. The CFO shall have the authority to periodically select other service providers (e.g., trustees, arbitrage consultants, etc.) as necessary to meet legal requirements and to minimize net debt costs.
- f. **Policy Statement 32**. Compensation for bond counsel, underwriter's counsel, municipal advisors, and other financial services will be as low as possible



(through the competitive and any legally required procurement process), given desired qualification levels, and consistent with industry standards.

### IX. Credit Ratings

- a. **Policy Statement 33.** The MDTA seeks to maintain the highest possible investment grade credit ratings for revenue bonds, notes and other evidences of indebtedness issued under the provisions of Title 4 of the Transportation Article, consistent with this policy and other Department guidelines.
  - For issues secured by toll revenues, MDTA will request ratings prior to the sale of securities from at least two of the three major rating agencies for municipal bond issues: Moody's Investors Service, S&P Global, and Fitch Ratings.
  - ii. For conduit financing issues, the decision to request underlying credit ratings will be on a case by case basis as determined by the Executive Director, CFO, the municipal advisors, the obligor and the underwriter for the bonds in the case of a negotiated sale.
  - iii. The MDTA may provide written and/or oral presentations to the rating agencies to assist the agency credit analysts.
- b. **Policy Statement 34.** MDTA shall consider the use of credit enhancements such as debt service reserves, bond insurance, letters of credit, and surety bonds when such credit enhancement proves cost-effective.
  - i. The net debt service on the bonds should be reduced by more than the net carrying costs of the enhancement. A credit enhancement should result in lower net financing costs and may result in higher credit ratings.
- c. **Policy Statement 35**. The Executive Director, CFO and the municipal advisors are responsible for maintaining relationships with the rating agencies. This effort includes providing periodic updates on MDTA's general financial condition along with meetings and presentations in conjunction with a new debt issuance.

## X. Annual Review

a. **Policy Statement 36.** This Debt Policy is to be reviewed by the MDTA Finance Committee at least annually.

#### XI. Definitions

a. None

## XII. Authorized/Supporting Documents

#### XIII. Policy History

- a. Approved 8.16. 2005
- b. Reviewed 8.10, 2006
- c. Amended 8.9.2007 as of 9.20.2007
- d. Amended 9.11.2008
- e. Amended 8.25.2009
- f. Amended 11.24.2010
- g. Reviewed 9.22.2011
- h. Amended 9.27.2012
- i. Amended 8.22.2013
- j. Amended 8.28.2014



- k. Amended 8.27.2015
- I. Amended 8.25.2016
- m. Amended 9.7.2017
- n. Amended 8.30.2018
- o. Amended 8.29.2019
- p. Amended 8.27.20

# **TAB 8**



Larry Hogan, Governor Boyd K. Rutherford, Lt. Governor Gregory Slater, Chairman

#### **Board Members:**

Dontae Carroll Mario J. Gangemi, P.E.
William H. Cox, Jr. Cynthia D. Penny-Ardinger
William C. Ensor, III Jeffrey S. Rosen
W. Lee Gaines, Jr. John F. von Paris

James F. Ports, Jr., Executive Director

#### **MEMORANDUM**

**TO:** MDTA Board

**FROM:** Mr. Allen W. Garman, Director of Treasury & Debt

SUBJECT: Investment Report DATE: August 26, 2021

#### **PURPOSE OF MEMORANDUM**

The purpose of this item is to provide the Maryland Transportation Authority (MDTA) Board with a quarterly update on investment strategy and performance. This item was discussed in detail at the August 10, 2021 Finance Committee meeting and the Committee supports the continuation of the current investment strategies for all accounts.

### **SUMMARY**

For the trailing twelve-month period ended June 30, 2021, investments conformed to Investment Policy limitations. Portfolio structuring by account adhered to Board approved strategy. Total return performance for the General account was commensurate with the benchmark index. During the duration extension transition period for the M&O Reserve, the account will continue to remain short relative to the new benchmark index and portfolio duration will transition over several months. Total return performance for the M&O Reserve will not have a good comparable benchmark during the transition period.

The MDTA Board approved an investment strategy and benchmark change at its February 27, 2020 meeting to lengthen the average maturity of certain unrestricted reserves to 7.5-years from 2.8-years, as well as the associated *Effective Duration* (rate driven price volatility) to 7.0 from 2.75. Implementation of this strategy change was delayed as a result of the pandemic induced market volatility, distortions, and record low interest rates. At the November 2020 meeting, the Board approved a gradual transition for a small portion (14%) of the unrestricted cash held in the M&O Reserve. The Investment Committee will continue to update the Board periodically on the recommended timing for restructuring the remaining 86% of unrestricted reserves held in the General account.

## **INVESTMENT STRATEGY**

The agency employs either a Matched Funding or Total Return approach for certain categories of accounts. Debt Service and Capital accounts are managed on a Matched Funding basis, with investment maturities matched to known or potential outflows. Unrestricted and Restricted Reserves are managed for Total Return, with consideration of the risk/return tradeoff associated with longer-term structures. Longer duration portfolios benefit from higher average annual returns over multiyear periods and tend to exhibit greater return volatility relative to shorter-term maturity structures.

The General account is benchmarked against a composite index of 1-5-year bullet agency indices. The blended composite index is fifty percent of the ICE BofAML 1-3 Year Bullet Agency Index and fifty percent of the 3-5 Year Bullet Agency Index. Investment maturities are generally staggered from three-months to five-years, with overweight in the three- to five-year maturity bands and an effective duration target of approximately 3.0.

The M&O Reserve account began transitioning in December 2020 from the 1-5 year bullet agency benchmark to a new composite of 1-13 year Treasury Strip indices that approximates the effective duration of a laddered portfolio of 6-month to 15-year securities. The new strategy will lengthen the average maturity of the account to 7.5-years from 2.8-years, as well as the associated effective duration to 7.0 from 2.75. During the duration extension transition period, the portfolio will continue to remain short relative to the new benchmark index and total return performance for the account will not have a good comparable benchmark.

## **RELATIVE PERFORMANCE AND BENCHMARKING**

During the trailing twelve-months, the General account was positioned an effective duration averaging near the 1-5 year bullet agency benchmark. The General account's trailing total return performance of 0.20 percent was commensurate with the index's return of 0.10 percent, with the variance largely attributable to the short duration positioning in the rising rate environment. The M&O Reserve's trailing performance of 0.29 percent was above both the old benchmark's return of 0.10 percent and the new benchmark's return of negative 3.33 percent. As noted above in the Strategy section, the M&O Reserve will continue to remain short relative to the new benchmark index during the duration extension transition period and total return performance for the account will not have a good comparable benchmark.

### **RECOMMENDATION**

Approve the investment strategies for the current quarter. During the August 10, 2021 meeting, the Finance Committee concurred with the continuation of the current investment strategies for the unrestricted reserves.

# **TAB 9**



**Larry Hogan, Governor**Boyd K. Rutherford, Lt. Governor
Gregory Slater, Chairman

**Board Members:** 

Dontae Carroll William H. Cox, Jr. William C. Ensor, III W. Lee Gaines, Jr. Mario J. Gangemi, P.E. Cynthia D. Penny-Ardinger Jeffrey S. Rosen John F. von Paris

James F. Ports, Jr., Executive Director

#### MEMORANDUM

**TO:** MDTA Board

**FROM:** Mr. Allen W. Garman, Director of Treasury & Debt

**SUBJECT:** Investment Policy – Annual Review and Proposed Changes

**DATE:** August 26, 2021

# **PURPOSE OF MEMORANDUM**

Complete required annual review of the Investment Policy and request Maryland Transportation Authority (MDTA) Board approval of the proposed changes. The policy changes were reviewed with the Finance Committee on August 10, 2021 and the policy was recommended to move to the full Board for approval.

#### **SUMMARY**

Changes to the permissible Investment Obligations definition within the Trust Agreement were approved by the MDTA Board in May 2020 and became effective through a springing amendment process when majority bondholder approval was achieved with the Series 2021 bond issue on April 7, 2021. With the legal limitation changes now effective in the Trust Agreement, the Investment Committee recommends the same revisions to the internal investment management policy.

Specific to municipal bonds, the addition of "at time of purchase" language and a change of rating requirements to double-A will eliminate *forced seller*<sup>1</sup> situations that result from ratings downgrades and provide prudent financial flexibility for greater income potential.

- 1. Modify the language in Section V(a)(vii) to match the revised Trust Agreement permitting the purchase of Municipal Securities that are rated by one NRSRO<sup>2</sup> in at least in the second highest rating category.
- 2. Clarify language in Section I(a)(iii) requiring Finance Committee notifications of a municipal security downgrade for a bond with only one credit rating.

<sup>&</sup>lt;sup>1</sup> Forced Seller - Involuntary sale of assets or securities in the event of an uncontrollable or unforeseen situation, typically in reaction to an economic event.

<sup>&</sup>lt;sup>2</sup> NRSRO: Nationally Recognized Statistical Ratings Organization

Investment Policy, Annual Review Page Two

# Master Trust Agreement

full faith and credit and credit obligations of state or local government municipal bond issuers that are rated in the highest Rating Category by at least two Rating Agencies

## Supplemental Trust Agreement

full faith and credit and credit obligations of state or local government municipal bond issuers that are rated at the time of purchase in at least the second highest Rating Category by at least one Rating Agency

## **Current Investment Policy**

Full faith and credit obligations of state or local government municipal bond issuers that are rated at the time of purchase in the highest rating category by at least two (2) NRSROs.

# **Proposed Investment Policy**

Full faith and credit obligations of state or local government municipal bond issuers that are rated at the time of purchase in at least the second highest rating category by at least one (1) NRSRO.

Key sections of the policy are noted in the table below.

| Key Elements                   | Section |
|--------------------------------|---------|
| Security Type Limitations      | 5       |
| Maturity Limitations           | 6       |
| Diversification Issuer/Sector  | 8       |
| Reporting Requirements         | 14      |
| Policy Violations & Downgrades | 1       |

# **RECOMMENDATION**

The Investment Committee requests MDTA Board approval of the revised Investment Policy.

## **ATTACHMENT**

• Investment Policy Draft



Approved by:

Approved by:

Approved by:

Approved by:

Form and Legal Sufficiency Review, Office of Attorney General

Original Date: August 16, 2005

# **Investment Management**

### Purpose

The purpose of this Policy is to establish guidelines for the safeguarding and efficient management of the Maryland Transportation Authority's (MDTA) cash and investments. This policy applies to all accounts, including those established under the Trust Agreement.

# Reference(s)

- Title 4 of the Transportation Article, Annotated Code of Maryland (as amended)
- Title 6 of the State Finance and Procurement Article, Annotated Code of Maryland (as amended)
- Second Amended and Restated Trust Agreement between the Maryland Transportation Authority and the Bank of New York Mellon (dated as of September 1, 2007, as amended), Section 5.02 Investment of Monies, and applicable provisions of any governing trust agreements (Trust Agreements).
- Governmental Accounting Standards Board (GASB)
- Internal Revenue Code of 1986, Arbitrage Rebate Regulations (as amended)
- Uniform Commercial Code
- MDTA Board Resolution 2011-02 (Authorized Staff)

### Scope:

This Policy is applicable to MDTA Finance Staff

#### Responsible Party:

The Chief Financial Officer (CFO) and Finance Division staff, including the Director of Treasury and Debt, are charged with ensuring compliance and conducting periodic reviews and revisions to this policy.

#### **Investment Management**

#### I. Prudence

- a. Policy Statement 1. All investment balances shall be invested with prudence considering the probable safety of the capital as well as the probable income derived.
  - i. Investments and investment practices shall be in compliance with applicable provisions of the Annotated Code of Maryland and to the extent applicable to the MDTA, guidelines established by the State Treasurer and the GASB. Section 6-22 of the State Finance and Procurement Article of the Annotated Code of Maryland does not govern the investment of the MDTA's revenues. This State law applies to political subdivisions, municipal corporations and other specified



governmental entities, but not to agencies or units of the government of the State of Maryland. Section 4-311 of the Transportation Article of the Annotated Code of Maryland gives the MDTA statutory authority to enter into a Trust Agreement and to pledge its revenues. Permitted investments are primarily driven by the definition of Investment Obligations contained in the Second Amended and Restated Trust Agreement dated as of September 7, 2007, with some additional consideration of any other obligations that constitute legal investments for State agencies such as the MDTA.

- ii. The CFO or the Director of Treasury and Debt Management shall report to the Finance Committee any material deviations from this policy.
- iii. The CFO or the Director of Treasury and Debt Management shall immediately report to the Finance Committee any security holding credit rating downgrade initiated by at least two Nationally Recognized Statistical Ratings Organization (NRSRO) or one NRSRO for securities with only one credit rating.

#### II. Ethics

- a. Policy Statements 2. Employees involved in the investment process shall refrain from personal business activity that may create conflicts of interest. Furthermore, employees:
  - i. Are prohibited from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of the MDTA.
  - ii. Must provide annual financial disclosures in accordance with the requirement of the State Ethics Commission, and as otherwise required by law.

#### III. Delegation of Authority

- a. Policy Statement 3. The MDTA's power to manage investment of public MDTA funds is subject to any applicable State and federal law, including Title 4 of the Transportation Article of the Annotated Code of Maryland and Title 6 of the State Finance and Procurement Article of the Annotated Code of Maryland, the MDTA's Master Trust Agreement, Article V, Section 5.02 and applicable provisions of any other MDTA Trust Agreements.
  - Responsibility for the operation of the investment program has been delegated by resolution to the CFO and certain Directors of the Finance Division, who shall establish and maintain written administrative procedures and internal controls for the operation of the investment program, consistent with this Investment Policy. Such procedures shall include:
    - 1. Explicit designation of the person(s) responsible for investment transactions.
      - a. No person may engage in an investment transaction except as provided under the terms of this policy and procedures established by the CFO.
    - 2. To the extent not covered by this policy, procedures shall include reference to:
      - a. Safekeeping
      - b. Repurchase Agreements



- c. Wire Transfer Agreements
- d. Collateral Depository Agreements
- e. Banking Service Agreements
- f. Competitive Bidding Procedures
- g. Cash Flow Requirements

#### IV. Finance Committee

- a. Policy Statement 4. The MDTA's Finance Committee will serve in an advisory capacity to the CFO in its periodic review of the MDTA's Investment Policy, investment strategy, practices and portfolio performance. The Finance Committee is responsible for:
  - i. Reviewing and updating the Investment Policy at least annually.
  - ii. Monitoring the investment transactions to assure that adequate controls are in place.
  - iii. Assuring that the MDTA is in compliance with the Investment Policy.
  - iv. Meeting periodically to deliberate economic outlook, portfolio diversification and maturity structure, cash flow forecasts, potential risks and the interest rate outlook.

#### V. Allowable Investments

- a. **Policy Statement 5.** Permitted investments include the following instruments:
  - i. U.S. Treasury Obligations Securities issued or backed by the full faith and credit of the United States Treasury.
  - ii. Federal Agency Obligation Securities issued by or backed by the full faith and credit of any United States Government agency or government sponsored enterprise with credit ratings in the highest category assigned to that obligor, but in no event less than the double-A category. Includes, but is not limited to:
    - 1. Fannie Mae
    - 2. Freddie Mac
    - 3. Federal Home Loan Bank
    - 4. Federal Farm Credit Bank
    - 5. Federal Intermediate Credit Banks
    - 6. Federal Land Banks
    - 7. Federal Bank of Cooperatives
    - 8. Export-Import Bank of the United States
    - 9. Federal Financing Bank
    - 10. Federal Housing Administration
    - 11. Farmers Home Administration
  - iii. Repurchase Agreements The MDTA may purchase U.S. Treasury Obligations or Federal Agency Obligations under a repurchase agreement provided that the following conditions are met:
    - 1. The term to maturity of repurchase agreements invested from accounts created by Trust Agreements shall be limited as follows:
      - a. Bond Service Subaccount 1 year.
      - b. Reserve Subaccount 1 year.
      - c. Capital Account (bond proceeds) the expected period of spend out, or five years, whichever is less.
      - d. All Other Funds 90 days.



- The contract is fully secured by deliverable U.S. Treasury or Federal Agency obligations as described in 5i and 5ii above (without limit to maturity), having a market value at all times of a least one hundred two percent (102%) of the amount of the contract.
- 3. A master repurchase agreement or specific written, repurchase agreement governs the transaction.
- 4. The securities are held by an independent third-party custodian, acting solely as agent for the MDTA and free of any lien, provided such third party is not the seller under the repurchase agreement.
- 5. A perfected first security interest under the Uniform Commercial Code, or book entry procedures prescribed at 31 C.F.R. 306.1 et seg. in such securities as created for the benefit the MDTA.
- 6. For repurchase agreements with terms to maturity of greater than one (1) day, the MDTA will value the collateral securities weekly and require under collateralization to be corrected within one (1) business day.
  - a. If a collateral deficiency is not corrected within this time fame, the collateral securities will be liquidated.
- 7. The counterparty must meet the following criteria:
  - a. Be a primary government securities dealer that reports daily to the Federal Reserve Bank of New York, or a bank, savings and loan association or diversified securities broker-dealer having \$5 billion in assets or \$500 million in capital and subject to regulation of capital standards by any state or federal regulatory agency.
  - b. Have a minimum long-term credit rating of a least single A and a short-term rating of not less than Tier-1.
  - c. Have been in operation for a least five (5) years.
- iv. Collateralized Certificates of Deposit The MDTA may purchase Certificates of Deposit issued by, and time deposits in, any bank or savings and loan association organized under the laws of the State, any other state of the United States or of the United States, including the Trustee; provided that such bank or savings and loan association has combined capital, surplus and undivided profits of a least \$100 million; and provided further that such Certificates of Deposit or time deposits are:
  - 1. Insured by the Federal Deposit Insurance Corporation.
  - 2. To the extend not so insured, collateralized by U.S. Treasury Obligations or Federal Agency Obligations, having a market value of a least one hundred two percent (102%) of the amount of contract.
    - a. Securities must be held by the Trustee or an independent third party acting solely as custodian on behalf of the MDTA, free and clear of any lien.
    - b. Maturity for certificates of deposit shall be limited to a maximum maturity of one year.
- v. Banker's Acceptances The MDTA may purchase Acceptances issued by a domestic bank or a federally charted domestic office of a foreign bank, which are eligible for purchase by the Federal Reserve System, if the following conditions are met:



- 1. The maturity is no greater than two hundred-seventy (270) days.
- 2. The short-term paper of the issuing bank is rated no lower than Tier-1 by any two (2) NRSROs.
- 3. The issuing bank has combined net capital of a least \$100 million as indicated in the most recent quarterly financial statement.
- 4. The amount invested in any single bank will not exceed five percent (5%) of the total funds available for investment (based on book value on the date of acquisition).
- vi. Commercial Paper Unsecured short-term debt of U.S. corporations may be purchased if the following conditions are met:
  - 1. Maximum maturity of two hundred seventy (270) days.
  - 2. Maximum allocation to commercial paper is twenty percent (20%) of the total funds available for investment (based on book value on the data of acquisition).
  - 3. Maximum allocation to a single issuer is five percent (5%) of the total funds available for investment (based on book value on the date of acquisition).
  - 4. The issuing corporation, or its guarantor, has a net worth of at least \$50 million.
  - 5. At time of purchase, the issuing corporation, or its guarantor, has short-term debt ratings of not less than Tier-1 from any two (2) NRSROs and long-term debt ratings of not less than single-A.
- vii. Municipal Securities The MDTA may purchase obligations of state or local government municipal bond issuers meeting one (1) of the following two (2) conditions:
  - 1. <u>FThey are full</u> faith and credit obligations of state or local government municipal bond issuers that are rated at the time of purchase in <u>at least</u> the <u>second</u> highest rating category by at least onetwo (12) <u>NRSROsNRSRO</u>.
    - a. Downgraded securities that maintain at least one NRSRO rating in one of the top two categories may be held for a reasonable time after the downgrade as necessary to mitigate an investment loss.
  - Legally defeased municipal obligations that are secured by an escrow containing either U.S. Government Agency Securities or U.S. Government Securities
- viii. Money Market Mutual Funds The MDTA may purchase shares in open ended investment funds provided such funds are:
  - 1. Registered under the Investment Company Act of 1940.
  - 2. Operated in accordance with SEC Rule 2A-7.

Rated in the highest category by at least one (1) NRSRO.

- ix. Maryland Local Government Investment Pool The MDTA may invest in the Pool with prior permission of the State Treasurer's Office as outlined in Article 95, Section 22G of the Annotated Code of Maryland.
- x. Supranationals Rated in the highest category by at least one (1) NRSRO and denominated in U.S. dollars, currently limited to:
  - World Bank International Bank for Reconstruction and Development (IBRD)
  - 2. International Finance Corporation (IFC)
  - 3. Inter-American Development Bank (IADB)



- 4. African Development Bank (AFDB)
- 5. Asian Development Bank (ASIA)
- xi. The CFO may at any time determine in writing that the MDTA temporarily, for a period determined by the CFO, shall not purchase any security or class of securities authorized in this Policy Statement.

# VI. Maturity Restrictions

- a. Policy Statement 6. MDTA's investment objectives include preservation of principal, liquidity, and longer-term total return performance considerations. The market value of securities in the MDTA's portfolio may fluctuate due to changes in market conditions. MDTA shall manage investments to ensure adequate funds are available when needed.
  - In addition to the limitations and requirements of applicable provisions of the Annotated Code of Maryland and applicable guidelines established by the State Treasurer and GASB:
    - Funds shall be invested at all times in keeping with the daily and seasonal pattern of the MDTA's cash balances, as well as any other special factors or needs, in order to assure the availability of liquid funds on a timely basis.
  - ii. Cash flow projections will be monitored and updated on an ongoing basis by MDTA personnel and reported regularly to the investment managers(s).
  - iii. On a periodic basis, a determination will be made, based on cash flow projections and total return performance considerations, regarding the appropriate maturity structures of the portfolios. The final maturity of investments held in each portfolio at the time of settlement may not exceed:
    - 1. Operating Accounts 1 Year
    - 2. Bond Service Accounts 1 Year
    - 3. Operating Reserve 5 Years
    - 4. Capitalized Interest Accounts Maturities must precede or coincide with coupon payments dates.
    - 5. Capital Accounts 5 Years, or longer if the maturity precedes or coincides with the expected need for funds and only with prior approval of the CFO.
    - 6. General 15 Years, or longer with prior approval of the CFO.
    - 7. Maintenance & Operating Reserve 15 Years
    - 8. Debt Services Reserves 15 Years

#### VII. Prohibited Securities, Transactions and Activities

- a. **Policy Statement 7.** The following securities, transactions and activities are prohibited:
  - i. Reverse repurchase agreements.
  - ii. Short sales (selling a specific security before it has been legally purchased).
  - iii. Borrowing funds for the sole purpose of reinvesting the proceeds of such borrowing.
  - iv. Investing in complex derivatives such as range notes, dual index notes, inverse floating rate notes and deleveraged notes, or notes linked to



lagging indices or to long-term indices.

- v. Investing in Mortgage-Backed Securities, Collateralized Mortgage Obligations, Structured Notes, Asset-Backed Obligations, Inverse Floater, and Real Estate Mortgage Conduits (REMICS).
  - As an exception to prohibited asset- and mortgage-backed securities noted in Statement 7.vi, pooled loan securities issued through the Small Business Administration (SBA Pool Securities) and backed by the full faith and credit of the United States are permitted investments.
- vi. Investing in any security not specifically permitted by this Investment Policy.

## VIII. Diversification

- a. Policy Statement 8. The MDTA will diversify its holdings by security type and institution to avoid incurring unreasonable risks due to excessive concentration in specific instruments, financial institutions or issuers. Diversification standards are as follows:
  - i. Diversification by instrument as maximum percent of the portfolio:
    - 1. U.S. Treasury Obligations 100%
    - 2. U.S. Federal Agency Obligations -100%
    - 3. Repurchase Agreements 50%
    - 4. Bankers Acceptances 20%
    - 5. Municipal Securities 20%
    - 6. Money Market Mutual Funds -100%
    - 7. Maryland Local Government Investment Pool 50%
    - 8. Collateralized Certificates of Deposit 20%
    - 9. Commercial Paper 20%
    - 10. SBA Pool Securities (Pool/Issue) 5%
    - 11. Supranationals 30%
  - ii. Diversification by individual Institution/Issuer/Poll as maximum percent of the portfolio:
    - 1. Repurchase Agreements 40%
    - 2. Federal Agencies (Issuer) 35%
    - 3. Commercial Banks (CD) 5%
    - 4. Money Market Mutual Funds 50%
    - 5. Bankers Acceptances (Institution) 5%
    - 6. Commercial Paper (Issuer) 5%
    - 7. Municipal Bond (Issuer) 5%
    - 8. SBA Pool Securities (Pool/Issue) 0.5%
    - 9. Supranational (Issuer) 10%

#### IX. Safekeeping, Custody and Additional Requirements

- a. Policy Statement 9. All security transactions, including collateral for repurchase agreements, entered into by the MDTA shall be conducted on a deliver-versuspayment (DVP) basis.
  - i. Securities will be held by the MDTA or its designated custodian.
    - 1. If held by a custodian, the securities must be in the MDTA's name or in the custodian's nominee name and identifiable on the custodian's books as belonging to the MDTA.



- a. If held by a custodian, the custodian must be a third party, not a counterparty (buyer or seller).
  - i. The third-party requirement does not apply to excess checking account funds invested overnight in a bank "sweep" repurchase agreement or similar vehicle.
- b. **Policy Statement 10.** Collateralization is required for Certificates of Deposit and repurchase agreements.
  - 1. In order to anticipate market changes and provide a level of security for all funds, the collateralization level will be at least one hundred and two percent (102%) of market value of principal and accrued interest.
  - 2. Collateral will always be held by an independent third party with whom the Authority has a current custodial agreement.
  - 3. Acceptable collateral is specified under Section 6-202 of the State Finance and Procurement Article of the Annotated Code of Maryland.
  - The third party trust custodian has the right to reject otherwise acceptable collateral based on their discretion concerning market conditions.

#### X. Internal Controls

- a. **Policy Statement 11.** The MDTA shall establish a system of internal controls to reasonably prevent loss of public funds as a result of fraud, employee error and/or imprudent action, or misrepresentation by third parties. This system will include:
  - i. An audit of the investment operation shall be part of the annual financial audit conducted by the MDTA or an outside independent audit company.
  - ii. Separation of transaction authority from accounting and record keeping.
  - iii. Avoidance of physical delivery of securities when possible.
  - iv. Clear delegation of responsibility to subordinate staff members.
  - v. Written records of all telephone transactions for investments and wire transfers.
  - vi. Development of a wire transfer agreement with lead bank or third-party custodian, as appropriate.

#### XI. Authorized Financial Dealers and Institutions

- a. **Policy Statement 12.** The MDTA shall transact securities purchases and sales only with Qualified Institutions or directly with issuers.
  - i. The MDTA shall maintain a list of financial institutions and broker/dealers that are approved for investments purposes ("Qualified Institutions").
  - ii. Direct purchases of securities from issuers are not subject to the Qualified Institutions restrictions.
  - iii. Only firms meeting the following requirements will be eligible to serve as Qualified Institutions:
    - 1. Primary dealers and regional dealers that qualify under Securities and Exchanges Commission Rule 15C3-1 (uniform net capital rule).
    - 2. Net capital of no less than \$25 million.



- 3. Registered as a dealer under the Securities Exchange Act of 1934.
- 4. Member of the Financial Industry Regulatory Authority (FINRA).
- 5. Registered to sell securities in Maryland.
- 6. Engaged in the business of effecting transactions in U.S. government and agency obligations for at least five (5) consecutive years.
- b. **Policy Statement 13.** Qualified Institutions shall be provided with the MDTA's Investment Policy. The MDTA shall maintain on file current audited financial statements for each Qualified Institution with which the MDTA transacts business.

# XII. Competitive Selection of Investment Instruments

- a. **Policy Statement 14.** Whenever practical, securities shall be purchased and sold through a formal competitive process requiring the solicitation and evaluation of a least three (3) bids/offers from Qualified Institutions.
  - i. Supporting records of the competitive process must be retained including the name of the financial institutions solicited, rate quoted, description of the security, investment selected, and any special considerations that had an impact on the decision.
  - **ii.** If the highest yielding security was not selected for purchase or if three bids/offers from Qualified Institutions are not obtained, an explanation describing the rationale will be included in this record.

#### XIII. Investment of Bond Proceeds

a. Policy Statement 15. The MDTA shall comply with all applicable sections of the Internal Revenue Code of 1986, Arbitrage Rebate Regulations (as amended) and bond trust covenants with regard to the investment of bond proceeds. The MDTA will consult with bond counsel to ensure that non-compliance is remediated in accordance with income tax regulations. Accounting records shall be maintained in a form and for a period of time sufficient to document compliance with these regulations and covenants.

#### XIV. Reporting

- **a. Policy Statement 16.** MDTA staff shall provide the CFO with a monthly statement of transactions and holdings priced at market. At least quarterly, a report must be prepared detailing compliance with policy constraints. The report may include, but is not limited to the following:
  - i. Portfolio performance versus benchmarks, analyzed on a total return basis for those funds invested pursuant to a strategy that may result in the sale of securities that are not intended to be held until maturity.
  - **ii.** Percentage of total portfolio by investment class and comparison to diversification limits in Policy Statement 8.
  - **iii.** Holding by institution/issuer/pool and comparison to diversification limits in Policy Statement 8.
  - **iv.** An investment plan for the next quarter-describing the target maturity structure, duration, and asset allocation.

#### XV. Definitions



- a. For the purposes of this Policy, the following words have the following meanings:
  - NRSRO Nationally Recognized Statistical Rating Organization or rating agency (e.g., Moody's, S&P, Fitch).

## XVI. Authorized/Supporting Documents

a. None

# XVII. Policy History

- a. Approved 8.16.05
- b. Approved 8.10.06
- c. Approved 9.20.07
- d. Approved 12.13.07
- e. Approved 3.26.08
- f. Approved 6.12.08
- g. Approved 9.23.09
- h. Approved 11.24.10
- i. Approved 9.22.11
- j. Approved 3.23.12
- k. Approved 7.26.12
- I. Approved 8.22.13
- m. Approved 11.21.13
- n. Approved 11.20.14
- o. Approved 1.26.16 p. Approved 8.25.16
- q. Approved 12.22.16
- r. Approved 12.21.17 s. Approved 12.20.18
- t. Approved 12.19.19
- u. Approved 2.27.20
- v. Approved 12.17.20

# **TAB 10**



**Larry Hogan, Governor**Boyd K. Rutherford, Lt. Governor
Gregory Slater, Chairman

**Board Members:** 

Dontae Carroll William H. Cox, Jr. William C. Ensor, III W. Lee Gaines, Jr. Mario J. Gangemi, P.E. Cynthia D. Penny-Ardinger Jeffrey S. Rosen John F. von Paris

James F. Ports, Jr., Executive Director

#### **MEMORANDUM**

**TO:** MDTA Board

PRESENTED BY: Ms. Christina Thompson, Acting Director of Finance

**SUBJECT:** Fiscal Year 2022-2027 Financial Forecast

**DATE:** August 26,2021

# **PURPOSE OF MEMORANDUM**

To request a recommendation of approval of the updated Fiscal Year (FY) 2022-2027 Financial Forecast.

# **SUMMARY**

The FY 2022-2027 Financial Forecast was originally approved by the MDTA Board on July 29, 2021. The forecast reflected the then current annual Traffic & Revenue (T&R) forecast issued on November 6, 2020, adjusted for the transaction backlog. Uncertainties associated with COVID-19, permanently transitioning to All-Electronic Tolling, and the 3<sup>rd</sup> Generation Electronic Toll Collection System transition were reflected in the forecast.

The updated financial forecast reflects an updated T&R forecast. Annually MDTA's independent T&R consultant, CDMSmith, updates MDTA's T&R forecast. This year's forecast was completed earlier than in the past, which provided an opportunity to update the forecast prior to submission to the Department of Legislative Services. Based on FY 2021 actual performance, several prior uncertainties were reduced or eliminated, resulting in an improved 10-year forecast outlook. The revised forecast also reflects the elimination of a \$65 million loan to MDOT. Per MDOT's Chief Financial Officer, an alternative financing option will be utilized.

For the FY 2022-2027 forecast period MDTA remains in compliance with its financial goals and legal standards.

- Throughout the forecast period (FY 2022 2027), the MDTA meets its financial goals:
  - >\$350 million unencumbered cash, and
  - > 2.0 debt service coverage
- MDTA remains above its trust agreement rate covenant (net revenues ≥1.0 x sum of: 120% debt service + deposits to M&O account).
- No systemwide toll increases are needed in the forecast period.

Fiscal Year 2022-2027 Financial Forecast Page Two

- Debt to be issued during the forecast period is \$1,119.17 million.
- Maximum outstanding indebtedness within the forecast period remains below the statutory cap of \$3 billion (\$2.53 billion in FY 2027).
- Debt service paid over the forecast period is \$941.7 million.

### **ANALYSIS**

The primary differences between the update and original June 2021 forecast are:

- Increased revenue throughout the forecast period: The current financial forecast reflects an increase of \$153.7 million due to stronger than anticipated commercial traffic growth, and better than anticipated recovery from COVID-19 in FY 2021.
- Decreased debt issuances and debt service: Revenue bond issuances (including TIFIA) decrease by \$258.4 million and debt service decreased by \$56.9 million over the period due to an increase in net revenue available for PAYGO capital spending.
- Elimination of the \$65 million MDOT loan (\$53.7 million, net change).

### <u>Assumptions</u>

- Traffic and toll Revenue Forecast Update: CDM Smith August 2021
- Draft FY 2022 2027 CTP
- Final FY 2022 Operating Budget
- Future operating costs: FY 2023 estimate increased 4% per year thereafter

## **Evaluation Criteria**

Adhere to MDTA goals and policies:

- >\$350 million unrestricted cash
- $\geq$ 2.0 debt service coverage
- Rate covenant ratio >1.0 sum of 120% debt service plus deposits to M&O account
- Debt outstanding ≤ \$3 billion
- Forecast tests the need for potential future system wide toll increases. (None needed within the six-year program period.)

## **ATTACHMENT**

- Financial Forecast
- CDMSmith Annual Forecast Results Memorandum

#### MARYLAND TRANSPORTATION AUTHORITY **CASH FLOW FORECAST** FY 2020 - 2026

| In Millions \$  | FY 2021   | FY 2022   | FY 2023   | FY 2024   | FY 2025   | FY 2026   | FY 2027   |
|---|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Revenues  |           |           |           |           |           |           |           |
| Toll Revenues   | \$433.9   | \$822.9   | \$736.1   | \$735.7   | \$740.6   | \$749.2   | 761.3     |
| Concessions Revenue   | 3.8       | 3.8       | 3.9       | 3.9       | 3.9       | 3.9       | 3.9       |
| Investment Income & Other Revenue                                 | 9.1       | 7.2       | 7.4       | 6.6       | 6.1       | 6.1       | 6.1       |
| MDOT Loan Repayment - Interest                                    | 0.2       | 0.5       | 1.7       | 1.6       | 1.5       | 1.3       | 1.2       |
| BWI/Port Police Reimbursement                                     | 30.7      | 32.6      | 33.9      | 35.3      | 36.7      | 38.2      | 39.7      |
| Total Revenues  | \$477.6   | \$867.1   | \$783.0   | \$783.1   | \$788.7   | \$798.7   | \$812.2   |
| Operating Expenses  |           |           |           |           |           |           |           |
| Operating Account Budget  | \$315.3   | \$360.8   | \$359.6   | \$374.0   | \$389.2   | \$404.8   | 421.0     |
| Debt Service  | 61.8      | 105.0     | 138.1     | 147.0     | 154.3     | 164.0     | 171.4     |
| Total Operating Expenses  | \$377.1   | \$465.8   | \$497.7   | \$521.0   | \$543.6   | \$568.8   | \$592.4   |
|   |           |           |           |           |           |           |           |
| Operating Revenue Net of Expenses                                 | \$100.5   | \$401.3   | \$285.3   | \$262.1   | \$245.2   | \$229.9   | 219.8     |
| Capital Expenses  |           |           |           |           |           |           |           |
| 2022-2027 Total CTP   | \$471.7   | \$602.9   | \$559.2   | \$492.3   | \$427.3   | \$387.0   | 308.2     |
| Total Expenses (Operating + Capital)                              | \$848.8   | \$1,068.7 | \$1,057.0 | \$1,013.2 | \$970.9   | \$955.8   | \$900.5   |
|   |           |           |           |           |           |           |           |
| Capital Funding Source / (Uses) and Intergovernmental             |           |           |           |           |           |           |           |
| Revenue Bonds   | \$401.8   | \$0.0     | \$0.0     | \$103.9   | \$176.0   | \$153.0   | 85.0      |
| TIFIA   | -         | -         | 200.0     | -         | -         | -         | -         |
| Surety Policy   | (3.0)     | -         | -         | (0.2)     | (0.4)     | (0.4)     | (0.2)     |
| Cash Refunding  | (63.1)    |           |           | -         | -         | -         |           |
| MDOT Loan Repayment - Principal                                   | (4.8)     | 4.7       | 4.8       | 4.9       | 4.9       | 5.0       | 5.1       |
| Less: VDOT Contribution   | -         | -         | 13.0      | -         | -         | -         | -         |
| Less: I-95 Interchange Partner Contribution                       | -         | -         | -         | 20.0      | -         | -         | -         |
| Accrual Accounting Reconciliation                                 |           |           |           |           |           |           |           |
| Total Current Year Sources (Uses) Available                       | 330.8     | 4.7       | 217.8     | 128.6     | 180.5     | 157.7     | 89.9      |
| Annual Cash Requirements  | 518.0     | 1,064.0   | 839.2     | 884.7     | 790.4     | 798.2     | 810.7     |
|   |           |           |           |           |           |           |           |
| Annual Cash Surplus/Deficit                                       | (\$40.3)  | (\$196.9) | (\$56.2)  | (\$101.6) | (\$1.6)   | \$0.5     | 1.5       |
| Total Cash Balance  | \$741.4   | \$544.5   | \$488.4   | \$386.7   | \$385.1   | \$385.6   | 387.2     |
|   |           |           |           |           |           |           |           |
| Bonds Outstanding (<\$2.325 b. FY 16-20; then <\$3.0 b.)          | \$2,091.8 | \$2,083.4 | \$2,263.6 | \$2,310.2 | \$2,426.1 | \$2,514.7 | \$2,529.4 |
| Financial Coverage Ratios   | \$418.8   | \$511.5   | \$455.3   | ¢252.7    | ¢252.4    | \$352.6   | \$354.1   |
| Unencumbered Cash (\$350MM minimum)                               |           | • -       |           | \$353.7   | \$352.1   |           |           |
| Debt Service Coverage ( $\geq$ 2.5x thru FY 20; then $\geq$ 2.0x) | 2.6       | 4.8       | 3.1       | 2.8       | 2.6       | 2.4       | 2.3       |
| Rate Covenant Compliance (Legal - 1.0x)                           | 2.0       | 3.9       | 2.5       | 2.2       | 2.1       | 1.9       | 1.8       |

## Insert Version No.

#### Draft September 2021 Official Forecast

Draft September 2021 Official Forecast
FY 2021 Amended Operating Budget (adjusted by \$8M)
FY 2022 Final Operating Budget - includes E-ZPass adj.
FY 2023 Includes E-ZPass Adj.
Draft FY 2022-2027 CTP as of 5/25/21 (Version 7)
August 2021 T&R Report
ICC TIFIA Refunding
2021 New Money Financing
Updated Surety Policy Rates
Remove MDOT Loan



#### Memorandum

To: Deb Sharpless

From: Ron Davis, Kelly Morison

Date: August 17, 2021

Subject: Annual Forecast Results Final

This memo includes a summary of the annual traffic and revenue forecast update results. A full report documenting the input data, methodology, and results in more detail is planned to be delivered in fall 2021. The most significant changes compared to last year's November 2020 forecast update include:

- Benchmarking the future year underlying forecast growth to recent performance. This
  resulted in an increase in revenue in all years mainly due to stronger than anticipated
  commercial vehicle traffic growth in FY 2021.
- Updating future construction project assumptions. This had mixed impacts depending on the year and resulted in an overall decrease revenue due to more construction projects assumed compared to last year.
- Updating COVID-19 impact assumptions. This resulted in an overall increase in revenue due to a better than anticipated COVID-19 recovery in FY 2021.
- Updating the backlog recovery assumptions. This resulted in an increase in revenue in FY 2022 with more revenue shifting from FY 2021 to FY2022 than was assumed in the November 2020 forecast update.

The resulting forecasted revenue by fiscal year and category are shown in **Table 1**. The Hatem Bridge toll revenue shown in the rightmost column of the table is a subset of the Legacy toll revenue included in the second column of the table.

Table 1 - Annual Revenue Forecast Results by Fiscal Year

| Fiscal Year | Legacy Toll<br>Revenue | ICC Toll<br>Revenue | I-95 ETL Toll<br>Revenue | Other<br>Revenue <sup>1</sup> | Total<br>Revenue |
|-------------|------------------------|---------------------|--------------------------|-------------------------------|------------------|
| 2022        | \$ 700.3               | \$ 83.9             | \$ 14.9                  | \$ 23.8                       | \$ 822.9         |
| 2023        | 610.0                  | 71.2                | 16.7                     | 38.2                          | 736.0            |
| 2024        | 600.6                  | 72.9                | 17.8                     | 44.4                          | 735.7            |
| 2025        | 597.5                  | 74.4                | 19.6                     | 49.1                          | 740.6            |
| 2026        | 602.4                  | 75.9                | 21.5                     | 49.4                          | 749.2            |
| 2027        | 610.4                  | 77.4                | 22.7                     | 50.8                          | 761.3            |
| 2028        | 618.3                  | 78.9                | 24.8                     | 52.4                          | 774.4            |
| 2029        | 625.8                  | 80.5                | 26.9                     | 52.1                          | 785.3            |
| 2030        | 630.4                  | 82.1                | 28.5                     | 52.4                          | 793.3            |
| 2031        | 634.0                  | 83.3                | 30.0                     | 52.7                          | 800.1            |

| Hatem   | Bridge |
|---------|--------|
| Toll Re | venue  |
| \$      | 13.8   |
|         | 12.1   |
|         | 12.0   |
|         | 12.1   |
|         | 12.2   |
|         | 12.2   |
|         | 12.3   |
|         | 12.4   |
|         | 12.5   |
|         | 12.5   |
|         |        |

#### **Disclaimer**

CDM Smith used currently-accepted professional practices and procedures in the development of the traffic and revenue estimates in this report. However, as with any forecast, it should be understood that differences between forecasted and actual results may occur, as caused by events and circumstances beyond the control of the forecasters. In formulating the estimates, CDM Smith reasonably relied upon the accuracy and completeness of information provided (both written and oral) by the Maryland Transportation Authority. CDM Smith also relied upon the reasonable assurances of independent parties and is not aware of any material facts that would make such information misleading.

CDM Smith made qualitative judgments related to several key variables in the development and analysis of the traffic and revenue estimates that must be considered as a whole; therefore, selecting portions of any individual result without consideration of the intent of the whole may create a misleading or incomplete view of the results and the underlying methodologies used to obtain the results. CDM Smith gives no opinion as to the value or merit of partial information extracted from this report.

All estimates and projections reported herein are based on CDM Smith's experience and judgment and on a review of information obtained from multiple agencies, including Maryland Transportation Authority. These estimates and projections may not be indicative of actual or future values and are therefore subject to substantial uncertainty. Certain variables such as future developments, economic cycles, pandemics, government actions, climate change related events, or impacts related to advances in automotive technology etc. cannot be predicted with certainty and may affect the estimates or projections expressed in this report, such that CDM Smith does not specifically guarantee or warrant any estimate or projection contained within this report.

While CDM Smith believes that the projections and other forward-looking statements contained within the report are based on reasonable assumptions as of the date of the report, such forward-looking statements involve risks and uncertainties that may cause actual results to differ materially from the results predicted. Therefore, following the date of this report, CDM Smith will take no responsibility or assume any obligation to advise of changes that may affect its assumptions contained within the report, as they pertain to socioeconomic and demographic forecasts, proposed residential or commercial land use development projects and/or potential improvements to the regional transportation network.

<sup>&</sup>lt;sup>1</sup>Does not include concession revenue

Annual Forecast Results Final August 17, 2021 Page 3

The report and its contents are intended solely for use by the Maryland Transportation Authority and designated parties approved by Maryland Transportation Authority and CDM Smith. Any use by third-parties, other than as noted above, is expressly prohibited. In addition, any publication of the report without the express written consent of CDM Smith is prohibited.

CDM Smith is not, and has not been, a municipal advisor as defined in Federal law (the Dodd Frank Bill) to Maryland Transportation Authority and does not owe a fiduciary duty pursuant to Section 15B of the Exchange Act to Maryland Transportation Authority with respect to the information and material contained in this report. CDM Smith is not recommending and has not recommended any action to Maryland Transportation Authority. Maryland Transportation Authority should discuss the information and material contained in this report with any and all internal and external advisors that it deems appropriate before acting on this information.

# **TAB 11**



Larry Hogan, Governor

Boyd K. Rutherford, Lt. Governor Gregory Slater, Chairman

#### **Board Members:**

Dontae Carroll
William H. Cox, Jr.
William C. Ensor, III
W. Lee Gaines, Jr.
Wario J. Gangemi, P.E.
Cynthia D. Penny-Ardinger
Jeffrey S. Rosen
John F. von Paris

James F. Ports, Jr., Executive Director

## **MEMORANDUM**

**TO**: MDTA Board

**FROM**: Mr. Jim F. Ports, Executive Director, MDTA

Ms. Jaclyn Hartman, Chief Financial Officer, MDOT

**SUBJECT**: I-495 & I-270 Public-Private Partnership Program (P3) Master Trust Agreement and

Supplement Agreement Template

**DATE**: August 26, 2021

## **PURPOSE OF MEMORANDUM**

To request (i) approval for the execution of a master trust agreement (P3 Master Trust Agreement), to be executed shortly after the date that approval is granted, and (ii) approval as to the form of the supplemental agreement template (P3 Supplemental Agreement Template) which will be used as the form of the supplemental trust agreement (P3 Supplemental Trust Agreement) to be executed upon financial close of Phase 1 South: American Legion Bridge I-270 to I-370 (Phase 1 South) and each other section of the I-495 & I-270 Public-Private Partnership Program (P3 Program). Each P3 Supplemental Trust Agreement shall be presented to the MDTA Board for approval before it is executed, with the first for Phase 1 South expected in late 2022.

## **SUMMARY**

MDTA will establish the P3 Master Trust Agreement for the P3 Program and a P3 Supplemental Trust Agreement for each section of the P3 Program under which limited recourse toll revenue notes will be issued (MDTA Notes). The P3 Master Trust Agreement shall remain in effect for the entirety of the P3 Program. Each P3 Supplemental Trust Agreement will have an initial duration of 40 years, during which term, MDTA will commit to refinancing the MDTA Notes to extend their term to align with the 50-year term of the Section P3 Agreement, which agreement will govern the design, construction, financing, operation and maintenance of a section.

I-495 & I-270 P3 Master Trust Agreement and Supplemental Trust Template Page Two

The analysis below provides a brief overview of the MDTA financing process and describes relevant details of the P3 Master Trust Agreement and the P3 Supplemental Agreement Template. The MDTA Notes Term Sheet, attached, provides the key terms of the P3 Master Trust Agreement and each P3 Supplemental Trust Agreement, and was previously submitted to the MDTA Board in June as part of the MDTA Board Summary for the approval of the Phase P3 Agreement (noting however that the rate covenant terms in the MDTA Notes Term Sheet has been amended in the P3 Master Trust Agreement to provide for a less sensitive rate covenant trigger, which is beneficial to MDTA).

## <u>ANALYSIS</u>

## Overview

MDTA will establish a new P3 Master Trust Agreement for the P3 Program. At financial close of each section, the section developer (Section Developer) will purchase from MDTA the MDTA Notes for its section in a private placement under the relevant P3 Supplemental Trust Agreement. MDTA will pledge to the trustee a security interest in all of the right, title, and interest of MDTA in and to the toll revenues collected from users of the priced managed lanes applicable to that Section, in order to secure the payment of the principal and interest on the MDTA Notes and other amounts due under the P3 Supplemental Trust Agreement.

The MDTA Notes shall be non-recourse to MDTA's toll revenues from its other facilities and only toll revenues relating to the P3 Program shall be pledged under the MDTA Notes. The MDTA Notes issued at financial close of the relevant section will be repaid by MDTA, in accordance with the P3 Supplemental Trust Agreement, from and secured solely by the toll revenues generated by the relevant section, and such toll revenues will not be pledged to any other creditor or any section of any other phase of the P3 Program.

The project costs paid for with the proceeds of the MDTA Notes are intended to be costs that are the responsibility of the State of Maryland (State) and that are critical components of the P3 Program. The total principal amount of the MDTA Notes for Phase 1 South is not expected to exceed \$100 million.

Toll revenues collected with respect to the P3 Program shall be applied in accordance with the P3 Master Trust Agreement and applicable P3 Supplemental Trust Agreement in payment of MDTA's P3 Program costs, trustee costs, principal and interest on the MDTA Notes, a toll payment to the Section Developers, and certain other payments defined therein.

I-495 & I-270 P3 Master Trust Agreement and Supplemental Trust Template Page Three

The pledge of the toll revenues under the applicable P3 Supplemental Trust Agreement segregate the toll revenues for each section.

## **P3 Master Trust Agreement**

MDTA will enter into the P3 Master Trust Agreement with the trustee shortly after receiving approval from the MDTA Board (so that the P3 Master Trust Agreement becomes affective at around the same time as the effective date of the Phase P3 Agreement for Phase 1 of the P3 Program, which occurred on August 18, 2021). No notes will be issued under the P3 Master Trust Agreement (notes will only be issued under the P3 Supplemental Trust Agreements), but the P3 Master Trust Agreement will set the framework for the trust structure and establish certain trust accounts.

Under the P3 Master Trust Agreement, the trustee will establish certain trust accounts relating to the P3 Program. MDTA will agree to transfer all toll revenue that it collects related to the P3 Program into an account maintained by MDTA which is not a trust account (P3 Program Account) and apply the funds in accordance with the P3 Master Trust Agreement and any P3 Supplemental Trust Agreements.

Under the P3 Master Trust Agreement, the trustee will establish an upfront payment account (Upfront Payment Account) and an operating reserve account (Operating Reserve Account). The Upfront Payment Account will be used to deposit upfront payments and certain other payments received from the developer in connection with the P3 Program, and funds therein may be used to pay costs of the P3 Program and the Traffic Relief Plan.

On the 18th day of each month (or if such day is not a business day, on the preceding business day), MDTA shall apply funds in the P3 Program Account as follows:

*First*: in payment of MDTA's back office and collection costs and expenses incurred in relation to the P3 Program during the preceding month;

Second: all principal and interest that shall be due and payable under the MDTA Notes on the next payment date to the relevant section's P3 Program notes debt service payment account under (and as defined in) the applicable P3 Supplemental Trust Agreement; and

*Third*: all remaining toll revenues received with respect to the P3 Program relating to trips that occurred during (or prior to) the preceding month *excluding* any P3 Program ETC away collections (non-Maryland *E-ZPass* Toll agencies) (less any amounts transferred pursuant to *First* and *Second* above), to the Operating Reserve Account.

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On the fifth day of each month (or if such day is not a business day, on the preceding business day), MDTA shall transfer from the P3 Program Account to the Operating Reserve Account an amount equal to all P3 Program ETC away collections that were credited to the P3 Program Account in the prior month.

Amounts in the Operating Reserve Account will be used to make the Section Developer Toll Payment due to each Section Developer, as described in the section below.

The P3 Master Trust Agreement includes a rate covenant. If there is projected to be a Rate Covenant Shortfall (meaning the P3 Program revenues (including video surcharges, late payment fees, etc.) expected to be collected will be insufficient to cover the payments due to all Section Developers from the Operating Reserve Account and all principal and interest due on all MDTA Notes) in six or more consecutive months during the next 24 months, MDTA shall either (i) make administrative or operational changes that will eliminate the Rate Covenant Shortfall or (ii) if there are not administrative or operational changes that will eliminate the Rate Covenant Shortfall, then MDTA shall notify MDOT. Following such notification MDOT shall either (a) instruct MDTA to take no further action on the basis that MDOT elects to make supplemental payments at the time of the projected shortfall so that, if such supplemental payments were included as additional P3 Program Revenues in the calculation of the Rate Covenant calculation then no shortfall would exist or (b) instruct MDTA staff to present to the MDTA Board a toll proposal to commence the toll rate setting process intended to fix, revise, charge, and collect the tolls, fees or other charges in the P3 Program so that the Rate Covenant Shortfall is eliminated. Upon the conclusion of the toll setting process the MDTA Board may approve, adjust or reject the toll proposal.

The State does not take traffic risk in relation to the P3 Program, any Rate Covenant Shortfall would only relate to collection risk or escalation in certain fees or reduction of costs.

## P3 Supplemental Agreement Template

At financial close of each section, MDTA will enter into a P3 Supplemental Trust Agreement with the trustee and relevant Section Developer, under which the MDTA Notes related to that section will be purchased by the relevant Section Developer (in its capacity as Section Noteholder) from MDTA. Each P3 Supplemental Trust Agreement shall be based on the form of P3 Supplemental Agreement Template attached to the P3 Master Trust Agreement. The first P3 Supplemental Trust Agreement is expected to be entered into in the second half of 2022 when Phase 1 South reaches financial close. Under the P3 Supplemental Trust Agreement, the trustee will create a section note proceeds account (Section Note Proceeds Account) and a section debt service payment account (Section Debt Service Payment Account). The proceeds received by MDTA from the sale of the MDTA Notes will be credited to the Section Note Proceeds Account and applied to pay trustee fees and eligible projects costs to be identified prior to issuance.

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As described above, MDTA will transfer from the P3 Program Account an amount equal to the principal and interest due to each Section Developer into the relevant Section Debt Service Payment Account.

On the 20th of each month, the trustee will make the following payments:

*First,* payment from the Operating Reserve Account of all fees and other amounts due to the trustee for all P3 Program sections.

*Second*, payment from any Section Debt Service Payment Account to the relevant Section Developer of the amount of principal and interest due to the Section Developer.

Third, payment from the Operating Reserve Account, to each Section Developer its Section Developer Toll Payment. The Section Developer Toll Payment shall be calculated based the transponder (*E-ZPass*®) toll rate applicable to each valid transaction submitted to MDTA less (a) a per transaction developer transaction fee (determined by MDTA pursuant to the Tolling Services Agreement), and less (b) any scheduled principal and interest due on the MDTA Notes, subject to certain other adjustments set out therein.

Fourth, if so directed by MDOT, payment of any excess amount in the Operating Reserve Account to MDOT (to be deposited in the Transportation Trust Fund) subject to and in compliance with all applicable laws.

MDTA is statutorily limited to issuing debt with a maximum term of 40 years. In order that the MDTA Notes are in place throughout the term of the Section P3 Agreement, it will be necessary to refinance the MDTA Notes following the 10<sup>th</sup> anniversary of the Section P3 Agreement to ensure that each section maintains MDTA Notes outstanding during the entire term of the Section P3 Agreement.

MDTA is expected to issue the MDTA Notes within its statutory bonding authority, which will be repaid from the tolls derived from the P3 Program facility and which will not impact the debt coverage of MDTA's outstanding bonds. These notes will, however, be subject to MDTA's statutory debt limit of \$3.0 billion. The total principal amount of the MDTA Notes for Phase 1 South is not expected to exceed \$100 million. The issuance of the MDTA Notes is not expected to negatively impact MDTA's ability to progress other capital projects.

## **ATTACHMENTS**

- MDTA Notes Term Sheet
- P3 Master Trust Agreement
- P3 Supplemental Agreement Template

### **EXHIBIT 3**

### **MDTA NOTES TERM SHEET**<sup>1</sup>

This non-binding term sheet sets forth the material terms and conditions that are expected to be included in the MDTA Master Trust Agreement ("MDTA Master Trust Agreement") and the Supplement Trust Agreement for the first section ("Section 1") of Phase 1 (the "Section 1 Supplemental Trust Agreement") for the I-495 and I-270 P3 Program (the "P3 Program"). Each subsequent Section of Phase 1 is expected to have its own supplemental trust agreement on the same terms as the Section 1 Supplemental Trust Agreement. All terms not defined in this term sheet shall have the meanings given them in the Section P3 Agreement Term Sheet.

|    | Part A - MDTA Master Trust Agreement |  |  |
|----|--------------------------------------|--|--|
| 1. | Parties                              | The Parties to the MDTA Master Trust Agreement will be:  (a) The Maryland Transportation Authority, an agency of the State of Maryland ("MDTA"); and  (b) The Bank of New York Mellon (the "Trustee").   |  |
| 2. | Trustee                              | The Trustee shall be appointed on behalf of the Noteholders (as defined in Section 3) and Section Developers. The Trustee's appointment shall be subject to standard provisions relating to duties, limitations, and indemnities. The Trustee shall also be appointed as trustee for the Section 1 Supplemental Trust Agreement and any future supplemental trust agreement supplementing the MDTA Master Trust Agreement (each a "Supplemental Trust Agreement").   |  |
| 3. | Noteholders                          | The Section 1 Noteholder and the holder of any notes issued pursuant to any Supplemental Trust Agreement (the "Noteholders").  Substantially the same form of supplemental trust agreement shall be entered into with the Noteholders and  |  |
|    |                                      | Section Developers for each Section of Phase 1 and of any subsequent sections of future phases of the P3 Program.  |  |
| 4. | Upfront Payment Account              | The Trustee shall create an upfront payment account (the "Upfront Payment Account"). Any development rights fees paid by any Phase Developer under any Phase P3 Agreement or any Upfront Payment paid by any Section Developer under any Section P3 Agreement, with respect to any phase or section of the P3 Program shall be credited to the Upfront Payment Account. MDTA shall (upon direction from MDOT) direct the Trustee to make payments from the Upfront Payment Account. The amount on deposit in the Upfront Payment Account shall not be available to satisfy claims of the Noteholders or the Section Developers. The funds may be used (i) to pay costs of the P3 Program, including (A) a subsidy payment for other sections, (B) any claims under the Section P3 Agreement, (C) MDOT costs associated with the P3 Program, and (D) funding the Operating Reserve Account; (ii) following substantial completion of all sections of the last phase of the P3 Program, to pay costs of the Traffic Relief Plan (including costs associated with the |  |

 $<sup>^{\</sup>mathrm{1}}$  NTD: This term sheet shall be attached as Exhibit 3 to the Section P3 Agreement Term Sheet.

|    |   | and the state of the Deltine and Western Devices N  |
|----|---|---|
|    |   | construction of the Baltimore-Washington Parkway); and (iii) following substantial completion of all elements of the Traffic Relief Plan, as MDOT may elect (subject to any applicable law).  |
| 5. | P3 Program Notes are<br>Limited Recourse<br>Obligations | Neither the State nor any political subdivision of the State, MDOT, nor MDTA shall be obligated to pay any of the notes issued under any Supplemental Trust Agreement (the "P3 Program Notes") or the interest thereon except as provided for in the MDTA Master Trust Agreement or the Supplemental Trust Agreements, and neither the faith and credit nor the taxing power of the State, any political subdivision of the State, MDOT, or MDTA is pledged to the payment of the P3 Program Notes or the interest thereon. The issuance of the P3 Program Notes shall not directly or indirectly or contingently obligate the State or any political subdivision of the State to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. MDTA has no taxing powers. |
| 6. | P3 Program Account                                      | MDTA shall maintain an account for the purpose of collection of all toll revenue relating to the P3 Program (the "P3 Program Account"). The P3 Program Account is not a trust account and is not held by the Trustee.   |
|    |   | MDTA shall credit all toll revenues received with respect to the P3 Program (including the Section 1 Toll Revenues (as defined in Section 13)) into the P3 Program Account at a frequency consistent with MDTA's typical funds payment operations.  |
|    |   | On the 18th day of each month (or if such day is not a business day, on the preceding business day), MDTA shall apply funds in the P3 Program Account as follows:   |
|    |   | First: in payment of MDTA's back office and collection costs and expenses incurred in relation to the P3 Program during the preceding month;  |
|    |   | Second: all principal and interest that shall be due and payable under the P3 Program Notes on the next payment date to the relevant Section's P3 Program Notes debt service payment account under (and as defined in) the applicable Supplemental Trust Agreement; and   |
|    |   | Third: all remaining toll revenues received with respect to the P3 Program relating to trips that occurred during (or prior to) the preceding month excluding any P3 Program ETC Away Collections (less any amounts transferred pursuant to First and Second above), to the Operating Reserve Account.  |
|    |   | On the last day of each month (or if such day is not a business day, on the preceding business day), MDTA shall transfer from the P3 Program Account to the Operating Reserve Account an amount equal to all P3 Program ETC Away Collections relating to trips that occurred during (or prior to) the preceding month.  |
|    |   | "P3 Program ETC Away Collections" shall mean the toll revenues received by MDTA with respect to the P3 Program  |

relating to any transponder transactions associated with Transponders that are issued by an interoperable toll account provider or an *E-ZPass*® member other than MDTA. 7. The Trustee shall create an operating reserve account (the **Operating Reserve Account** "Operating Reserve Account") and shall segregate the funds and investment earnings thereon from the funds and investment earnings for all other accounts. MDTA shall make payments into the Operating Reserve Account in accordance with Section 6 (P3 Program Account) above. MDTA shall direct the Trustee to make payments of amounts held in the Operating Reserve Account accordance with the MDTA Master Trust Agreement, the Section 1 Supplemental Trust Agreement and any other supplemental agreement, or as otherwise directed by MDOT. MDTA shall, on an annual basis (on the anniversary of 8. **Rate Covenant Shortfall** Substantial Completion of the first section of Phase 1), determine the Rate Covenant Shortfall (as defined below) **UPDATED IN FINAL AGREEMENT - SEE** for each of the next 12 months. **SUMMARY MEMO** If there is projected to be a Rate Covenant Shortfall in any of the next 12 months, MDTA shall promptly, in consultation with MDOT, determine if there are any administrative or operational changes that can be made by MDTA to eliminate the Rate Covenant Shortfall within 12 months. Following such determination MDTA shall either: (a) if it is determined by MDTA that there are administrative or operational changes that will eliminate the Rate Covenant Shortfall as described above, then MDTA shall promptly implement such changes so that, within 12 months of the determination that a Rate Covenant Shortfall exists, the Rate Covenant Shortfall for each of the subsequent 12 months is eliminated; or (b) if it is determined by MDTA that there are not administrative or operational changes that will eliminate the Rate Covenant Shortfall as described above, then MDTA staff shall, within three months of determination that a Rate Covenant Shortfall exists (or such longer period as may be necessary to comply with any applicable law) and in consultation with MDOT Secretary and Chief Financial Officer, present to the MDTA Board for consideration a toll proposal to commence the toll rate setting process as set forth in §4-312 of the Enabling Legislation. The toll proposal shall include changes necessary, to fix, revise, charge, and collect the tolls in the P3 Program (such action may include, without limitation, increasing tolls, changing regulations including revising any relevant citation fees, the multiplier applicable to non-transponder transactions and any associated fees/penalties applicable to non-transponder transactions, or making changes to fees and charges associated with non-payment or late payment of any toll or tolling violations) so that, within 12 months of the commencement of actions in accordance with this paragraph (b), the Rate Covenant Shortfall for each of the subsequent 12 months is eliminated. MDTA shall promptly implement any changes approved by the MDTA Board.

Nothing in this Section 8 shall require MDTA to (i) take any action which is not in accordance with applicable law, rule, and regulation; or (ii) take any action that would constitute a Compensation Event (as defined in the applicable P3 Program Section P3 Agreement) or could lead to the Section Developer having a claim under the applicable P3 Program Section P3 Agreement.

### "Rate Covenant Shortfall" means, for any month:

- (i) all amounts projected to be payable from the Operating Reserve Account to all Section Developers of all sections of all phases of the P3 Program during such month and all principal and interest that shall be due and payable to all Noteholders under any notes issued pursuant to each supplemental trust agreement as calculated by MDTA; minus
- (ii) projected toll revenues collected across all sections of all phases of the P3 Program during such month (including all payments of tolls received via *E-ZPass* or other transponder transaction, all payments of tolls received via any means other than transponder transactions, all video toll premiums, account service charges, late fees, penalties, or other amounts arising out of or relating to the payment of tolls by users of all sections of all phases of the P3 Program) less MDTA's projected costs and expenses payable from the P3 Program Account with respect to such month,

provided that only sections that have been in operation for at least 24 months following substantial completion of such sections shall be included in such calculation; provided further, if the Rate Covenant Shortfall for any month is less than zero it shall be deemed to be zero for such month. Projections for (i) and (ii) above shall use the current best estimate of toll revenues and prior twelve-month historical observations for establishing assumptions of the distribution of payment method, vehicle classification and in-state vs. out-of-state vehicles. Reasonable adjustments shall be made to these assumptions to account for changes in collections.

|     | Part B - Section 1 Supplemental Trust Agreement |   |  |
|-----|---|---|--|
| 9.  | Parties   | The <b>Parties</b> to the Section 1 Supplemental Trust  |  |
|     |   | Agreement will be:  |  |
|     |   | (a) The Maryland Transportation Authority, an agency  |  |
|     |   | of the State of Maryland ("MDTA");  |  |
|     |   | (b) The Bank of New York Mellon (the " <b>Trustee</b> "); and   |  |
|     |   | (c) [●] as section noteholder (the " <b>Section 1</b>   |  |
|     |   | Noteholder") and as section developer (the "Section 1 Developer") who shall be the Section                                      |  |
|     |   | Developer under the Section P3 Agreement for  |  |
| 10  | Purchase of Section 1 Notes                     | Section 1.  |  |
| 10. | Purchase of Section 1 Notes                     | At financial close for Section 1, MDTA will issue and sell to the Section 1 Noteholder and the Section 1 Noteholder             |  |
|     |   | will purchase from MDTA, the Section 1 Notes in the   |  |
|     |   | principal amount specified in the Section 1 Supplemental Trust Agreement. The proceeds shall be deposited by                    |  |
|     |   | MDTA into the Section 1 Note Proceeds Account (as   |  |
| 4.4 | Towns of Costinus & Notes                       | defined below).   |  |
| 11. | Terms of Section 1 Notes                        | [●] notes in the amount of $\$[\bullet]^2$ will be issued by MDTA on financial close of Section 1 at a fixed interest rate (the |  |
|     |   | "Section 1 Notes"). MDTA may issue the Section 1 Notes  |  |
|     |   | at a premium.   |  |
|     |   | <b>Term</b> : The term of the notes shall be 40 years from the  |  |
|     |   | date of financial close of the Section P3 Agreement for   |  |
|     |   | Section 1. MDTA will have the option to redeem the Section 1 Notes commencing 10 years from the date of                         |  |
|     |   | the Section P3 Agreement for Section 1.   |  |
|     |   | Interest rate: Fixed rate of [●]% per annum. Interest   |  |
|     |   | shall accrue from the date falling 3 months after the   |  |
|     |   | Substantial Completion Date for Section 1 and shall be  |  |
|     |   | payable monthly on the Section 1 Toll Payment Date (defined below). The yields on the Section 1 Notes are                       |  |
|     |   | expected to be reflective of 30-year US Treasury yields at  |  |
|     |   | the time of issuance.   |  |
|     |   | Amortization: Principal on the Section 1 Notes shall be   |  |
|     |   | repaid monthly on each Section 1 Toll Payment Date such   |  |
|     |   | that total monthly debt service (principal plus interest) equals \$[●] commencing on the date falling [6/7] years               |  |
|     |   | from the date of [Section P3 Agreement]/[financial close]   |  |
|     |   | for Section 1.  |  |
|     |   | Interest on the Section 1 Notes is expected to be taxable   |  |
|     |   | to the extent provided under applicable federal and State   |  |
| 12. | Early Prepayment                                | law. Section 1 Notes shall only be subject to early prepayment  |  |
|     |   | (i) as referenced in Section 11 above <sup>3</sup> and (ii) upon  |  |
|     |   | termination of the Section P3 Agreement for Section 1.  |  |

 $<sup>^2</sup>$  **NTD**: The total principal amount of the MDTA Notes for Phase 1 South is not expected to exceed \$100 million.

<sup>&</sup>lt;sup>3</sup> **NTD:** See Section 56 of the Section P3 Agreement Term Sheet which sets out MDTA's right to redeem the Section 1 Notes and the consequences of any decision not to refinance.

| 13.     | Pledge of Section 1 Toll<br>Revenues             | MDTA shall pledge to the Trustee in order to secure the payment of the principal, interest, and all other amounts due by MDTA under the Section 1 Notes and the Section 1 Supplemental Trust Agreement, for the benefit of the Section 1 Noteholder and Section 1 Developer, a security interest in all of the right, title, and interest of MDTA in and to the Section 1 Toll Revenues (the "Section 1 Trust Estate").  "Section 1 Toll Revenues" means all revenues collected from Users of Priced Managed Lanes in Section 1 with   |
|---------|--|--|
|         |  | respect to the Priced Managed Lanes in Section 1, including all payments of tolls received via <i>E-ZPass</i> ® or other types of Transponders, all payments of tolls received via any means other than Transponders, all video toll premiums, account service charges, late fees, penalties, or other amounts arising out of or relating to the payment of tolls by Users of the Priced Managed Lanes in Section 1.   |
|         |  | " <b>Transponders</b> " has the meaning set out in the Tolling Services Agreement Term Sheet.  |
|         |  | " <b>User(s)</b> " has the meaning set out in the Tolling Services Agreement Term Sheet.   |
| 14.     | Section 1 Notes are Limited Recourse Obligations | Neither the State nor any political subdivision of the State, MDOT, nor MDTA shall be obligated to pay the Section 1 Notes or the interest thereon except as provided for in the MDTA Master Trust Agreement or the Section 1 Supplemental Trust Agreement, and neither the faith and credit nor the taxing power of the State, any political subdivision of the State, MDOT, or MDTA is pledged to the payment of the P3 Program Notes or the interest thereon. The issuance of the P3 Program Notes shall not directly or indirectly or contingently obligate the State or any political subdivision of the State to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. MDTA has no taxing powers. |
| 15.     | Establishment of Section 1 Note Proceeds Account | The Trustee shall create a Section 1 note proceeds account (the "Section 1 Note Proceeds Account") and shall segregate the funds and investment earnings thereon from the funds and investment earnings for all other reserve subaccounts. The amount on deposit in the Section 1 Note Proceeds Account shall be held by the Trustee only for the benefit of MDTA, and shall not be available to satisfy claims of Noteholders or the Section Developer.  The Section 1 Note Proceeds Account shall be funded with the proceeds from the sale of the Section 1 Notes upon financial close for Section 1, net of issuance expenses.   |
| MDOT an | - MDTA   | financial close for Section 1, net of issuance expenses.  MDTA shall (upon direction from MDOT) direct the Trustee to make payments from the Section 1 Note Proceeds  Account from time to time during the term of the Section 1 Supplemental Trust Agreement to pay (i) upfront Trustee fees and Trustee fees incurred in relation to Section 1 prior to Substantial Completion of Section 1; (ii)  [use of funds to pay eligible project costs related to Section 1 to be determined during the Predevelopment   |

|     |  | Work for Section 1]; and (iii) any other costs as  |  |
|-----|--|--|--|
| 16. | Section 1 Debt Service Payment Account             | determined by MDTA.  The Trustee shall create a Section 1 Debt Service Payment Account (the "Section 1 Debt Service Payment Account") and shall segregate the funds and investment earnings thereon from the funds and investment earnings for all other accounts.  MDTA shall make payments into the Section 1 Debt Service Payment Account in accordance with Section 6 (P3 Program Account) above. Amounts held in the Section 1 Debt Service Payment Account shall be applied in payment of principal and interest due under the Section 1   |  |
| 17. | Payments to the Noteholder and Section 1 Developer | Notes in accordance with Section 17 below.  On each Section 1 Toll Payment Date (defined below),  MDTA shall direct the Trustee to make the following payments:  |  |
|     |  | a) Payment from the Operating Reserve Account of an amount equal to all fees and other amounts due to the Trustee in connection with the Section 1 Supplemental Trust Agreement, the Master Trust Agreement and all other supplemental trust agreement.  |  |
|     |  | b) Payment from the Section 1 Debt Service Payment Account to the Section 1 Noteholder of the amount of principal and interest due to the Section 1 Noteholder on such date, provided that the amount of such payment obligation shall be capped at the amount available in the Section 1 Debt Service Payment Account (the "Section 1 Notes P&I Payment"). In the event that there are insufficient funds in the Section 1 Debt Service Payment Account to pay the scheduled Section 1 Notes P&I Payment on any Section 1 Toll Payment Date, the unpaid amount of the scheduled Section 1 Notes P&I Payment shall be due on the next Section 1 Toll Payment Date that sufficient funds are available. |  |
|     |  | c) Payment from the Operating Reserve Account, to the Section 1 Developer the Section 1 Developer Toll Payment (defined below).  |  |
|     |  | The payments due under clause (b) and (c) above are absolute payment obligations of MDTA payable from the Section 1 Trust Estate and due to the Section 1 Noteholder and Section 1 Developer, as applicable, on each Section 1 Toll Payment Date. MDTA will satisfy such payment obligations by directing the Trustee to make such payments from the Section 1 Debt Service Payment Account or the Operating Reserve Account (as applicable). Non-payment of principal and interest on the Section 1 Notes will be a MDOT Default under the Section P3 Agreement (subject to a customary cure period), unless such non-payment is caused by a shortfall in funds in the Section 1 Debt Service Payment |  |

|     |                              | Account. Non-payment of the Section 1 Developer Toll Payment will be a MDOT Default under the Section P3 Agreement (subject to a customary cure period), and an insufficiency of funds in the Operating Reserve Account shall not excuse MDTA from the performance of such payment obligation.  "Section 1 Developer Toll Payment" means, on any Section 1 Toll Payment Date, an amount equal to:  1) the aggregate of all Trip Tolls (as defined and calculated in accordance with the Tolling Services Agreement Term Sheet) with respect to each Valid Trip submitted to MDTA during the previous calendar month <sup>4</sup> ; less |
|-----|------------------------------|---|
|     |                              | <ol> <li>the Transaction Fee (as defined in the Tolling Services Agreement Term Sheet) charged by MDTA for each Trip submitted to MDTA in accordance with the Tolling Services Agreement Term Sheet; less</li> <li>the scheduled Section 1 Notes P&amp;I Payment due on such date; less</li> <li>any amounts that MDTA is permitted to clawback under Section 34 (Clawback) of the Tolling Services Agreement Term Sheet, provided that if the Section Developer Toll Payment for any month is less than zero it shall be deemed to be zero for such month.</li> </ol>  |
|     |                              | The Section 1 Noteholder will have no right to receive video surcharges, account fees, fines, penalties, or other amounts from Users of Section 1.  |
|     |                              | "Section 1 Toll Payment Date" means the 20th day of each month, commencing from the first full calendar month to occur after tolling commencement for Section 1.  "Valid Trip" is defined in the Tolling Services Agreement   |
| 18. | Section 1 Noteholder         | Term Sheet. The Section 1 Noteholder makes the following  |
|     | Representations & Warranties | representations upon which MDTA and the Trustee may rely:   |
|     |                              | (a) it is (i) a "qualified institutional buyer" as that term is defined in Rule 144A under the Securities Act of 1933, as amended (the "Securities Act") or (ii) an "accredited investor" within the meaning of Rule 501(a) (Accredited investor) of Regulation D (Rules Governing the Limited Offer and Sale of Securities without Registration under the Securities Act of 1933) ("Regulation D") <sup>5</sup> ;  |

<sup>&</sup>lt;sup>4</sup> NTD: The Trip Toll is calculated based on the transponder rates and does not vary if a Trip is processed as a non-transponder transaction or otherwise subject to surcharges or any citations. "Trip Tolls" is not the same as "Section 1 Toll Revenue."

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<sup>&</sup>lt;sup>5</sup> NTD: As a condition precedent to close under the Section P3 Agreement for Section 1 (or as a CP under the Section 1 Supplemental Trust Agreement), the Section 1 Developer shall have provided MDTA with all evidence that MDTA requires in order to verify that the Developer is an "qualified institutional buyer" or "accredited investor" (as defined above).

- (b) it is purchasing the Section 1 Notes for its own account and not with a view to the distribution thereof;
- (c) in connection with any permitted transfer of any Section 1 Notes, it will not engage in any form of general solicitation or general advertising within the meaning of Rule 502(c) under the Securities Act with respect to such transfer of Section 1 Notes;
- (d) it understands and acknowledges that (i) the Section 1 Notes have not been registered under the Securities Act or any other applicable securities law and that the Section 1 Notes are being offered for sale in transactions not requiring registration under the Securities Act pursuant to Section 4(a)(2) thereof, (ii) in addition to any other restrictions on the resale of the Section 1 Notes, the Section 1 Notes may be resold only if an exemption from registration is available, except under circumstances where such an exemption is not required by law, and (iii) MDTA is not required to register the Section 1 Notes;
- (e) it acknowledges that it has either been supplied with or been given access to information, including a term sheet outlining material information, which it has requested from the issuer and to which a reasonable investor would attach significance in making investment decisions, and the Section 1 Noteholder has had the opportunity to ask questions and receive answers from knowledgeable individuals, including its own counsel, concerning the issuer and the Section 1 Notes and the security therefor so that, as a reasonable investor, the Section 1 Noteholder has been able to make a decision to purchase the Section 1 Notes. The Section 1 Noteholder has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of its prospective investment in the Section 1 Notes; and
- (f) it shall not transfer, or permit the transfer of, directly or indirectly, any equity interest in the Section 1 Noteholder if such transfer would cause the Section 1 Noteholder to cease to be a "qualified institutional buyer" (as defined above) or an accredited investor (as defined above). Not less than 20 business days prior to any proposed transfer of any direct or indirect equity interest in the Section 1 Noteholder, the Section 1 Noteholder shall deliver to MDTA (i) notice of the proposed transfer and (ii) all evidence that MDTA requires to demonstrate that following such proposed transfer, the Section 1 Noteholder shall continue to be a "qualified institutional buyer" (as defined above) or an accredited investor (as defined above).

| 19. | MDTA Representations & Warranties | MDTA represents and covenants that:  |
|-----|-----------------------------------|--|
|     | Waltandes                         | (a) it is duly authorized under the Constitution and laws of the State to issue the Section 1 Notes, to enter into the MDTA Master Trust Agreement and Section 1 Supplemental Trust Agreement, and to pledge the Section 1 Trust Estate in the manner and to the extent set forth in the Section 1 Supplemental Trust Agreement;   |
|     |                                   | (b) all action on its part for the issuance of the Section<br>1 Notes has been duly and effectively taken;   |
|     |                                   | (c) the Section 1 Notes when issued in accordance with the Section 1 Supplemental Trust Agreement will be valid and binding limited obligations of MDTA; and <sup>6</sup>  |
|     |                                   | (d) as of its date and the date hereof, the information contained in the Disclosure Documentation is complete, true and accurate, and such information does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. <sup>7</sup>  |
| 20. | MDTA Covenants                    | MDTA covenants that it shall:  |
|     |                                   | a. pay or cause to be paid the principal of and interest<br>on every Section 1 Note on the date (and no earlier<br>date) and at the place and in the manner provided<br>for in the Section 1 Supplemental Trust Agreement,<br>provided that (i) the Section 1 Notes shall be limited<br>obligations of MDTA payable solely from the Section<br>1 Trust Estate and (ii) payment of the principal of<br>and interest on the Section 1 Notes shall only fall<br>due to the extent that sufficient funds are available<br>in the Section 1 Debt Service Payment Account are<br>sufficient; |
|     |                                   | <ul> <li>not create or incur any indebtedness (including the issuance of any additional notes under the Section 1 Supplemental Trust Agreement) payable from any portion of the Section 1 Trust Estate;</li> </ul>   |
|     |                                   | <ul> <li>take all reasonable measures permitted by law to<br/>enforce payment to it of the Section 1 Toll Revenues<br/>due and payable;</li> </ul>   |
|     |                                   | <ul> <li>d. permit any filing necessary to evidence the grant to<br/>the Trustee of the interest in the Section 1 Trust<br/>Estate; and</li> </ul>   |

<sup>&</sup>lt;sup>6</sup> NTD: MDTA's bond counsel shall issue a typical opinion as a condition precedent to closing confirming that (1) the Section 1 Notes have been duly authorized and issued and (2) the Section 1 Notes are valid and legally binding obligations of MDTA.

<sup>&</sup>lt;sup>7</sup> NTD: As a condition precedent to funding, MDTA will provide disclosure documentation as required by applicable law (the "Disclosure Documentation").

|     |                                     | e. except as permitted by the Section 1 Supplemental Trust Agreement, not sell, lease, pledge, assign, or otherwise dispose of its interest in the Section 1 Trust Estate.   |
|-----|-------------------------------------|--|
| 21. | Acceleration of the Section 1 Notes | There shall be no events of default under the Section 1 Notes and the Section 1 Notes shall not be accelerated or subject to early prepayment except following the termination of the Section P3 Agreement or as referenced in Section 11.   |
|     |                                     | Upon any termination of the Section P3 Agreement, the Section 1 Noteholder will be paid the par value of the outstanding Section 1 Notes (plus, if applicable, any unamortized premium) and the outstanding MDTA Notes will be redeemed, assigned, or transferred to another party or assumed by MDOT, at MDOT's sole direction. As a condition precedent to payment of the par value of the outstanding Section 1 Notes (plus, if applicable, any unamortized premium), the Section 1 Noteholder must take all reasonable steps requested by MDOT or MDTA to effect such redemption, assignment, transfer, or assumption. |
|     |                                     | Following any termination of the Section P3 Agreement MDTA may elect (in coordination with MDOT) to issue new notes under a new Section 1 supplemental trust agreement to repay the Section 1 Notes and the Section 1 Trust Estate may be pledged to secure such new notes.  |
|     |                                     | The Section 1 Noteholder's, and Section 1 Developer's recourse and that of its Lenders for non-payment under the Section 1 Supplemental Trust Agreement shall be through the terms of the Section P3 Agreement and neither the Trustee, nor the Section 1 Noteholder, Section 1 Developer, or their Lenders shall take any action against MDTA or claim any amount in any MDTA account for any non-payment, or to enforce a security interest over the Section 1 Trust Estate.   |
| 22. | Registration                        | The Section 1 Notes shall be negotiable instruments for all purposes and shall be transferable by delivery, subject only to (i) the restrictions set out in Section 23 ( <i>Transferability Restrictions</i> ) and (ii) the provisions for registration and registration of transfer endorsed on the Section 1 Notes, which requirements shall not include registration with the Securities and Exchange Commission. The Trustee shall act as register for the Section 1 Notes and shall keep registration of transfers of the Section 1 Notes.  |
| 23. | Transferability Restrictions        | Except to the extent expressly permitted pursuant to this Section 23, (i) the Section 1 Noteholder shall not assign or transfer any of the Section 1 Notes or its right to repayment of principal or interest under the Section 1 Notes to any other Person and (ii) the Section Developer shall not assign or transfer its rights and obligations under this Supplemental Trust Agreement to any other Person.  |

The Section 1 Noteholder may grant a security interest in the Section 1 Noteholder's rights under the Section 1 Notes to its lenders (provided such lenders are "qualified institutional buyers" (as defined above)). The Section 1 Developer may pledge its rights to receive the Section Developer Toll Payment to its lenders.

In the event that the Section 1 Developer transfers its rights and obligations under the Section P3 Agreement to another party (pursuant to a foreclosure or as otherwise permitted under the Section P3 Agreement):

- (A) the Section 1 Noteholder shall simultaneously transfer its rights and obligations under the Section 1 Notes to the substitute party, provided that any transfer of the Section 1 Notes permitted pursuant to this paragraph shall only be permitted if (a) the transferee is a qualified institutional buyer (as defined above) or an accredited investor (as defined above) and (b) not less than 20 business days prior to the proposed transfer, the Section 1 Noteholder has delivered to MDTA (i) notice specifically identifying the proposed transferee and (ii) all evidence that MDTA requires to demonstrate that such proposed transferee is an accredited investor under Rule 501(a) of Regulation D; and
- (B) the Section Developer shall simultaneously transfer all of its rights and obligations under this Supplemental Trust Agreement to the substitute party.

# I-495 & I-270 PUBLIC-PRIVATE PARTNERSHIP PROGRAM MASTER TRUST AGREEMENT

between

## MARYLAND TRANSPORTATION AUTHORITY

and

THE BANK OF NEW YORK MELLON

Dated as of \_\_\_\_\_, 2021

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## THIS TRUST AGREEMENT (this "Trust Agreement") is made on ●, 2021

### **BETWEEN:**

- (1) MARYLAND TRANSPORTATION AUTHORITY, an agency of the State ("MDTA"); and
- (2) **THE BANK OF NEW YORK MELLON**, as trustee (the "**Trustee**").

## **RECITALS**

- (A) WHEREAS, in 2017, Governor Larry Hogan announced Maryland's Traffic Relief Plan (the "**Plan**"). The largest component of the Plan is the I-495 & I-270 Public-Private Partnership Program which will include improvements to over 70 miles of interstate in the State of Maryland (the "**State**") including:
  - (3) I-495 from the vicinity of the George Washington Memorial Parkway in Virginia, across and including the American Legion Bridge to the Woodrow Wilson Memorial Bridge; and
  - (4) I-270 from its interchange with I-495 to its interchange with I-70,

(together, the "P3 Program"); and

- (B) WHEREAS, under Title 10A of the State Finance and Procurement Article of the Annotated Code of Maryland, MDTA and the Maryland Department of Transportation, a principal department of the State including the State Highway Administration ("MDOT") are authorized to undertake the solicitation, program management, and delivery of the P3 Program; and
- (C) WHEREAS, MDTA is authorized pursuant to the Enabling Legislation, to issue revenue bonds, notes, and other evidences of obligation for the purpose of financing and refinancing all or any part of the costs of Transportation Facilities Projects and to secure such revenue bonds and notes by a trust agreement, under which it may pledge and assign all or any part of the revenues of any Transportation Facilities Project to secure such revenue bonds and notes; and
- (D) WHEREAS, MDOT and MDTA will deliver the P3 Program, a Transportation Facilities Project, in two or more phases. Each phase will include one or more sections (each a "P3 Program Section" and together, the "P3 Program Sections"); and
- (E) WHEREAS, MDTA and the Trustee are entering into this Trust Agreement for the purposes of documenting the arrangement between MDTA and the Trustee, which will extend through all P3 Program Sections; and
- (F) WHEREAS, for each P3 Program Section, MDTA will issue a series of notes (each note, a "P3 Program Note" and together, the "P3 Program Notes") under a Supplemental Trust Agreement, which shall contain the terms and requirements of the P3 Program Notes. The purchaser of the P3 Program Notes for a P3 Program Section will be the section developer of such P3 Program Section; and
- (G) WHEREAS, neither the State nor any political subdivision of the State, MDOT, nor MDTA shall be obligated to pay any of the P3 Program Notes issued under any Supplemental Trust Agreement or the interest thereon except as provided for in this Trust Agreement or any Supplemental Trust Agreement, and neither the faith and credit nor the taxing power of the State, any political subdivision of the State, MDOT or MDTA is pledged to the payment of the P3 Program Notes or the interest thereon. The issuance of the P3 Program Notes shall not directly or indirectly or contingently obligate the State or any political subdivision of the State

to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. MDTA and MDOT have no taxing powers.

NOW, THEREFORE, WITNESSETH that in consideration of the foregoing and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MDTA and the Trustee do hereby agree and covenant as follows:

### 1. DEFINITIONS AND RULES OF CONSTRUCTION

### 1.1 **Definitions.**

Terms used in this Trust Agreement have the following meanings, unless a different meaning clearly appears from the context.

"Authorized Officers" is defined in Section 8.3(d) (Manner of Giving Notice).

"Business Day" means any day that is not a Saturday, a Sunday, a State public holiday, or a federal public holiday or a day on which banking institutions in the State or in the city in which the office of the Trustee is located are authorized or obligated to remain closed.

"**Depositary**" means the Trustee and shall also mean one or more other banks or trust companies duly authorized to engage in the banking business and designated by MDTA as a depositary of moneys under the provisions of this Trust Agreement.

"Director" means the Executive Director of MDTA, but not the Secretary of MDOT.

**"Electronic Means"** means the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder.

"**Enabling Legislation**" means Title 4 of the Transportation Article of the Annotated Code of Maryland, as amended, and all future acts supplemental thereto or amendatory thereof.

**"Fitch**" means Fitch Ratings, its successors and assigns and, in the event such corporation ceases to rate municipal bonds, any other nationally recognized rating service designated by MDTA.

### "Government Obligations" means:

- (a) direct obligations of, or obligations the timely payment of the principal of and the interest on which are unconditionally guaranteed by, the United States of America, or evidences of indirect ownership of such obligations; and
- (b) obligations of state or local government bond issuers, provision for the payment of the principal of and interest on which shall have been made by deposit with an escrow agent or trustee of obligations described in paragraph (a) the principal of and interest on which when due will be sufficient to pay the principal of and interest on such state or local government obligations when due.

"Governmental Entity" means the State and any other agency, or subdivision of the State, and any agency, special district, commission, or other authority exercising executive, legislative, judicial, regulatory, administrative, or taxing functions of, or pertaining to, the government of the State.

"**Image-Based Transaction**" means a Toll Transaction where the vehicle is identified by a photographic image of the license plate.

"Instructions" is defined in Section 8.3(d) (Manner of Giving Notice).

"Investment Obligations" means investments permitted by law and by the investment policy agreed from time to time between MDOT and MDTA (that values safety of principal, liquidity, and return on investment, in that order) relating to the Master Trust Agreement and any Supplemental Trust Agreement.

"MDOT" is defined in the Recitals.

"MDTA" is defined in the opening paragraph.

"MDTA P3 Program Costs" means MDTA's back office and collection costs, and other expenses and costs incurred in relation to the P3 Program.

"MDTA Representative" means the Chairman, the Executive Director or the Deputy Executive Director of MDTA, Chief Financial Officer of MDTA, or such officer's designee as provided in writing and, when used with respect to any act, any other person (who may or may not be a member, officer, or employee of MDTA) authorized to perform such act by the Enabling Legislation or a resolution of MDTA.

"**Moody's**" means Moody's Investors Service, Inc., its successors and assigns and, in the event such corporation ceases to rate municipal bonds, any other nationally recognized rating service designated by MDTA.

"Noteholder" means each Section Noteholder under any Supplemental Trust Agreement.

"Operating Reserve Account" is defined in Section 3.1(b) (Operating Reserve Account).

"Opinion of Bond Counsel" means a written opinion of counsel for MDTA or any other Person (which counsel shall be reasonably acceptable to the Trustee) with respect to such matters as required under any document or the Trustee may otherwise reasonably require, and which shall be in form and substance reasonably acceptable to the Trustee.

"Outstanding" or "outstanding," when used with respect to P3 Program Notes, means all P3 Program Notes that have been authenticated and delivered by the Trustee under any Supplemental Trust Agreement, except:

- (a) P3 Program Notes paid or redeemed or delivered to or acquired by the Trustee for cancellation;
- (b) P3 Program Notes for which the Trustee or any Depositary or Paying Agent shall hold sufficient moneys or Government Obligations the principal of and the interest on which, when due and payable, will provide sufficient moneys to pay the principal of, and the interest on such P3 Program Notes to their maturity date or dates, or dates fixed with respect to Amortization Requirements (as used and defined in the applicable Supplemental Trust Agreement), as demonstrated by a written report prepared by a firm of independent certified public accountants; and
- (c) P3 Program Notes in exchange for or in lieu of which other P3 Program Notes have been authenticated and delivered under this Trust Agreement or any Supplemental Trust Agreement; provided, however, that in determining whether the owners of the requisite principal amount of outstanding P3 Program Notes have given any request, demand, authorization, direction, notice, consent or waiver hereunder, P3 Program Notes owned

by MDTA or any other obligor upon the P3 Program Notes shall be disregarded and deemed not to be outstanding, except that in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only P3 Program Notes that the Trustee knows to be so owned shall be so disregarded. P3 Program Notes so owned that have been pledged in good faith may be regarded as outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such P3 Program Notes and the pledgee is not MDTA or any other obligor upon the P3 Program Notes.

- **"P3 Program"** is defined in the Recitals.
- "P3 Program Account" is defined in Section 3.3 (P3 Program Account).
- **"P3 Program ETC Away Collections**" means toll revenues received by MDTA with respect to the P3 Program relating to Trip based Transponder Transactions associated with *E-ZPass*® transponders that are issued by toll agencies other than MDTA (or by any other interoperable toll account provider as approved by MDTA).
- "P3 Program Note" is defined in the Recitals.
- **"P3 Program Phase P3 Agreement**" means any phase public-private partnership agreement entered into among MDTA, MDOT, and the applicable phase developer with respect to predevelopment work for a phase of the P3 Program.
- **"P3 Program Revenues**" means all Section Toll Revenues (as described and defined in any Supplemental Trust Agreement) collected across all P3 Program Sections (including all payments of tolls received via *E-ZPass* or other Transponder Transaction, all payments of tolls received via any means other than Transponder Transactions, including but not limited to all video toll premiums, account service charges, late fees, penalties, or other amounts arising out of or relating to the payment of tolls by users of P3 Program Sections).
- "P3 Program Section" is defined in the Recitals.
- **"P3 Program Section P3 Agreement**" means any section public-private partnership agreement entered into among MDTA, MDOT, and the applicable Section Developer with respect to the design, construction, financing, operation, and maintenance of a P3 Program Section.
- "Paying Agents" means the Trustee in its capacity as paying agent for the P3 Program Notes and any other entity designated as such in a Supplemental Trust Agreement.
- "**Person**" or "**person**" means and includes an association, an unincorporated organization, a corporation, a partnership, a joint venture, a business trust, a government or an agency or a political subdivision thereof, any other public or private entity, or a natural person.
- "Plan" is defined in the Recitals.
- "Rate Covenant Shortfall" is defined in Article 5 (Rate Covenant).
- "Rating Agency" means Fitch, Moody's, S&P, or any other securities rating agency that, at the request of MDTA, shall have assigned a rating that is then in effect, and their successors and assigns, and "Rating Agencies" means each such Rating Agency, collectively.
- "Section Developer" means each Section Developer under any Supplemental Trust Agreement.

**"S&P"** means Standard & Poor's Ratings Services and its successors and assigns and, in the event such corporation ceases to rate municipal bonds, any other nationally recognized rating service designated by MDTA.

"State" is defined in the Recitals.

"Supplemental Trust Agreement" shall mean any I-495 & I-270 public-private partnership program supplemental trust agreement (the form of which is attached as Schedule 2 (*Form of I-495 & I-270 Public-Private Partnership Program Supplemental Trust Agreement*)) among MDTA, as issuer, the Trustee, a Noteholder, and a Section Developer, with respect to a P3 Program Section.

"**Toll Transaction**" means an electronic record of a toll and a related set of contemporaneous vehicle images representing a vehicle that passes through a specific tolling point on the P3 Program. A Toll Transaction may be either a Transponder Transaction or an Image-Based Transaction.

"**Transponder**" means an in-vehicle device which is designed to transmit information used to collect tolls and is associated with a particular toll account, as may be further defined in any Supplemental Trust Agreement. For the avoidance of doubt, however, "Transponder" does not include a vehicle's license plate or other identifying markers that require the use of image-reading technology.

"**Transponder Transaction**" means a Toll Transaction with respect to a vehicle equipped with an active *E-ZPass* or an interoperable Transponder.

"Transportation Facilities Projects" is defined in §4-101 of the Enabling Legislation.

"**Trip**" means a bundled group of Toll Transactions relating to a single trip or passage on the priced managed lanes by a vehicle.

"Trust Agreement" is defined in the opening paragraph.

"Trustee" is defined in the opening paragraph.

"Upfront Payment Account" is defined in Section 3.1(a) (Upfront Payment Account).

### 1.2 Rules of Construction.

Unless the context clearly indicates to the contrary, the following rules apply to the construction of this Trust Agreement:

- (a) Words importing the singular number include the plural number and words importing the plural number include the singular number.
- (b) Words of the masculine gender include correlative words of the feminine and neuter genders.
- (c) The table of contents and the headings or captions used in this Trust Agreement are for convenience of reference and do not constitute a part of this Trust Agreement, nor affect its meaning, construction, or effect.
- (d) Words importing persons include any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, or government, agency, or political subdivision thereof.

- (e) The word "Holder," "holder," "Noteholder," "owner," or any similar term, when used with respect to any P3 Program Note, means the registered owner of such P3 Program Note.
- (f) Any reference to the Upfront Payment Account and the Operating Reserve Account shall be to the accounts so designated under Section 3.1 (*Creation of Funds and Accounts*). If any Supplemental Trust Agreement provides for the establishment of separate funds and accounts for any P3 Program Notes, then any provision of this Trust Agreement requiring or permitting the application of amounts on deposit in any account to the payment of any P3 Program Note or the transfer of amounts on deposit in any account maintained for any P3 Program Notes to any other account shall refer to the account maintained for P3 Program Notes of the P3 Program Section of which such P3 Program Note is a part.
- (g) Any reference in this Trust Agreement to a particular Article, Section, or other subdivision shall be to such Article, Section, or subdivision of this Trust Agreement unless the context shall otherwise require.
- (h) Each reference in this Trust Agreement to an agreement or contract shall include all amendments, modifications, and supplements to such agreement or contract unless the context shall otherwise require.
- (i) Any reference to any particular time of day shall be to such time of day in Baltimore, Maryland, unless the context shall otherwise require.

### 2. CONDITIONS PRECEDENT TO DELIVERY OF THE P3 PROGRAM NOTES

The P3 Program Notes shall be issued and delivered pursuant to a Supplemental Trust Agreement upon satisfaction of the provisions of this Trust Agreement.

### 3. ACCOUNTS

## 3.1 Creation of Accounts.

The following accounts are hereby created under this Trust Agreement and shall be held and maintained as set forth under this Trust Agreement:

### (a) Upfront Payment Account

The Trustee shall create an upfront payment account (the "**Upfront Payment Account**") and shall segregate the funds and investment earnings thereon from the funds and investment earnings for all other accounts. The amount on deposit in the Upfront Payment Account shall be held by the Trustee in trust only for the benefit of MDOT and MDTA, and shall not be available to satisfy claims of the Noteholders or Section Developers.

#### (b) Operating Reserve Account

The Trustee shall create an operating reserve account (the "**Operating Reserve Account**") and shall segregate the funds and investment earnings thereon from the funds and investment earnings for all other accounts.

Any Supplemental Trust Agreement authorizing the issuance of any P3 Program Notes may provide for the creation of separate funds and accounts for such P3 Program Notes. When any provision of this Trust Agreement requires that any amount be deposited in a fund or account maintained for the P3 Program Notes of any P3 Program Section, such amount shall be

deposited in the fund or account established for the P3 Program Notes of such P3 Program Section.

For the purposes of internal accounting, any fund or account created by this Trust Agreement may contain one or more accounts or subaccounts, as shall be deemed appropriate by MDTA.

## 3.2 Upfront Payment Account.

Any payment that MDOT or MDTA receives in connection with the P3 Program and that MDTA directs for payment into the Upfront Payment Account, or any payment received by the Trustee that is not paid into any other account pursuant to the terms hereof, shall be credited to the Upfront Payment Account. Such payments may include, but are not limited to, (a) any development rights fee or similar payment received from a P3 Program phase developer, any proceeds of the drawing on a letter of credit or other security related to any development rights fee, (b) any upfront payment received from any Section Developer, (c) any proceeds from drawing on the letter of credit provided as closing security received from any Section Developer, or (d) any other fees or funds directed into the Upfront Payment Account by MDTA or MDOT. Any letter of credit or other security provided with respect to any development rights fee shall be provided in the name of the Trustee and shall be drawn by the Trustee if so directed by MDTA.

Funds in the Upfront Payment Account may be used (a) to pay costs of the P3 Program, including but not limited to, (i) subsidy payment(s) for P3 Program Sections, (ii) any claims, change orders, and compensating events under any P3 Program Phase P3 Agreement or P3 Program Section P3 Agreement, (iii) reimbursement to MDOT for costs associated with the P3 Program, (iv) funding for the Operating Reserve Account (including to eliminate a Rate Covenant Shortfall), (v) any costs incurred by MDOT under any interagency agreement with MDTA or other document related to the P3 Program, (vi) any costs incurred by MDOT in connection with a letter of credit provided by MDOT for the Operating Reserve Account, and (vii) any costs associated with ancillary projects necessary for the successful delivery of a P3 Program Section; and (b) following substantial completion of all P3 Program Sections of the last phase of the P3 Program, to pay any costs of the Plan or as MDOT may elect (subject to any applicable law). Trustee will apply the funds in the Upfront Payment Account at the direction of MDTA, upon MDTA receiving written authorization from MDOT for such use of funds.

### 3.3 **P3 Program Account.**

MDTA shall establish and maintain a bank account exclusively for the P3 Program Revenues (the "P3 Program Account"). Following receipt of P3 Program Revenues in MDTA's commingled accounts, funds shall be subsequently transferred by MDTA to the P3 Program Account at a frequency consistent with MDTA's typical funds payment operations. Monies deposited in the commingled depository account that are not related to the P3 Program and not expressly pledged under this Trust Agreement or any Supplemental Trust Agreement are not pledged under this Trust Agreement or any Supplemental Trust Agreement.

It shall be the duty of MDTA, to withdraw from the P3 Program Account the following amounts and pay them as follows:

(a) on or before the 18th day of each month (or if such day is not a Business Day on the preceding Business Day):

First: to MDTA, an amount equal to MDTA P3 Program Costs incurred during the preceding month and any prior unpaid MDTA P3 Program Costs;

Second: to the Trustee, all principal and interest that shall be due and payable under the P3 Program Notes on the next payment date for deposit to the credit of the relevant P3 Program Section's Section Debt Service Payment Account under (and as defined in) the applicable Supplemental Trust Agreement; and

*Third*: to the Trustee, for credit to the Operating Reserve Account, all remaining P3 Program Revenues received with respect to the P3 Program relating to Trips that occurred during (or prior to) the preceding month *excluding* any P3 Program ETC Away Collections (less any amounts transferred pursuant to *First* and *Second* above), and

(b) on the fifth day of the month (or if such day is not a Business Day on the preceding Business Day) to the Trustee, for credit to the Operating Reserve Account, an amount equal to all P3 Program ETC Away Collections that were credited to the P3 Program Account in the prior month.

### 3.4 **Operating Reserve Account.**

MDTA shall make payments into the Operating Reserve Account in accordance with Section 3.3 (*P3 Program Account*).

MDTA shall direct the Trustee to make payments of amounts held in the Operating Reserve Account on each Section Toll Payment Date (as defined in the applicable Supplemental Trust Agreement) as follows:

First: an amount equal to all fees and other amounts due to the Trustee in connection with this Trust Agreement and each Supplemental Trust Agreement;

Second: to each Section Developer, the Section Developer Toll Payment (as calculated under the applicable Supplemental Trust Agreement) due to such Section Developer under the terms of each Supplemental Trust Agreement; and

*Third*: any excess amount, if so directed by MDTA, to MDOT (to be deposited in the Transportation Trust Fund) subject to and in compliance with all applicable law.

MDTA or MDOT may elect to provide a letter of credit in favor of the Trustee *in lieu* of cash reserve for payments due from the Operating Reserve Account. If a letter of credit has been so provided by MDTA or MDOT, the Trustee shall draw on such letter of credit at MDTA's direction if necessary to make the payments required under any Supplemental Trust Agreement and if the amounts in the Operating Reserve Account are insufficient to pay such amounts in full.

## 4. DEPOSITARIES OF MONEYS, SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

## 4.1 **Deposits Constitute Trust Accounts.**

(a) General.

All moneys received by MDTA under the provisions of this Trust Agreement or any Supplemental Trust Agreement, including all P3 Program Revenues, shall be applied only in accordance with the provisions of this Trust Agreement or the applicable Supplemental Trust Agreement. Such moneys shall be trust funds to the extent provided herein and shall not be subject to any lien or attachment by any creditor of MDTA.

(b) Qualifications of Depositaries.

No moneys shall be deposited with any Depositary other than the Trustee, in an amount exceeding 50% of the amount which an officer of such Depositary shall certify to MDTA as the combined capital and surplus of such Depositary.

### (c) Security for Deposits.

All moneys deposited with the Trustee or any other Depositary hereunder shall be continuously secured, for the benefit of MDTA and the owners of the P3 Program Notes, either (i) by lodging with a bank or trust company approved by MDTA and by the Trustee as custodian, as collateral security, Government Obligations, or, with the approval of the Trustee, other marketable securities eligible as security for the deposit of trust funds under applicable regulations of the Comptroller of the Currency of the United States or applicable state law or regulations, having a market value (exclusive of accrued interest) not less than the amount of such deposit, or (ii) if the furnishing of security as provided in clause (i) above is not permitted by applicable law, in such other manner as may then be required or permitted by applicable state or federal laws and regulations regarding the security for, or granting a preference in the case of, the deposit of trust funds; provided, however, that it shall not be necessary for the Paying Agents to give security for the deposit of any moneys with them for the payment of the principal of or the premium or the interest on any P3 Program Notes, or for the Trustee to give security for any moneys that shall be represented by obligations purchased under the provisions of this paragraph (c) as an investment of such moneys.

All moneys held by MDTA or deposited with the Trustee shall be credited to the particular account or subaccount to which such moneys belong.

## 4.2 Investment of Moneys in Trust Accounts.

Moneys held for the credit of any trust account established pursuant to this Trust Agreement or any Supplemental Trust Agreement shall be invested and reinvested by the Trustee, as shall be directed by MDTA in writing, in Investment Obligations that shall mature, or that shall be subject to redemption at the option of the holder, not later than the respective dates on which the moneys held for the credit of such account will be required for the purposes intended.

### 4.3 Investments Deemed to be part of Account or Subaccount for Which Purchased.

Investment Obligations purchased as an investment of moneys in any account or subaccount created by this Trust Agreement or any Supplemental Trust Agreement shall be deemed at all times to be a part of such account or subaccount, and the interest accruing thereon and any profit realized from such investment shall be credited to such account or subaccount, and any loss resulting from such investment shall be charged to such account or subaccount. The Trustee or MDTA shall sell at the best price obtainable or present for redemption any obligations so purchased whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from any such account or subaccount. Neither the Trustee nor MDTA shall be liable or responsible for any loss resulting from any such investment. Although MDTA recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, MDTA hereby agrees that broker confirmations of investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered by the Trustee.

## 4.4 Valuation.

For the purpose of determining the amount on deposit to the credit of any such account or subaccount created by this Trust Agreement or any Supplemental Trust Agreement, obligations

in which money in such account or subaccount shall have been invested shall be valued at the market value.

The Trustee and MDTA shall value the investments in the accounts and subaccounts created by this Trust Agreement or any Supplemental Trust Agreement annually on June 30. In addition, the investments of the accounts and subaccounts created by this Trust Agreement or any Supplemental Trust Agreement shall be valued by the Trustee at any time requested by MDTA on reasonable notice.

The fair market value of any investment in the accounts and subaccounts shall be determined as follows:

- (a) as to investments the bid and asked prices of which are published on a regular basis in FT Interactive Data (or, if not there, then in Bloomberg Terminal), the average bid and asked prices for such investments so published on or most recently prior to such time of determination;
- (b) as to investments the bid and asked prices of which are not published on a regular basis in FT Interactive Data or Bloomberg Terminal, the average bid price at such nationally recognized government securities dealers (selected by the Trustee in its absolute discretion) at the time making a market in such investments or as quoted in the Interactive Data Service; and
- (c) as to certificates of deposit and bankers acceptances and other investments, the face amount thereof.

If more than one provision of this definition of "fair market value" shall apply at any time to any particular investment, the fair market value thereof at such time shall be determined in accordance with the provision establishing the lowest value for such investment.

### 5. RATE COVENANT

MDTA shall, on an annual basis (initially on the anniversary of substantial completion of the first P3 Program Section of the first phase of the P3 Program and subsequently on June 30th each year), determine the Rate Covenant Shortfall (as defined below) for each of the next 24 months.

If there is projected to be a Rate Covenant Shortfall in six or more consecutive months during the next 24 months, MDTA shall promptly, in consultation with MDOT, determine if there are any administrative or operational changes that can be made by MDTA to eliminate the Rate Covenant Shortfall.

Following such determination MDTA shall either:

- (a) if it is determined by MDTA that there are administrative or operational changes that will eliminate the Rate Covenant Shortfall as described above, then MDTA shall promptly implement such changes so that, within 12 months of the determination that a Rate Covenant Shortfall exists, the Rate Covenant Shortfall for each of the subsequent 12 months is eliminated; or
- (b) if it is determined by MDTA that there are not administrative or operational changes that will eliminate the Rate Covenant Shortfall as described above, then MDTA shall notify MDOT. Following receipt of such notice MDOT shall either:

- (i) instruct MDTA to take no further action on the basis that MDOT elects to make supplemental payments at the time of the projected shortfall so that, if such supplemental payments were included as additional P3 Program Revenues in the calculation of Rate Covenant Shortfall then no shortfall would exist (such amounts may be funded from the Upfront Payment Account, excess funds in the Operating Reserve Account, the Transportation Trust Fund or any other source that MDOT may elect); or
- (ii) instruct MDTA to commence the process set forth in the paragraph below.

MDTA shall, within three months of receipt of an instruction from MDOT pursuant to paragraph (ii) above (or such longer period as may be necessary to comply with any applicable law), present to the MDTA Board for consideration a toll proposal to commence the toll rate setting process as set forth in §4-312 of the Enabling Legislation. The toll proposal shall include changes necessary to fix, revise, charge, and collect the tolls, fees or other charges in the P3 Program so that, within 12 months of the commencement of actions in accordance with this paragraph (b), the Rate Covenant Shortfall for each of the subsequent 24 months is eliminated. MDTA shall promptly implement any changes that may be approved by the MDTA Board.

Nothing in this Article 5 shall require MDTA to (i) take any action which is not in accordance with applicable law, rule, and regulation; or (ii) take any action that would constitute a Compensation Event (as defined in the applicable P3 Program Section P3 Agreement) or could lead to the Section Developer having a claim under the applicable P3 Program Section P3 Agreement.

As used herein, "Rate Covenant Shortfall" means, for any month:

- (a) all amounts projected to be payable from the Operating Reserve Account to all Section Developers across all P3 Program Sections during such month and all principal and interest that shall be due and payable during such month to all Noteholders under any P3 Program Notes issued pursuant to each Supplemental Trust Agreement as calculated by MDTA; minus
- (b) the projected P3 Program Revenues with respect to such month less projected MDTA P3 Program Costs with respect to such month,

provided that only P3 Program Sections that have been in operation for at least 24 months following substantial completion of such P3 Program Sections shall be included in such calculation; provided further, if the Rate Covenant Shortfall for any month is less than zero it shall be deemed to be zero for such month. A Rate Covenant Shortfall shall be deemed to have "occurred" in any month if the projected Rate Covenant Shortfall amount is greater than zero. Projections for (i) and (ii) of this definition shall use the current best estimate of toll revenues and prior twelve-month historical observations for establishing assumptions of the distribution of payment method, vehicle classification and in-state vs. out-of-state vehicles. Reasonable adjustments shall be made to these assumptions to account for changes in collections.

### 6. **CONCERNING THE TRUSTEE**

### 6.1 **Appointment of Trustee.**

The Trustee accepts and agrees to its appointment as Trustee on behalf of the Noteholders and Section Developers party to any Supplemental Trust Agreement.

## 6.2 **Acceptance of Trusts.**

The Trustee accepts and agrees to execute the trusts imposed upon it by this Trust Agreement and any Supplemental Trust Agreement, but only upon the terms and conditions set forth in this Article 6 and subject to the provisions of this Trust Agreement and any Supplemental Trust Agreement, to all of which the parties thereto and, with respect to any Supplemental Trust Agreement, the respective owners of the P3 Program Notes agree. The acceptance by the Trustee of the trusts imposed upon it by this Trust Agreement and any Supplemental Trust Agreement and its agreement to perform said trusts are subject to the express terms and conditions of each agreement, and no implied covenants or obligations shall be read into this Trust Agreement and any Supplemental Trust Agreement against the Trustee.

The Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Trust Agreement and any Supplemental Trust Agreement. The permissive rights of the Trustee hereunder and under any Supplemental Trust Agreement shall not be construed as duties.

#### 6.3 Indemnification of Trustee.

The Trustee shall be under no obligation to institute any suit, or to take any remedial proceeding under this Trust Agreement or any Supplemental Trust Agreement, or to enter any appearance or in any way defend in any suit in which it may be made defendant, or to take any steps in the execution of the trusts hereby created or in the enforcement of any rights and powers under this Trust Agreement or any Supplemental Trust Agreement, until it shall be indemnified to its satisfaction against any and all costs and expenses, outlays, and counsel fees and other reasonable disbursements, and against all liability. The Trustee may, nevertheless, begin suit, or appear in and defend suit, or do anything else in its judgment proper to be done by it as such Trustee, without indemnity, and in such case MDTA shall reimburse the Trustee from the P3 Program Revenues for all costs and expenses, outlays, and counsel fees and other reasonable disbursements properly incurred in connection therewith. If MDTA shall fail to make such reimbursement, the Trustee may reimburse itself from any moneys in its possession under the provisions of this Trust Agreement and any Supplemental Trust Agreement and shall be entitled to a preference therefor over any of the P3 Program Notes outstanding under any Supplemental Trust Agreement. This provision shall survive the termination of this Trust Agreement and any Supplemental Trust Agreement.

## 6.4 Limitation on Responsibilities of Trustee.

The Trustee shall be under no obligation to effect or maintain insurance or to renew any policies of insurance or to inquire as to the sufficiency of any policies of insurance maintained by MDTA, or to report, or make or file claims or proof of loss for, any loss or damage insured against or which may occur, or to keep itself informed or advised as to the payment of any taxes or assessments, or to require any such payment to be made. The Trustee shall have no responsibility in respect of the validity, sufficiency, due execution, or acknowledgment of this Trust Agreement, or, except as to the authentication thereof, in respect of the validity of the P3 Program Notes or the due execution or issuance thereof. The Trustee shall be under no obligation to see that any duties herein imposed upon MDTA, the Paying Agents, any Depositary, or any party other than itself, or any covenants herein contained on the part of any party other than itself to be performed, shall be done or performed, and the Trustee shall be under no obligation for failure to see that any such duties or covenants are so done or performed. In connection with the performance of its duties hereunder, the Trustee, including its officers, directors, employees and agents, shall not be liable for any action taken or omitted under this Trust Agreement and any Supplemental Trust Agreement so long as it shall have acted without negligence or willful misconduct.

## 6.5 Trustee Not Liable for Failure of MDTA to Act.

The Trustee shall not be liable or responsible because of the failure of MDTA or of any of its employees or agents to make any collections or deposits or to perform any act herein required of MDTA or because of the loss of any moneys arising through the insolvency or the act or default or omission of any Depositary in which such moneys shall have been deposited under the provisions of this Trust Agreement or any Supplemental Trust Agreement. The Trustee shall not be responsible for the application of any of the proceeds of the P3 Program Notes or any other moneys deposited with it and paid out, withdrawn, or transferred hereunder if such application, payment, withdrawal, or transfer shall be made in accordance with the provisions of this Trust Agreement or any Supplemental Trust Agreement. The immunities and exemptions from liability of the Trustee hereunder shall extend to its directors, officers, employees, and agents.

## 6.6 **Compensation of Trustee.**

Subject to the provisions of any applicable contract relating to compensation between MDTA and the Trustee, MDTA shall, from the P3 Program Revenues, the Note Proceeds Account (under (and as defined in) the applicable Supplemental Trust Agreement), or from other available sources, pay to the Trustee reasonable compensation for all services performed by it hereunder and also all its reasonable expenses, charges, and other disbursements and those of its attorneys, agents, and employees incurred in and about the administration and execution of the trusts hereby created and the performance of its powers and duties hereunder, and, from such P3 Program Revenues only, shall indemnify and save the Trustee harmless against any liabilities that it may incur in the exercise and performance of its powers and duties hereunder, except for liabilities arising out of the negligence or willful misconduct of the Trustee. If MDTA shall fail to make any payment required by this Section 6.6, the Trustee may make such payment from any moneys in its possession under the provisions of this Trust Agreement and any Supplemental Trust Agreement and shall be entitled to a preference therefor over any of the P3 Program Notes outstanding. At no time shall the Trustee have to risk or expend its own funds during the course of performing its duties, or in the exercise of any of its rights or powers hereunder or under any Supplemental Trust Agreement. This Section 6.6 shall survive the termination of this Trust Agreement and any Supplemental Trust Agreement.

### 6.7 **Periodic Statements.**

It shall be the duty of the Trustee, semi-annually on each January 1 and July 1, or if requested by MDTA, monthly on or before the 25th of each month, to file with MDTA a statement setting forth in respect of the preceding calendar period:

- (a) the amount withdrawn or transferred by it and the amount deposited with it on account of each account and subaccount held by it under the provisions of this Trust Agreement and any Supplemental Trust Agreement;
- (b) the amount on deposit with it at the end of such period to the credit of each such account and subaccount;
- (c) the amount applied to the purchase or redemption of P3 Program Notes under the provisions of any Supplemental Trust Agreement and a description of the P3 Program Notes or portions thereof so purchased or redeemed; and
- (d) any other information that MDTA may reasonably request.

Upon request of MDTA, the Trustee shall file with MDTA a brief description of all obligations held by it as an investment of moneys in each such account and subaccount.

All records and files pertaining to the P3 Program in the custody of the Trustee shall be open at all reasonable times to the inspection of MDTA and its agents and representatives.

## 6.8 Trustee May Rely on Certificates.

In case at any time it shall be necessary or desirable for the Trustee to make any investigation respecting any fact preparatory to taking or not taking any action or doing or not doing anything as such Trustee, and in any case in which this Trust Agreement or any Supplemental Trust Agreement provides for permitting or taking any action, the Trustee may rely conclusively upon any certificate, requisition, opinion, or other instrument required or permitted to be filed with it under the provisions of this Trust Agreement or any Supplemental Trust Agreement, and any such instrument shall be conclusive evidence of such fact to protect the Trustee in any action that it may or may not take or in respect of anything it may or may not do, in good faith, by reason of the supposed existence of such fact. Except as otherwise provided in this Trust Agreement or any Supplemental Trust Agreement, any request, notice, certificate, or other instrument from MDTA to the Trustee shall be deemed to have been signed by the proper party or parties if signed by an MDTA Representative, and the Trustee may accept and rely upon a certificate signed by the Director as to any action taken by MDTA.

## 6.9 Trustee May Act through Agents.

The Trustee may execute any of the trusts or powers conferred upon it in this Trust Agreement and any Supplemental Trust Agreement and perform any of its duties hereunder by or through attorneys, agents or employees and shall not be responsible for the misconduct or negligence of agents or attorneys appointed with due care.

## 6.10 Trustee May Deal in P3 Program Notes.

The bank or trust company acting as Trustee under this Trust Agreement, and its directors, officers, employees, or agents, may in good faith, and subject to the transfer provisions of any Supplemental Trust Agreement, buy, sell, own, hold, and deal in any of the P3 Program Notes and may join in any action that any Noteholder may be entitled to take with like effect as if such bank or trust company were not the Trustee or a Depositary under this Trust Agreement.

### 6.11 Trustee Not Responsible for Recitals.

The recitals, statements, and representations contained herein, in any offering document, and in the P3 Program Notes shall be taken and construed as made by and on the part of MDTA and not by the Trustee, and the Trustee assumes and shall be under no responsibility for the correctness of the same.

### 6.12 Reliance on Certain Documents.

The Trustee shall be protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in good faith, reasonably and in accordance with the terms of this Trust Agreement and any Supplemental Trust Agreement, upon any resolution, order, notice, request, consent, waiver, certificate, statement, affidavit, requisition, bond, note, or other paper or document which it shall in good faith reasonably believe to be genuine and to have been adopted or signed by the proper board or person or to have been prepared and furnished pursuant to any of the provisions of this Trust Agreement and any Supplemental Trust Agreement, or upon the written opinion of any attorney, engineer, or accountant believed by the Trustee to be qualified in relation to the subject matter, and the Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument. The Trustee shall not be under any obligation to see to the recording

or filing of this Trust Agreement or otherwise to the giving to any person of notice of the provisions hereof.

## 6.13 **Resignation of Trustee.**

The Trustee may resign and thereby become discharged from the trusts hereby created, by notice in writing given to MDTA and the owners of outstanding P3 Program Notes, not less than 60 days before such resignation is to take effect, and such resignation shall take effect upon the appointment of a successor Trustee hereunder and the acceptance by such successor Trustee of the trusts hereof.

#### 6.14 Removal of Trustee.

The Trustee may be removed upon 30 days' notice at any time by MDTA by an instrument in writing executed by the Director. A facsimile copy or email copy of each such instrument shall be delivered promptly by MDTA to the Trustee. The Trustee may also be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provision of this Trust Agreement or any Supplemental Trust Agreement with respect to the duties and obligations of the Trustee by any court of competent jurisdiction upon the application of MDTA. Notwithstanding any provision of this Trust Agreement or any Supplemental Trust Agreement to the contrary, no removal of the Trustee shall be effective until a successor has been appointed and has accepted the duties of Trustee.

### 6.15 **Successor Trustee.**

Every successor Trustee appointed hereunder shall execute, acknowledge, and deliver to its predecessor, and also to MDTA, an instrument in writing accepting such appointment hereunder, and thereupon such successor Trustee, without any further act, shall become fully vested with all the rights, immunities, powers, and trusts and subject to all the duties and obligations, of its predecessor; but such predecessor shall, nevertheless, on the written request of its successor or of MDTA, execute and deliver an instrument transferring to such successor Trustee all the rights, immunities, powers, and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all property and moneys held by it hereunder to its successor. Should any instrument in writing from MDTA be required by any successor Trustee for more fully and certainly vesting in such Trustee the rights, immunities, powers, and trusts hereby vested or intended to be vested in the predecessor Trustee, any such instrument in writing shall and will, on request be executed, acknowledged, and delivered by MDTA.

Notwithstanding any of the foregoing provisions of this Section 6.15, any bank or trust company having power to perform the duties and execute the trusts of this Trust Agreement and each Supplemental Trust Agreement, and otherwise qualified to act as Trustee hereunder with or into which the bank or trust company acting as Trustee may be merged or consolidated, or to which the assets and business of such bank or trust company may be sold, shall be deemed the successor of the Trustee.

## 6.16 **Appointment of Depositaries.**

MDTA may at any time and from time to time appoint one or more Depositaries to hold any one or more of the accounts established pursuant to this Trust Agreement or any Supplemental Trust Agreement. Such Depositary or Depositaries shall perform at the direction of MDTA the duties of MDTA in depositing, transferring, and disbursing moneys to and from each of such accounts as set forth in this Trust Agreement, and all records of such Depositary in performing such duties shall be open at all reasonable times to inspection by the Trustee, MDTA, and their agents and employees. Any such Depositary shall be a bank or trust company duly authorized

to exercise corporate trust powers and subject to examination by federal or state authority, of good standing, and having a combined capital, surplus, and undivided profits aggregating not less than \$100,000,000. In the event any Depositary is appointed by MDTA, the provisions of Sections 6.2, 6.6, 6.7, 6.8, 6.10, 6.13, 6.14 and 6.17 shall apply to such Depositary as if such Depositary were the Trustee, and the Trustee shall not be liable or responsible for the failure of such Depositary to act or for the insolvency of or any omission by such Depositary, as provided in Section 6.5. Any Depositary may resign at any time after 60 Business Days' prior written notice to MDTA and the Trustee. MDTA shall notify the Trustee promptly after the appointment of any Depositary.

## 6.17 **Appointment of Successor Trustee.**

If at any time the Trustee shall resign, be removed, be dissolved, or otherwise become incapable of acting, or the bank or trust company acting as Trustee shall be taken over by any governmental official, agency, department, or board, the position of Trustee shall thereupon become vacant. If the position of Trustee shall become vacant for any of the foregoing reasons or for any other reason, MDTA shall appoint a Trustee to fill such vacancy. MDTA shall cause notice of any such appointment to be mailed to all owners of the P3 Program Notes.

If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section 6.17 within 10 days after the vacancy shall have occurred, the owner of any outstanding P3 Program Note or any retiring Trustee may apply to any court of competent jurisdiction within the State to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

Any successor Trustee shall be a bank or trust company duly authorized to exercise corporate trust powers and subject to examination by federal or state authority, of good standing, and having a combined capital and surplus aggregating not less than \$100,000,000.

### 7. SUPPLEMENTAL TRUST AGREEMENTS

## 7.1 **Supplemental Trust Agreements.**

MDTA and the Trustee may enter into Supplemental Trust Agreements from time to time for the purpose of:

- (a) providing for the issuance of P3 Program Notes related to each P3 Program Section; and
- (b) providing for such other related matters as may be required or contemplated by or appropriate under this Trust Agreement as determined by (i) a Certificate of Determination executed by MDTA, and (ii) an Opinion of Bond Counsel addressed to the Trustee stating that such Supplemental Trust Agreement is authorized or permitted by this Trust Agreement and complies with its terms, and that upon execution it will be valid and binding upon MDTA in accordance with its terms, each delivered to the Trustee as a condition precedent to executing any Supplemental Trust Agreement.

Each P3 Program Section will have a separate Supplemental Trust Agreement which will provide the terms for the P3 Program Notes related to such P3 Program Section. Each Supplemental Trust Agreement shall be based on the form attached at Schedule 2 (*Form of I-495 & I-270 Public-Private Partnership Program Supplemental Trust Agreement*) as may be amended by agreement among MDTA, the Trustee, the relevant Noteholder, and the relevant Section Developer.

No P3 Program Notes are being issued under this Trust Agreement.

## 7.2 Supplemental Trust Agreements Part of this Trust Agreement.

The Trustee is authorized to join with MDTA in the execution of any Supplemental Trust Agreement and to make the further agreements and stipulations that may be contained therein. Any Supplemental Trust Agreement executed in accordance with the provisions of this Article 7 shall thereafter form a part of this Trust Agreement, and all of the terms and conditions contained in any such Supplemental Trust Agreement as to any provision authorized to be contained therein shall be and shall be deemed to be part of the terms and conditions of this Trust Agreement for any and all purposes. In case of the execution and delivery of any Supplemental Trust Agreement, express reference may be made thereto in the text of any P3 Program Notes issued thereafter, if deemed necessary or desirable by the Trustee.

## 7.3 **Responsibility of Trustee.**

In each and every case provided for in this Article 7, the Trustee shall be entitled to exercise its discretion in determining whether or not any proposed Supplemental Trust Agreement, or any term or provision therein contained, is desirable, having in view the purposes of such instrument, the needs of MDTA, the rights and interests of the Noteholders and Section Developers, and the rights, obligations, and interests of the Trustee, and the Trustee shall not be under any responsibility or liability to MDTA, to any Noteholder, to any Section Developer, or to anyone whomsoever for entering into any Supplemental Trust Agreement in good faith if such agreement is deemed authorized under the provisions of this Article 7. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion or advice of any counsel approved by it, who may be counsel for MDTA, as evidence that any proposed Supplemental Trust Agreement does or does not comply with the provisions of this Trust Agreement, and that it is or is not proper for the Trustee, under the provisions of this Article 7, to join in the execution of such Supplemental Trust Agreement.

## 8. **MISCELLANEOUS**

#### 8.1 Successorship of MDTA.

MDTA may transfer and assign all or any portion of its rights, title, and interests in and to this Trust Agreement and each Supplemental Trust Agreement:

- (a) upon 10 days' prior notice to the Trustee and each Section Developer, but without the consent of the Trustee or any Section Developer, to any Governmental Entity that succeeds to the governmental powers and authority of MDTA; or
- (b) to any other Governmental Entity with the Trustee and each Section Developer's prior written consent.

In the event of the dissolution of MDTA, all of the covenants, stipulations, obligations, and agreements contained in this Trust Agreement by or on behalf of or for the benefit of MDTA shall bind or inure to the benefit of the successor or successors of MDTA from time to time and any officer, board, commission, authority, agency, or instrumentality to whom or to which any power or duty affecting such covenants, stipulations, obligations, and agreements shall be transferred by or in accordance with law, and the word "MDTA" as used in this Trust Agreement shall include such successor or successors.

#### 8.2 Successorship of Paying Agents or Depositaries.

Any bank or trust company with or into which any Paying Agent or Depositary may be merged or consolidated, or to which the assets and business of such Paying Agent or Depositary may

be sold, shall be deemed the successor of such Paying Agent or Depositary for the purposes of this Trust Agreement. If the position of any Paying Agent shall become vacant for any reason, MDTA shall, within 30 days thereafter, appoint a bank or trust company in the same city as Paying Agent to fill such vacancy; provided, however, that if MDTA shall fail to appoint such Paying Agent within such period, the Trustee shall make such appointment.

## 8.3 **Manner of Giving Notice.**

- (a) Any notice, demand, direction, request, or other instrument authorized or required by this Trust Agreement to be given to or filed with MDTA or the Trustee shall be deemed to have been sufficiently given or filed for all purposes of this Trust Agreement if and when sent by (i) personal delivery, (ii) certified mail, (iii) recognized overnight mail, (iv) Electronic Means followed by hard copy, or (v) registered mail, return receipt requested.
- (b) Notices under Section 8.3(a) must be sent to the following addresses (or to such other address as may from time to time be specified in writing by such Person):
  - if to MDTA, addressed to Maryland Transportation Authority, 2310 Broening Highway, Baltimore, Maryland 21224, Attention: Chief Financial Officer, or at such other address as MDTA shall have specified to the holder of each P3 Program Note in writing;
  - (ii) if to the Trustee, addressed to The Bank of New York Mellon, 385 Rifle Camp Road, Woodland Park, New Jersey 07424, Attention: Municipal Trust Services, Tom Vlahakis, or at such other address as MDTA shall have specified to the holder of each P3 Program Note in writing; or to any successor trustee, if addressed to it at such address as shall be specified by such successor trustee at the time of its appointment; and
  - (iii) if to a Rating Agency, addressed to: (A) Fitch Ratings, 33 Whitehall Street, New York, New York 10004; (B) Moody's Investors Service, Inc., 7 World Trade Center, 250 Greenwich Street, New York, New York 10007; and (C) Standard & Poor's Rating Services, 55 Water Street, 38th Floor, New York, New York, 10041.
- (c) All documents received by the Trustee under the provisions of this Trust Agreement, or copies thereof, shall be retained in its possession until this Trust Agreement shall be released, subject at all reasonable times to the inspection of MDTA, and the agents and representatives thereof.
- (d) The Trustee shall have the right to accept and act upon instructions, including funds transfer instructions in the forms set out in Schedule 1 attached hereto and Appendix 4 to each Supplemental Trust Agreement or in such other form as the Parties may agree (the "Instructions") given pursuant to this Trust Agreement and delivered using Electronic Means; provided, however, that MDTA shall provide to the Trustee an incumbency certificate listing officers with the authority to provide such Instructions (the "Authorized Officers") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by MDTA whenever a person is to be added or deleted from the listing. If MDTA elects to give the Instructions using Electronic Means and the Trustee in its discretion elects to act upon such Instructions, the Trustee's understanding of such Instructions shall be deemed controlling. MDTA understands and agrees that the Trustee cannot determine the identity of the actual sender of such Instructions and that the Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Trustee have been sent by such Authorized Officer. MDTA shall be responsible for

ensuring that only Authorized Officers transmit such Instructions to the Trustee and that MDTA and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by MDTA. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. MDTA agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by MDTA; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

## 8.4 Effect of Partial Invalidity; Severability.

In case any one or more of the provisions of this Trust Agreement is held to be illegal or invalid by any court, such illegality or invalidity shall not affect any other provision of this Trust Agreement, but this Trust Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation, or agreement contained in this Trust Agreement shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation, or agreement shall be deemed to be the covenant, stipulation, obligation, or agreement of MDTA to the full extent permitted by law.

## 8.5 **Redemption.**

As provided pursuant to a Supplemental Trust Agreement, the P3 Program Notes may be redeemable prior to maturity.

## 8.6 **Entire Agreement.**

This Trust Agreement contains the entire understanding of the parties with respect to the subject matter of this Trust Agreement and supersedes all prior agreements, understandings, statements, representations, and negotiations between the Parties with respect to their subject matter.

#### 8.7 **Amendment.**

This Trust Agreement may be amended only with the written consent of MDTA and the Trustee. Before the Trustee shall enter into any amendment pursuant to this paragraph, there shall have been filed with the Trustee an Opinion of Bond Counsel stating that such amendment is authorized or permitted by this Trust Agreement and complies with its terms, and that upon execution it will be valid and binding upon MDTA in accordance with its terms.

## 8.8 Waiver.

(a) No waiver of any obligation, term, condition, or other provision of this Trust Agreement will be valid unless in writing and signed by the waiving party.

- (b) No party's waiver of any breach or failure to enforce any of the obligations, terms, conditions, or other provisions of this Trust Agreement at any time will in any way limit or waive that party's right to subsequently enforce, or compel strict compliance with every obligation, term, condition, or other provision of this Trust Agreement, despite any course of dealing or custom of the trade (other than the waived breach or failure in accordance with the terms of such waiver).
- (c) If the parties make and implement any interpretation of this Trust Agreement without documenting such interpretation by an instrument in writing signed by all parties, such interpretation and implementation will not be binding in the event of any future disputes.

#### 8.9 **Effect of Covenants.**

## (a) General

All covenants, stipulations, obligations, and agreements of MDTA contained in this Trust Agreement shall be deemed to be covenants, stipulations, obligations, and agreements of MDTA and of the State to the full extent authorized by the Enabling Legislation and permitted by the Constitution and laws of the State.

## (b) Governing Law

This Trust Agreement is executed with the intent that the laws of the State shall govern its construction.

## (c) Immunity from Liability of MDTA Members, Etc.

No covenant, stipulation, obligation, or agreement contained herein shall be deemed to be a covenant, stipulation, obligation, or agreement of any present or future member or chairman, officer, employee, or agent of MDTA in his individual capacity, and neither the members of MDTA nor any officer thereof executing the P3 Program Notes shall be liable personally on the P3 Program Notes or be subject to any personal liability or accountability by reason of the issuance thereof. No member, officer, employee, or agent of MDTA shall incur any personal liability in acting or proceeding or in not acting or not proceeding, in good faith, reasonably, and in accordance with the terms of this Trust Agreement and the Enabling Legislation.

## 8.10 Section 4-313 of Enabling Legislation Not Applicable.

As provided in §4-313 of the Enabling Legislation, §4-313 of the Enabling Legislation does not apply to any P3 Program Notes.

## 8.11 Multiple Counterparts.

This Trust Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original, and such counterparts shall constitute but one and the same instrument.

#### 8.12 Other Trust Agreements.

MDTA expressly reserves the right to enter into one or more other trust agreements and to issue bonds, notes, or other obligations thereunder without compliance with the provisions hereof.

#### 8.13 **Business Days.**

Except as otherwise expressly provided herein or in any Supplemental Trust Agreement, if any date specified herein or the payment of any P3 Program Note or the performance of any act shall not be a Business Day, such payment or performance shall be made on the next succeeding Business Day with the same effect as if made on such date.

## 8.14 Jurisdiction and Process; Waiver of Jury Trial.

The Trustee irrevocably submits to the non-exclusive jurisdiction of any State court, over any suit, action, or proceeding arising out of or relating to this Trust Agreement or any Supplemental Trust Agreement to which it is a party. To the fullest extent permitted by applicable law, the Trustee irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such court, any objection that it may now or hereafter have to the laying of the venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

The Trustee agrees, to the fullest extent permitted by applicable law, that a final judgment in any suit, action, or proceeding of the nature referred to in this Section 8.14 brought in any such court shall be conclusive and binding upon it subject to rights of appeal, as the case may be, and may be enforced in the courts of the United States of America or the State (or any other courts to the jurisdiction of which it or any of its assets is or may be subject) by a suit upon such judgment.

The Trustee consents to process being served by or on behalf of MDTA in any suit, action, or proceeding of the nature referred to in this Section 8.14 by mailing a copy thereof by registered, certified, priority, or express mail (or any substantially similar form of mail), postage prepaid, return receipt or delivery confirmation requested, to it at its address specified in Section 8.3(b)(ii) (Manner of Giving Notice) or at such other address of which such holder shall then have been notified pursuant to Section 8.3(b)(ii) (Manner of Giving Notice). The Trustee agrees that such service upon receipt (a) shall be deemed in every respect effective service of process upon it in any such suit, action, or proceeding, and (b) shall, to the fullest extent permitted by applicable law, be taken and held to be valid personal service upon and personal delivery to it. Notices hereunder shall be conclusively presumed received as evidenced by a delivery receipt furnished by the United States Postal Service or any reputable commercial delivery service.

Nothing in this Section 8.14 shall affect the right of MDTA to serve process in any manner permitted by law, or limit any right that MDTA may have to bring proceedings against the Trustee in the courts of any appropriate jurisdiction or to enforce in any lawful manner a judgment obtained in one jurisdiction in any other jurisdiction.

All provisions in this Section 8.14 are subject in their entirety to the provisions of Article 6 (*Concerning the Trustee*).

MDTA HEREBY WAIVES TRIAL BY JURY IN ANY ACTION BROUGHT ON OR WITH RESPECT TO THIS TRUST AGREEMENT OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION HEREWITH OR THEREWITH.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

| (07.11)                                    | MARYLAND TRANSPORTATION AUTHORITY                            |
|--|--|
| (SEAL)                                     |  |
|  | Name:<br>Title: Executive Director                           |
|  | THE BANK OF NEW YORK MELLON, as Trustee                      |
| (SEAL)                                     |  |
|  | Name:<br>Title:  |
| ATTEST:                                    |  |
|  |  |
| Name:<br>Title:                            |  |
| Approved as to form and legal sufficiency: |  |
|  | Assistant Attorney General Maryland Transportation Authority |

IN WITNESS WHEREOF, the parties have executed this Master Trust Agreement as of the date set forth

above.

## **SCHEDULE 1**

## TRUSTEE INSTRUCTIONS

[LETTER OF CREDIT DRAW CERTIFICATE]

| [Trustee]         |   |   |
|-------------------|---|---|
| Ladies and Ger    | ntlemen:  |   |
| is being submit   | tted pursuant to Section [3.2]                        | on Authority ("MDTA"), this Letter of Credit Draw Certificate $^1[3.4]^2$ of that certain Master Trust Agreement, dated as of ew York Mellon, as trustee (the "Trustee"). |
| MDTA requests     | s the Trustee make the followi                        | ng draw and deposit:  |
|                   | ustee shall make a draw on the nount of $\{[ullet]$ . | he [Identify letter of credit being drawn] letter of credit in  |
| 2. The fur made]. |   | d into the [details of account into which payment should be   |
| Date of Transfe   | er:   |   |
| (SEAL)            |   | MARYLAND TRANSPORTATION AUTHORITY   |
|                   |   | Name:   |
|                   |   | Title:  |
|                   |   |   |
|                   |   |   |
|                   |   |   |

<sup>&</sup>lt;sup>1</sup> **NTD**: To be included if a draw is being made on a letter of credit provided by a phase developer or section developer.

 $<sup>^{2}</sup>$  **NTD**: To be included if a draw is being made on a letter of credit provided by MDOT.

## [FORM OF UPFRONT PAYMENT ACCOUNT FUNDS TRANSFER CERTIFICATE]

[Trustee]

| Ladies and Gentlemen:                                   |   |
|---|---|
| Funds Transfer Certificate is being submitted pur       | Authority ("MDTA"), this Upfront Payment Account resuant to Section [3.2] of that certain Master Trust a and The Bank of New York Mellon, as trustee (the |
| MDTA requests the Trustee make the following w Account: | ithdrawals and payments from the Upfront Payment  |
| 1. the amount of $\$[ullet]$ to [state name of payo     | ee] to [bank account details].  |
|   |   |
| Date of Transfer:                                       |   |
|   |   |
|   | MARYLAND TRANSPORTATION AUTHORITY   |
| (SEAL)  |   |
|   |   |
|   | Name:   |
|   | Title:  |
|   |   |

#### [FORM OF OPERATING RESERVE ACCOUNT FUNDS TRANSFER CERTIFICATE]

| _ |  |    |  | _ |
|---|--|----|--|---|
|   |  | IS |  |   |
|   |  |    |  |   |
|   |  |    |  |   |

Ladies and Gentlemen:

On behalf of the Maryland Transportation Authority ("MDTA"), this Operating Reserve Account Funds Transfer Certificate is being submitted pursuant to Section [3.4] of that certain Master Trust Agreement, dated as of [•], 2021 between MDTA and The Bank of New York Mellon, as trustee (the "Trustee").

MDTA requests the Trustee make the following withdrawals and payments from the Operating Reserve Account:

- 1. To the Trustee, the amount of \$[ ]3.
- 2. [To [each of the following:]
  - a. [Section Developer under I-495 & I-270 Public-Private Partnership Program Supplemental Trust Agreement for Section [ ]], the amount of \$[ ]<sup>4</sup> into the following bank account [insert bank details].<sup>5</sup>]
- 3. [To Maryland Department of Transportation, the amount of \$[ ] into the following bank account [insert bank details].]<sup>6</sup>

| Date of Transfer: |                                   |
|-------------------|-----------------------------------|
|                   | MARYLAND TRANSPORTATION AUTHORITY |
| (SEAL)            |                                   |
|                   |                                   |
|                   | Name:                             |
|                   | Title:                            |
|                   |                                   |

<sup>&</sup>lt;sup>3</sup> **NTD**: This amount should be equal to all fees and other amounts due to the Trustee.

<sup>&</sup>lt;sup>4</sup> **NTD**: This should be equal to the Section Developer Toll Payment due to the relevant Section Developer on the applicable Section Toll Payment Date.

<sup>&</sup>lt;sup>5</sup> **NTD**: To be repeated as necessary.

<sup>&</sup>lt;sup>6</sup> **NTD**: To be included as necessary for payment of excess funds in the Operating Reserve Account to MDOT. Delete if not applicable.

## **SCHEDULE 2**

# FORM OF I-495 & I-270 PUBLIC-PRIVATE PARTNERSHIP PROGRAM SUPPLEMENTAL TRUST AGREEMENT

[Attached.]

# I-495 & I-270 PUBLIC-PRIVATE PARTNERSHIP PROGRAM SUPPLEMENTAL TRUST AGREEMENT FOR SECTION [●]

by and between

## MARYLAND TRANSPORTATION AUTHORITY

and

THE BANK OF NEW YORK MELLON,

as Trustee

and

[SECTION NOTEHOLDER],

as Section Noteholder

and

[SECTION DEVELOPER],

as Section Developer

Dated as of \_\_\_\_\_, \_\_\_\_

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THIS SUPPLEMENTAL TRUST AGREEMENT (this "Supplemental Trust Agreement") is made on ● 202●

#### AMONG:

- (1) MARYLAND TRANSPORTATION AUTHORITY, an agency of the State ("MDTA");
- (2) THE BANK OF NEW YORK MELLON, as trustee (the "Trustee");
- (3) **[Section Noteholder]**, as purchaser (the "**Section Noteholder**") and as section developer (the "**Section Developer**").

#### **RECITALS**

- (A) WHEREAS, MDTA is authorized pursuant to the Enabling Legislation, to issue revenue bonds, notes, and other evidences of obligation for the purpose of financing and refinancing all or any part of the costs of Transportation Facilities Projects (as defined in the Enabling Legislation) and to secure such revenue bonds and notes by a trust agreement, which may pledge and assign all or any part of the revenues of any Transportation Facilities Project to secure such revenue bonds and notes; and
- (B) WHEREAS, pursuant to the Enabling Legislation, MDTA entered into that certain Master Trust Agreement, dated as of [●], 2021, with the Trustee (the "Master Trust Agreement"); and
- (C) WHEREAS, for the purpose of providing funds, with other available funds, to pay a portion of the costs of that certain section [●] (the "Section") of the P3 Program, MDTA has determined to issue notes in the aggregate principal amount of \$[●], dated as of [●] (the "Section Notes"); and
- (D) WHEREAS, by resolutions adopted by MDTA on [●], MDTA has authorized the issuance of the Section Notes; and
- (E) WHEREAS, neither the State nor any political subdivision of the State, MDOT, nor MDTA shall be obligated to pay the Section Notes or the interest thereon except as provided for in the Master Trust Agreement or this Supplemental Trust Agreement; and neither the faith and credit nor the taxing power of the State, any political subdivision of the State, MDOT, or MDTA is pledged to the payment of the Section Notes or the interest thereon; and the issuance of the Section Notes shall not directly or indirectly or contingently obligate the State, MDOT, MDTA or any political subdivision of the State to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. MDTA and MDOT have no taxing powers; and
- (F) WHEREAS, all things necessary to make the Section Notes, when authenticated by the Trustee and issued in accordance with this Supplemental Trust Agreement, the legal, valid, and binding obligations of MDTA according to the import thereof, and to constitute this Supplemental Trust Agreement a valid assignment and pledge of the Section [●] Toll Revenues, have been done and performed, and the creation, execution, and delivery of this Supplemental Trust Agreement, and the creation, execution, and issuance of the Section Notes, subject to the terms hereof, have in all respects been duly authorized.

## 1. GRANTING CLAUSES

MDTA, in consideration of the promises, of the acceptance by the Trustee of the trusts hereby created, and of the purchase and acceptance of the Section Notes by the owners thereof, and for other good and valuable consideration, the receipt and sufficiency of which is hereby

acknowledged, in order to secure the payment of the principal and interest on, and the purchase price of, the Section Notes according to their tenor and effect, the payment of the Section Developer Toll Payment, and the performance and observance by MDTA of all the covenants expressed or implied herein and in the Section Notes, for the equal and ratable benefit of the holders thereof and their respective successors and assigns, forever, subject only to the provisions of this Supplemental Trust Agreement permitting the application thereof on the terms and conditions set forth in this Supplemental Trust Agreement, does hereby grant, bargain, sell, convey, assign, and pledge to the Trustee, and unto its respective successors in trust and assigns forever, and grant to the Trustee, and unto its respective successors in trust and assigns forever, for the benefit of the Section Noteholder and Section Developer, a security interest in, all of the right, title, and interest of MDTA in and to the Section [•] Toll Revenues (the "**Trust Estate**");

**TO HAVE AND TO HOLD** all and singular the Trust Estate, whether now owned or hereafter acquired, unto the Trustee and its successors in trust and assigns forever upon the terms and trusts herein set forth for the equal and ratable benefit, security, and protection of all Section Developers and all present and future holders of the Section Notes, without privilege, priority, or distinction as to the lien or otherwise of any Section Note over any other Section Note or any Section Developer over any Section Noteholder (or any Section Noteholder over any Section Developer), except as otherwise expressly provided herein;

**PROVIDED, HOWEVER**, that, if MDTA shall well and truly pay, or cause to be paid, the Section Developer Toll Payment and the principal and interest on, and the purchase price of, the Section Notes, according to the true intent and meaning thereof, and shall perform and observe all the covenants and conditions of this Supplemental Trust Agreement and the Section Notes to be performed and observed by it, and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then the lien of this Supplemental Trust Agreement shall be discharged and satisfied and shall be null and void; otherwise, this Supplemental Trust Agreement is to be and remain in full force and effect. All covenants, stipulations, promises, agreements, and obligations of MDTA set forth herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of MDTA and not of any member, officer, employee of MDTA in his or her individual capacity, or chairman and no recourse shall be had for the prepayment or redemption price, if any, of principal or interest on the Section Notes or for any claim based thereon or hereunder against any member, officer, employee of MDTA, chairman or any person executing the Section Notes in his or her individual capacity.

**NOW, THEREFORE, WITNESSETH** that all Section Notes secured hereunder are to be issued, authenticated, and delivered, and all such property, rights, and interests, including, without limitation, the amounts hereby assigned and pledged, are to be dealt with and disposed of under, upon, and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses, and purposes as hereinafter expressed, and MDTA has agreed and covenanted, and does hereby agree and covenant with the Trustee, the Section Developer and the holders of the Section Notes as follows:

## 2. **DEFINITIONS AND RULES OF CONSTRUCTION**

#### 2.1 **Definitions.**

Terms used in this Supplemental Trust Agreement and not defined herein shall have the respective meanings given such terms in the Master Trust Agreement. In addition to the terms defined elsewhere herein, as used in the Master Trust Agreement and this Supplemental Trust Agreement, unless a different meaning is clearly intended from the context, the following terms shall have the meanings indicated below:

"**Accredited Investor**" is defined in Section 7(a) (*Representations and Warranties of the Section Noteholder*).

"Amortization Schedule" is defined in Section 10.2 (Required Prepayments).

"Closing" is defined in Section 4.2 (*Closing*).

"**Cost**" as applied to any Transportation Facilities Project financed under the provisions of this Supplemental Trust Agreement or any Improvements, shall include, without intending thereby to limit or restrict any proper definition of such word under the provisions of the Enabling Legislation, the cost of construction or acquisition and all obligations and expenses and all items of cost that are set forth in Section 3.1(b) (*Items of Cost*).

"**Designated Office**" when used with respect to the Trustee means the office of the Trustee set forth in or pursuant to Section [8.3(b)(ii)] (*Manner of Giving Notice*) of the Master Trust Agreement.

"Developer Transaction Fee" is defined in the Tolling Services Agreement.

"**Disclosure Documentation**" [means any disclosure documentation provided by MDTA as required by applicable law].<sup>1</sup>

"Financial Close" is defined in the Section P3 Agreement.

"**Improvements**" means any additions, betterments, improvements, and enlargements to any Section.

"Lender" is defined in the Section P3 Agreement.

"Master Trust Agreement" is defined in the Recitals.

"Maturity Date" is defined in Section 10.1 (Maturity and Optional Redemption).

"MDTA" is defined in the opening paragraph.

"Outstanding" or "outstanding," when used with respect to Section Notes means all Section Notes that have been authenticated and delivered by the Trustee under this Supplemental Trust Agreement, except:

- (a) Section Notes paid or redeemed or delivered to or acquired by the Trustee for cancellation;
- (b) Section Notes for which the Trustee or any Depositary or Paying Agent shall hold sufficient moneys or Government Obligations the principal of and the interest on which, when due and payable, will provide sufficient moneys to pay the principal of, and the interest on such Section Notes to their Maturity Date or dates, or dates fixed with respect to the Amortization Schedule, as demonstrated by a written report prepared by a firm of independent certified public accountants; and
- (c) Section Notes in exchange for or in lieu of which other Section Notes have been authenticated and delivered under this Supplemental Trust Agreement; provided, however, that in determining whether the owners of the requisite principal amount of

<sup>&</sup>lt;sup>1</sup> **NTD**: These documents will be specified prior to closing.

outstanding Section Notes have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Section Notes owned by MDTA or any other obligor upon the Section Notes shall be disregarded and deemed not to be outstanding, except that in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Section Notes that the Trustee knows to be so owned shall be so disregarded. Section Notes so owned that have been pledged in good faith may be regarded as outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Section Notes and the pledgee is not MDTA or any other obligor upon the Section Notes.

"Participant" when used with respect to any Securities Depository, means any participant of such Securities Depository.

"Priced Managed Lanes" is defined in the Section P3 Agreement.

"Qualified Institutional Buyer" is defined in Section 7(a) (Representations and Warranties of the Section Noteholder).

"**Redemption Price**" means, with respect to any Section Note or a portion thereof, the principal amount of the Section Note or portion thereof plus the applicable premium, if any, payable upon redemption thereof in accordance with its terms.

"**Regulation D**" is defined in Section 7(a) (*Representations and Warranties of the Section Noteholder*).

"Section" is defined in the Recitals.

"Section [●] Toll Revenues" means all revenues collected from Users of Priced Managed Lanes in the Section with respect to the Priced Managed Lanes in the Section, including all payments of tolls received via *E-ZPass*® or other types of Transponders, all payments of tolls received via any means other than Transponders, all video toll premiums, account service charges, late fees, penalties or other amounts arising out of or relating to the payment of tolls by Users of the Priced Managed Lanes in the Section.

"Section Debt Service Payment Account" is defined in Section 6.1(b) (Section Debt Service Payment Account).

"Section Developer" is defined in the opening paragraph.

"Section Developer Toll Payment" means, on any Section Toll Payment Date, an amount equal to:

- (a) the aggregate of all Trip Tolls (as defined and calculated in accordance with the Tolling Services Agreement) with respect to each Valid Trip (as defined in the Tolling Services Agreement) submitted to MDTA during the previous calendar month; *less*
- (b) the Developer Transaction Fee charged by MDTA for each Trip submitted to MDTA in accordance with the Tolling Services Agreement; *less*
- (c) the scheduled Section Notes P&I Payment due on such date; less
- (d) any amounts that MDTA is permitted to claw-back under Section [●] (*Clawback*) of the Tolling Services Agreement; *less*

(e) any other amounts due from the Section Developer to MDOT or MDTA, including amounts due under the Section P3 Agreement or Tolling Services Agreement,

provided that if the Section Developer Toll Payment for any month is less than zero it shall be deemed to be zero for such month.

"Section Note Proceeds Account" is defined in Section 6.1(a) (Section Note Proceeds Account).

"Section Noteholder" is defined in the opening paragraph.

"Section Notes" is defined in the Recitals.

"Section Notes P&I Payment" is defined in Section 6.2 (*Payments to the Section Noteholder*).

"Section P3 Agreement" means the Section P3 Agreement for the Section dated as of [●] among MDTA, MDOT, and the Section Developer.

"Section Toll Payment Date" means the 20th of each calendar month (or if such day is not a Business Day, on the following Business Day).

"Securities Act" is defined in Section 7(a) (Representations and Warranties of the Section Noteholder).

"Securities Depository" means [●], a [●] organized and existing under the laws of the State of [●], and any other securities depository for the Section Notes appointed pursuant to Section 12.2 (Book-Entry System), and their successors.

"Substantial Completion" is defined in the Section P3 Agreement.

"Substantial Completion Date" is defined in the Section P3 Agreement.

"Supplemental Trust Agreement" is defined in the opening paragraph.

"**Tolling Services Agreement**" means the Tolling Services Agreement for the Section, dated as of  $[\bullet]$ , between MDTA and the Section Developer.

"Transponders" is defined in the Tolling Services Agreement.

"Trip Toll" is defined in the Tolling Services Agreement.

"Trust Estate" is defined in Article 1 (Granting Clauses).

"Trustee" is defined in the opening paragraph.

"Users" is defined in the Tolling Services Agreement.

#### 2.2 Rules of Construction.

This Supplemental Trust Agreement shall be construed in accordance with the rules of construction provided in Section [1.2] (*Rules of Construction*) of the Master Trust Agreement, except for the following rules or if the context clearly indicates to the contrary:

- (a) The word "Holder," "holder," "Noteholder," "owner" or any similar term, when used with respect to any Section Note, means the registered owner of any Section Note.
- (b) Any reference to the Section Note Proceeds Account and the Section Debt Service Payment Account shall be to the accounts so designated under Section 6.1 (*Creation of Accounts*).

## 3. **AUTHORIZATION AND DETAILS OF SECTION NOTES**

#### 3.1 Use of Proceeds of Section Notes.

(a) The proceeds from the sale of the Section Notes issued under and secured by this Supplemental Trust Agreement, may be used from time to time during the term of this Supplemental Trust Agreement to pay (i) upfront Trustee fees and Trustee fees incurred in relation to the Section prior to Substantial Completion of the Section; (ii) [principal use of funds to pay eligible project costs related to the Section to be determined during the Predevelopment Work for the Section]; and (iii) any other Costs as determined by MDTA. Upon Substantial Completion of the Section, any excess funds in the Section Note Proceeds Account may (upon direction of MDTA to the Trustee) be transferred to the Operating Reserve Account.

## (b) Items of Cost

For the purposes of this Supplemental Trust Agreement, the Cost of the Section and Improvements shall include the cost of constructing or acquiring the same, and, without intending thereby to limit or restrict any proper definition of such Cost under the provisions of the Enabling Legislation, shall include the following:

- obligations incurred for labor and materials; and to contractors, builders, and materialmen for machinery and equipment, for the restoration or relocation of property damaged or destroyed in connection with such construction, for the removal or relocation of structures, for the clearing of lands and for the relocation of utilities;
- (ii) the cost of acquiring by purchase, if such purchase shall be deemed expedient, and the amount of any deposit in court or award or final judgment in, or any settlement or compromise of, any proceeding to acquire by eminent domain, such lands, property, rights, rights of way, easements, franchises and other interests as may be deemed necessary or convenient by MDTA, options and partial payments thereon, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, and the amount of any damages incident to or consequent upon the construction and operation of the Section and Improvements;
- (iii) interest on any Section Notes issued to finance the construction of the Section and Improvements prior to the commencement of and during the construction of the Section and after the completion of its construction, amounts needed to establish reserves and the reasonable fees of the Trustee and the Paying Agents for the payment of such interest;
- (iv) the fees and expenses of the Trustee, Paying Agents, indexing agents, remarketing agents, and other fiscal agents for their services prior to and during

construction, taxes, or other municipal or governmental charges lawfully levied or assessed during construction;

- (v) the cost of borings and other preliminary investigations to determine foundation or other conditions, expenses necessary or incident to determining the feasibility or practicability of constructing the Section and Improvements, and fees and expenses of engineers for making studies, surveys, and estimates of costs and of revenues and other estimates, and for preparing plans and specifications, and supervising construction, as well as for the performance of all other duties of engineers;
- (vi) expenses of administration properly chargeable to the Section and Improvements, legal expenses and fees, financing charges, cost of audits and of preparing and issuing the Section Notes, and all other items of expense not elsewhere in this Section 3.1(b) specified incident to the construction and equipment of the Section and Improvements, the financing thereof, the placing of the same in operation (including the initial premiums on any insurance required or obtained under the provisions of this Supplemental Trust Agreement), and the acquisition of lands, property, rights, rights of way, easements, franchises and interests therefor, including abstracts of title, title insurance, cost of surveys and other expenses in connection with such acquisition; and
- (vii) any obligation or expense incurred by MDOT in connection with the Section and Improvements with the written approval of MDTA, or by MDTA for any of the foregoing purposes.

#### 3.2 **Section Authorization.**

The financing and refinancing of the Section with the approval of MDTA is hereby authorized. The Section shall constitute a transportation facilities project.

#### 3.3 Section Notes Authorized.

There is hereby authorized the issuance and sale under this Supplemental Trust Agreement of  $[\bullet]$  Section Notes in the aggregate principal amount of  $[\bullet]$  Dollars  $(\$[\bullet])^2[$ , plus the net original issue premium of  $[\bullet]$  Dollars  $(\$[\bullet])]$  which shall be designated MDTA's "P3 Program Section  $[\bullet]$  Notes," for the purpose of financing all or a portion of the fees and costs of the Section set forth in Section 3.1(a) (Use of Proceeds of Section Notes).

#### 3.4 **Payment of Interest and Principal.**

The Section Notes shall be issued as fully registered notes. The Section Notes shall bear interest beginning three months after Substantial Completion, at the rate of  $[ \bullet ]$ % per annum (calculated on the basis of a 360-day year consisting of twelve 30-day months)<sup>3</sup> and shall be paid monthly on the Section Toll Payment Date in each of the years following Substantial Completion. Interest shall accrue from the date falling 3 months after the Substantial Completion Date for the Section. The Trustee shall be notified in writing of the occurrence of Substantial Completion.

<sup>&</sup>lt;sup>2</sup> NTD: The total principal amount of the MDTA Notes for Phase 1 South is not expected to exceed \$100 million.

<sup>&</sup>lt;sup>3</sup> NTD: The yields on the Section Notes are expected to be reflective of 30-year US Treasury yields at the time of issuance.

Principal on the Section Notes shall be repaid monthly on each Section Toll Payment Date<sup>4</sup>, in accordance with the amortization schedule set forth in Appendix 3 (*Amortization Schedule*). In the event that there are insufficient funds in the Section Debt Service Payment Account to pay the scheduled Section Notes P&I Payment on any Section Toll Payment Date, the unpaid amount of the scheduled Section Notes P&I Payment shall be due on the next Section Toll Payment Date that sufficient funds are available (plus additional accrued interest on such deferred principal and interest at the rate referred to in the first paragraph of this Section 3.4).

The Section Notes shall be substantially in the form set forth in Appendix 1 (Form of Section Note), with such insertions, omissions and variations as may be deemed necessary or appropriate by the officers of MDTA executing the same and as shall be permitted by the Enabling Legislation. MDTA hereby adopts the form of the Section Note set forth in Appendix 1 (Form of Section Note) and all of the covenants and conditions set forth therein, as and for the form of obligation to be incurred by MDTA as the Section Notes. The covenants and conditions set forth in the form of Section Note are incorporated into this Supplemental Trust Agreement by reference and shall be binding upon MDTA as though set forth in full herein.

The printing of the private placement numbers on Section Notes shall have no legal effect and shall not affect the enforceability of any Section Notes.

#### 4. PURCHASE AND REDEMPTION OF SECTION NOTES

#### 4.1 Purchase of Section Notes.

Subject to the terms and conditions of this Supplemental Trust Agreement, MDTA will issue and sell to the Section Noteholder and the Section Noteholder will purchase from MDTA, at the Closing provided for in Section 4.2 (*Closing*), Section Notes in the principal amount specified in Appendix 2 (*Section Noteholder Schedule*) at the purchase price of [100]%<sup>5</sup> of the principal amount thereof.

#### 4.2 Closing.

The sale and purchase of the Section Notes to be purchased by the Section Noteholder shall occur at the offices of [\_\_\_\_\_\_], [Street Address], [City], [State] [ZIP], at [\_\_]:00 a.m., [\_\_\_\_\_] time, at a closing (the "Closing"). At the Closing, MDTA will deliver to the Section Noteholder the Section Notes to be purchased in the form of a single Section Note dated the date of the Closing and registered in the Section Noteholder's name (or in the name of its nominee), against delivery by such Section Noteholder to the Trustee of immediately available funds in the amount of the purchase price therefor by wire transfer of immediately available funds to the Section Note Proceeds Account.

## 4.3 **Notice of Redemption.**

At least 30 days before the redemption date of the Section Notes, MDTA shall cause a notice of any such redemption to be mailed to all Section Noteholders, but any defect in such notice or the failure to mail any such notice shall not affect the validity of the proceedings for the redemption of the Section Notes. Each such notice shall set forth the Section Notes to be redeemed, the redemption price and the date fixed for redemption.

<sup>&</sup>lt;sup>4</sup> **NTD**: Repayment of principal shall commence on the date falling [6/7] years from the date of [Financial Close][Commercial Close] of the [Section]. Interest on the Section Notes accrues and is payable monthly starting three months following Substantial Completion of the Section.

<sup>&</sup>lt;sup>5</sup> **NTD**: This 100% number may be changed if MDTA elects to issue at a premium. MDTA cannot issue at a discount.

Any notice of the redemption of the Section Notes given hereunder may be conditioned upon the Trustee's receipt of funds to pay the principal amount of such Section Notes at least one Business Day prior to the date of redemption of such Section Notes.

Notwithstanding the giving of any notice of redemption as provided in this Section 4.3, if on any date fixed for the redemption of the Section Notes there shall not be on deposit with the Trustee or the Paying Agent sufficient funds for the payment of the principal at least one Business Day prior to the date of redemption of such Section Notes, such redemption shall be cancelled and the notice thereof rescinded, and the Trustee immediately shall give notice thereof to the holders of the Section Notes so called for redemption.

## 4.4 Effect of Calling for Redemption of Section Note.

On the date fixed for redemption, any conditions to such redemption having been satisfied, the Section Notes shall be due and payable in the principal amount of the Section Notes, including in the case of an early redemption, any unamortized premium, plus accrued interest to such date. If money sufficient to pay such amount, are held by the Trustee in trust for the Section Noteholders, interest on the Section Notes called for redemption shall cease to accrue after the date fixed for redemption; such Section Notes shall cease to be entitled to any benefits or security under this Supplemental Trust Agreement, or to be deemed outstanding; and the holders of such Section Notes shall have no rights in respect thereof except to receive payment of the principal amount of the Section Notes, plus accrued interest to the date of redemption. Section Notes for which irrevocable instructions to pay or to call for redemption on one or more specified dates have been given to the Trustee in form satisfactory to it shall not thereafter be deemed to be outstanding under this Supplemental Trust Agreement and shall cease to be entitled to the security of or any rights under this Supplemental Trust Agreement, other than rights to receive payment of the principal amount of the Section Notes and accrued interest thereon, to be given notice of redemption in the manner provided in Section 4.3 (Notice of Redemption), and, to the extent hereinafter provided, to receive Section Notes for any unredeemed portions of Section Notes.

#### CLOSING

## 5.1 Conditions Precedent to Delivery of Section Notes.

The Section Notes shall be executed by MDTA and delivered to the Trustee, whereupon the Trustee shall authenticate the Section Notes and, upon payment of the purchase price of such Section Notes, shall deliver the Section Notes upon the order of MDTA, but only upon delivery to the Trustee of each of the following:

- (a) an executed counterpart of the Master Trust Agreement, duly executed by MDTA, and this Supplemental Trust Agreement, duly executed by MDTA, the Section Noteholder, the Section Developer and the Trustee;
- (b) a copy, certified by the Executive Director, of the resolution adopted by MDTA designating the purchaser of the Section Notes, fixing the Amortization Schedule for the Section Notes, if any, specifying the interest rate for the Section Notes, and directing the authentication and delivery of the Section Notes to or upon the order of the purchasers therein named upon payment of the purchase price therein set forth and the accrued interest on the Section Notes;
- (c) all evidence MDTA requires in order to verify that the Section Noteholder is a Qualified Institutional Buyer or Accredited Investor;

- (d) to the Section Noteholder a copy of the Disclosure Documentation;
- (e) confirmation that all conditions precedent to Financial Close under the Section P3 Agreement have been satisfied; and
- (f) an opinion of bond counsel to MDTA confirming that (i) the Section Notes have been duly authorized and issued, and (ii) the Section Notes are valid and legally binding limited obligations of MDTA.

#### 5.2 **Execution and Authentication.**

The Section Notes shall bear the manual or facsimile signatures of the Chairman of MDTA and the Executive Director or Chiefs and Directors acting on the behalf of the Executive Director of MDTA, but it shall not be necessary that the same officer sign all of the Section Notes that may be issued hereunder at any one time, and a facsimile of the official seal of MDTA shall be imprinted on the Section Notes.

In case any officer whose signature or a facsimile of whose signature shall appear on any Section Notes shall cease to be such officer before the delivery of such Section Notes, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery, and any Section Note may bear the facsimile signature of or may be signed by such persons as at the actual time of the execution of such Section Note shall be the proper officers to sign such Section Note although at the date of such Section Note such persons may not have been such officers.

Only such of the Section Notes as shall have endorsed thereon a certificate of authentication duly executed by the Trustee, shall be entitled to any benefit or security under this Supplemental Trust Agreement. No Section Note shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed either manually or by facsimile by the Trustee, and such certificate of the Trustee upon any Section Note shall be conclusive evidence that such Section Note has been duly authenticated and delivered under this Supplemental Trust Agreement. The Trustee's certificate of authentication on any Section Note shall be deemed to have been duly executed if signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Section Notes that may be issued hereunder at any one time.

## 6. **ACCOUNTS**

#### 6.1 **Creation of Accounts.**

## (a) Section Note Proceeds Account

The Trustee shall create a Section Note proceeds account (the "Section Note Proceeds Account") and shall segregate the funds and investment earnings thereon from the funds and investment earnings for all other accounts. The amount on deposit in the Section Note Proceeds Account shall be held by the Trustee in trust only for the benefit of MDTA, and shall not be available to satisfy claims of holders of the Section Notes or the Section Developer.

The Section Note Proceeds Account shall be funded with the proceeds from the sale of the Section Notes upon Closing for the Section, net of issuance expenses. MDTA shall direct the Trustee to make payments from the Section Note Proceeds Account from time to time during the term of this Supplemental Trust Agreement for the purposes set forth in Section 3.1 (*Use of Proceeds of Section Notes*).

## (b) Section Debt Service Payment Account

The Trustee shall create a Section debt service payment account (the "Section Debt Service Payment Account") and shall segregate the funds and investment earnings thereon from the funds and investment earnings for all other accounts. MDTA shall make payments into the Section Debt Service Payment Account in accordance with Section [3.3] (P3 Program Account) of the Master Trust Agreement.

Amounts held in the Section Debt Service Payment Account shall be applied in payment of principal, including, in the event of any redemption prior to the Maturity Date, any unamortized premium, and interest due under the Section Notes in accordance with Section 6.2 (Payments to the Section Noteholder and Section Developer).

For the purposes of internal accounting, any fund or account created by this Supplemental Trust Agreement may contain one or more accounts or sub accounts, as shall be deemed appropriate by MDTA.

## 6.2 Payments to the Section Noteholder and Section Developer.

On each Section Toll Payment Date following Substantial Completion of the Section, MDTA shall direct the Trustee to make the following payments:

*First,* payment from the Operating Reserve Account of an amount equal to all fees and other amounts due to the Trustee in connection with this Supplemental Trust Agreement, the Master Trust Agreement and all other supplemental trust agreements.

Second, payment from the Section Debt Service Payment Account to the Section Noteholder of the amount of principal and interest due to the Section Noteholder on such date, provided that the amount of such payment obligation shall be capped at the amount available in the Section Debt Service Payment Account (the "Section Notes P&I Payment"). In the event that there are insufficient funds in the Section Debt Service Payment Account to pay the scheduled Section Notes P&I Payment on any Section Toll Payment Date, the unpaid amount of the scheduled Section Notes P&I Payment shall be due on the next Section Toll Payment Date that sufficient funds are available.

*Third*, payment from the Operating Reserve Account, of the Section Developer Toll Payment to the Section Developer.

The payments due under clauses Second and Third above are absolute payment obligations of MDTA payable from the Trust Estate and due to the Section Noteholder and Section Developer, as applicable, on each Section Toll Payment Date. MDTA will satisfy such payment obligations by directing the Trustee to make such payments from the Section Debt Service Payment Account or the Operating Reserve Account (as applicable).

The Section Noteholder's and Section Developer's sole recourse for non-payment under this Section 6.2 is set forth in Section 10.4 (*Limited Remedies for Non-Payment*).

## 7. REPRESENTATIONS AND WARRANTIES OF THE SECTION NOTEHOLDER

The Section Noteholder represents that:

(a) it is (i) a "Qualified Institutional Buyer" as that term is defined in Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"), or (ii) an "Accredited Investor" within the meaning of Rule 501(a) (Accredited investor) of Regulation D (Rules Governing the Limited Offer and Sale of Securities without Registration under the Securities Act of 1933) ("Regulation D");

- it is purchasing the Section Notes for its own account and not with a view to the distribution thereof, provided that the disposition of such Section Noteholder's property shall at all times be within such Section Noteholder's control;
- (c) in connection with any permitted transfer of any Section Notes, it will not engage in any form of general solicitation or general advertising within the meaning of Rule 502(c) under the Securities Act with respect to such transfer of Section Notes;
- (d) (i) the Section Notes have not been registered under the Securities Act or any other applicable securities law and that the Section Notes are being offered for sale in transactions not requiring registration under the Securities Act pursuant to Section 4(a)(2) thereof, (ii) in addition to any other restrictions on the resale of the Section Notes, the Section Notes may be resold only if an exemption from registration is available, except under circumstances where such an exemption is not required by law, and (iii) MDTA is not required to register the Section Notes;
- (e) it has either been supplied with or been given access to information, including the Disclosure Documentation outlining material information, which it has requested from MDTA and to which a reasonable investor would attach significance in making investment decisions, and the Section Noteholder has had the opportunity to ask questions and receive answers from knowledgeable individuals, including its own counsel, concerning MDTA and the Section Notes and the security therefor so that, as a reasonable investor, the Section Noteholder has been able to make a decision to purchase the Section Notes. The Section Noteholder has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of its prospective investment in the Section Notes; and
- (f) it shall not transfer, or permit the transfer of, directly or indirectly, any equity interest in the Section Noteholder if such transfer would cause the Section Noteholder to cease to be a Qualified Institutional Buyer or an Accredited Investor. Not less than 20 Business Days prior to any proposed transfer of any direct or indirect equity interest in the Section Noteholder, the Section Noteholder shall deliver to MDTA (i) notice of the proposed transfer and (ii) all evidence that MDTA requires to demonstrate that following such proposed transfer, the Section Noteholder shall continue to be a Qualified Institutional Buyer or an Accredited Investor.

## 8. MDTA REPRESENTATIONS AND WARRANTIES

MDTA represents and covenants that:

- (a) it is duly authorized under the Constitution and laws of the State to issue the Section Notes, to enter into the Master Trust Agreement and this Supplemental Trust Agreement, and to pledge the Trust Estate in the manner and to the extent set forth in this Supplemental Trust Agreement;
- (b) all action on its part for the issuance of the Section Notes has been duly and effectively taken;
- (c) the Section Notes issued in accordance with this Supplemental Trust Agreement are valid and binding limited obligations of MDTA; and

(d) as of its date and the date hereof, the information contained in the Disclosure Documentation is complete, true and accurate, and such information does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

#### 9. **MDTA COVENANTS**

MDTA covenants that it shall:

- (a) pay or cause to be paid the principal of and interest on every Section Note, including in the case of an early redemption, any unamortized premium, on the date (and no earlier date) and at the place and in the manner provided for in this Supplemental Trust Agreement, provided that (i) the Section Notes shall be limited obligations of MDTA payable solely from the Trust Estate and (ii) payment of the principal of and interest on the Section Notes, including any premium, shall only fall due to the extent that sufficient funds are available in the Section Debt Service Payment Account;
- (b) not create or incur any indebtedness (including the issuance of any additional notes under this Supplemental Trust Agreement) payable from any portion of the Trust Estate;
- (c) take all reasonable measures permitted by law to enforce payment to it of the Section [●] Toll Revenues due and payable;
- (d) permit any filing necessary to evidence the grant to the Trustee of the interest in the Trust Estate;
- (e) except as permitted by this Supplemental Trust Agreement, not sell, lease, pledge, assign or otherwise dispose of its interest in the Trust Estate; and
- (f) not amend the Master Trust Agreement in a manner that would have a material adverse effect on the rights or remedies of the Section Noteholder or Section Developer.

#### 10. PAYMENT AND PREPAYMENT OF THE SECTION NOTES

## 10.1 Maturity and Optional Redemption.

The term of the Section Notes shall be 40 years from Financial Close for the Section (the "**Maturity Date**"). As provided therein, the entire unpaid principal balance of each Section Note shall be due and payable on the Maturity Date.

MDTA will have the option to redeem the Section Notes beginning on the 10th anniversary of the date of the Section P3 Agreement for the Section in accordance with Section  $[\bullet]$  of the Section P3 Agreement. The Redemption Price shall be due and payable on the date of redemption.

Any Section Note paid in full shall be surrendered to MDTA and cancelled and shall not be reissued.

If the Maturity Date or any other redemption date of any Section Note is on a day that is not a Business Day, payment shall be made on the next succeeding Business Day and shall include the additional days elapsed in the computation of interest payable on such next succeeding Business Day.

#### 10.2 Required Prepayments.

On each Section Toll Payment Date set forth in Appendix 3 (Amortization Schedule) or as such Appendix 3 shall be revised by the immediately succeeding paragraph (Appendix 3 (Amortization Schedule) or as so revised from time to time, the "Amortization Schedule"), MDTA will repay by installment the principal amount set forth opposite such date for the Section Notes described therein, at par.

## 10.3 Early Prepayment of the Section Notes.

Except following the termination of the Section P3 Agreement (as further described in Section 11.1 (Mandatory Prepayment of the Section Notes)) or in accordance with Section 10.1 (Maturity and Optional Redemption),

- (a) the Section Notes shall not be subject to early prepayment or repayment;
- (b) the Section Notes shall not be subject to acceleration; and
- (c) MDTA shall not redeem the Section Notes prior to their scheduled repayment date.

#### 10.4 Limited Remedies for Non-Payment

Each of the Section Noteholder and Section Developer acknowledges and agrees that:

- (a) its sole recourse and that of its Lenders for non-payment of the Section Notes, the Section Developer Toll Payment or any other amount due under this Supplemental Trust Agreement shall be limited to those expressly set out under the terms of the Section P3 Agreement; and
- (b) neither the Trustee, nor the Section Noteholder, the Section Developer or their Lenders shall have a right to:
  - (i) take any action against MDTA or claim any amount in any MDTA account for any non-payment; or
  - (ii) enforce a lien, setoff or security interest against the Trust Estate.

#### 11. MANDATORY PREPAYMENT OF THE SECTION NOTES

## 11.1 Mandatory Prepayment of the Section Notes.

The Section Notes shall not be subject to acceleration or to early prepayment except following the termination of the Section P3 Agreement or in accordance with Section 10.1 (*Maturity and Optional Redemption*).

Upon any termination of the Section P3 Agreement, the Section Noteholder will be paid the par value of the outstanding Section Notes (plus, if applicable, any unamortized premium) and the outstanding MDTA Notes will be redeemed, assigned or transferred to another party or assumed by MDOT, at MDTA's sole direction. As a condition precedent to payment of the par value of the outstanding Section Notes (plus, if applicable, any unamortized premium), the Section Noteholder must take all reasonable steps requested by MDOT or MDTA to effect such redemption, assignment, transfer or assumption.

Following any termination of the Section P3 Agreement, MDTA may elect to issue new notes under a new Section supplemental trust agreement authorized under the Master Trust Agreement to repay the Section Notes and the Trust Estate may be pledged to secure such new notes.

The Section Noteholder's sole recourse for non-payment under this Article 11 is set forth in Section 10.4 (*Limited Remedies for Non-Payment*).

## 11.2 **Pro Rata Application of Funds.**

Anything in this Supplemental Trust Agreement to the contrary notwithstanding, if at any time the moneys in the Section Debt Service Payment Account shall not be sufficient to pay the interest on, or the principal of, the Section Notes as the same shall become due and payable (either by their terms or by acceleration of maturity under the provisions of this Article 11), such moneys, together with any moneys then available or thereafter becoming available for such purpose, whether through the exercise of the remedies provided for in this Article 11 or otherwise, shall be applied at the direction of MDTA as follows:

- (a) If the principal of all outstanding Section Notes shall not have been declared due and payable, the unpaid amount of the scheduled Section Notes P&I Payment shall be due on the next Section Toll Payment Date that sufficient funds are available in the Section Debt Service Payment Account.
- (b) If the principal of all outstanding Section Notes shall have become or shall have been declared due and payable, all such moneys shall be applied:

First, to the payment of all installments of interest then due and payable on the outstanding Section Notes in the order in which such installments became due and payable and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment, ratably, according to the amounts due on such installment; and

Second, to the payment of the principal, including in the case of an early redemption, any unamortized premium, of the outstanding Section Notes.

Whenever moneys are to be applied by the Trustee pursuant to the provisions of this Section 11.2, such moneys shall be applied by the Trustee at such times, and from time to time, as directed by MDTA, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future; the deposit of such moneys with the Paying Agents, or otherwise setting aside such moneys, in trust for the proper purpose shall constitute proper application by the Trustee; and the Trustee shall incur no liability whatsoever to MDTA, the Section Noteholder, the Section Developer or any other person for any delay in applying any such moneys, so long as the Trustee acts with reasonable diligence, having due regard to the circumstances, and ultimately applies the same in accordance with such provisions of this Supplemental Trust Agreement as may be applicable at the time of application by the Trustee. Whenever the Trustee shall exercise such discretion in applying such moneys, it shall fix the date (which shall be a Section Toll Payment Date unless the Trustee shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the fixing of any such date.

## 12. REGISTRATION; EXCHANGE; SUBSTITUTION OF SECTION NOTES

## 12.1 Registration of Section Notes.

The Section Notes shall be negotiable instruments for all purposes and shall be transferable by delivery, subject only to (a) the restrictions set out in Section 12.3 (*Transferability Restrictions*) and (b) the provisions for registration of, and registration of transfer endorsed on, the Section

Notes, which requirements shall not include registration with the Securities and Exchange Commission.

The Trustee shall act as register for the Section Notes and shall keep registration of transfers of the Section Notes. The name and address of each holder of one or more Section Notes, each transfer thereof, and the name and address of each transferee of one or more Section Notes shall be registered in such register. If any holder of one or more Section Notes is a nominee, then (a) the name and address of the beneficial owner of such Section Note or Section Notes shall also be registered in such register as an owner and holder thereof and (b) at any such beneficial owner's option, either such beneficial owner or its nominee may execute any amendment, waiver or consent pursuant to this Supplemental Trust Agreement. Prior to due presentment for registration of transfer, the Person in whose name any Section Note shall be registered shall be deemed and treated as the owner and holder thereof for all purposes hereof, and MDTA shall not be affected by any notice or knowledge to the contrary.

If any Section Note is surrendered to the Trustee at its Designated Office for transfer or exchange in accordance with the provisions of such Section Note or Section 12.3 (*Transferability Restrictions*), MDTA shall execute and the Trustee shall authenticate and deliver in exchange for such Section Note a new Section Note bearing interest at the same rate and having the same stated maturity date, in aggregate principal amount equal to the principal amount of the Section Note so surrendered, upon reimbursement to MDTA or the Trustee of an amount equal to any tax or other governmental charge required to be paid with respect to such exchange.

Neither MDTA nor the Trustee shall be required to register the transfer of any Section Note or make any such exchange of any Section Note, (a) during the 15 days preceding the date of mailing of any notice of redemption or purchase or (b) at any time after a notice of the redemption or purchase of such Section Note or any portion thereof has been mailed.

## 12.2 **Book-Entry System.**

The provisions of this Section 12.2 shall apply to the Section Notes so long as the Section Notes shall be maintained under a book-entry system with a Securities Depository, any other provisions of this Supplemental Trust Agreement to the contrary notwithstanding.

#### (a) Payments Due on Section Notes.

The principal or Redemption Price of and interest on, and the purchase price of, the Section Notes shall be payable to the Securities Depository, or registered assigns, as the registered owner of the Section Notes, in same day funds on each date on which the principal or Redemption Price of or interest on, or the purchase price of, the Section Notes is due as set forth in this Supplemental Trust Agreement and in the Section Notes. Such payments shall be made to the offices of the Securities Depository specified by the Securities Depository to MDTA and the Trustee in writing. Without notice to or the consent of the Section Noteholder, MDTA and the Securities Depository may agree to make payments of principal and interest in a manner different from that set out herein. In such event, MDTA shall give the Trustee notice thereof, and the Trustee shall make payments with respect to the Section Notes in the manner specified in such notice as if set forth herein. Neither MDTA nor the Trustee shall have any obligation with respect to the transfer or crediting of the appropriate payments to Participants or the Section Noteholder or its nominee.

## (b) Securities Depository Deemed Owner.

So long as the Securities Depository or its nominee is the registered owner of the Section Notes, MDTA and the Trustee will recognize the Securities Depository or its nominee, respectively, as the holder of all of the Section Notes for all purposes, including the payment of the principal or Redemption Price of and interest on, and the purchase price of, the Section Notes, as well as the giving of notices and any consent or direction required or permitted to be given to, or on behalf of, the holders of the Section Notes under this Supplemental Trust Agreement.

## (c) Replacement of Securities Depository or Discontinuance of Book-Entry System.

MDTA, in its discretion, at any time may replace any Securities Depository as the depository for the Section Notes with another qualified securities depository or discontinue the maintenance of the Section Notes under a book-entry system upon 30 days' notice to the Securities Depository (or such fewer number of days as shall be acceptable to such Securities Depository).

## (d) Issuance of Replacement Section Notes upon Discontinuance of Book-Entry System.

If MDTA discontinues the maintenance of the Section Notes under a book-entry system, MDTA will issue certificated Section Notes directly to the Participants or, to the extent requested by any Participant, to the Section Noteholder as further described in this Section 12.2. MDTA shall make provisions to notify the Participants and the Section Noteholder, by mailing an appropriate notice to the Securities Depository, or by other means deemed appropriate by MDTA in its discretion, that it will issue certificated Section Notes directly to the Participants or, to the extent requested by an Participant, to the Section Noteholder as of a date set forth in such notice, which shall be a date at least 10 days after the date of mailing of such notice (or such fewer number of days as shall be acceptable to the Securities Depository).

In the event that certificated Section Notes are to be issued to Participants or to the Section Noteholder, MDTA shall promptly have prepared Section Notes of the same maturity and bearing interest at the same rate registered in the names of the Participants as shown on the records of the Securities Depository provided to the Trustee and Paying Agent or, to the extent requested by an Participant, in the name of the Section Noteholder shown on the records of such Participant provided to the Trustee and Paying Agent as of the date set forth in the notice delivered in accordance with this Section 12.2. MDTA, the Trustee and the Paying Agent shall be entitled to rely conclusively on the records of the Securities Depository or any Participant as to the identity of Participants, or the Section Noteholder as to the identity of the Section Noteholder for all purposes, including registration of certificated Section Notes delivered pursuant to this Section 12.2.

# (e) Issuance of Replacement Section Notes upon Appointment of Replacement Depository.

If MDTA replaces any Securities Depository as the depository for the Section Notes with another qualified Securities Depository, MDTA will issue to the replacement Securities Depository Section Notes of the same maturity and bearing interest at the same rate registered in the name of such replacement Securities Depository.

## (f) No Liability of MDTA or Trustee.

Each Securities Depository, the Participants, and the Section Noteholder, by their acceptance of the Section Notes, agree that MDTA and the Trustee shall have no liability for the failure of any Securities Depository to perform its obligations to any Participant or the Section Noteholder, nor shall MDTA or the Trustee be liable for the failure of any Participant to perform any obligation that such Participant may incur to the Section Developer.

#### 12.3 Transferability Restrictions.

Except to the extent expressly permitted pursuant to this Section 12.3, (a) the Section Noteholder shall not assign or transfer any of the Section Notes or its right to repayment of principal or interest under the Section Notes to any other Person and (b) the Section Developer shall not assign or transfer its rights and obligations under this Supplemental Trust Agreement to any other Person.

The Section Noteholder may grant a security interest in the Section Noteholder's rights under the Section Notes to its Lenders (provided such Lenders are Qualified Institutional Buyers). The Section Developer may pledge its rights to receive the Section Developer Toll Payment to its Lenders.

In the event that the Section Developer transfers its rights and obligations under the Section P3 Agreement to another party (pursuant to a foreclosure or as otherwise permitted under the Section P3 Agreement), (a) the Section Noteholder shall simultaneously transfer all of its rights and obligations under the Section Notes to the substitute party, provided that any transfer of the Section Notes permitted pursuant to this paragraph shall only be permitted if (i) the transferee is a Qualified Institutional Buyer or an Accredited Investor and (ii) not less than 20 Business Days prior to the proposed transfer, the Section Noteholder has delivered to MDTA (A) notice specifically identifying the proposed transferee and (B) all evidence that MDTA requires to demonstrate that such proposed transferee is a Qualified Institutional Buyer or an Accredited Investor; and (b) the Section Developer shall simultaneously transfer all of its rights and obligations under this Supplemental Trust Agreement to the substitute party.

#### 12.4 Replacement of Section Notes.

Within 10 Business Days after the receipt by MDTA, at the address and to the attention of the designated officer (all as specified in Section 8.3(b)(i) (*Manner of Giving Notice*) in the Master Trust Agreement), of:

- (a) evidence reasonably satisfactory to it of the ownership of, and the loss, theft, destruction or mutilation of, any Section Note, and
- (b) in the case of:
  - (i) loss, theft or destruction, an indemnity reasonably satisfactory to MDTA, or
  - (ii) mutilation, the surrendered (and thereafter cancelled) Section Note,

MDTA, at its own expense, shall execute and deliver, in lieu thereof, a new Section Note, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Section Note; or dated the date of such lost, stolen, destroyed or mutilated Section Note if no interest shall have been paid thereon.

#### 13. PAYMENTS ON SECTION NOTES

## 13.1 Place of Payment.

Subject to Section 13.2, payments of principal and interest becoming due and payable on the Section Notes and payments of the Section Developer Toll Payment becoming due and payable shall be made at the principal office of MDTA. MDTA may at any time, by notice to each holder of a Section Note, change the place of payment of the Section Notes so long as such place of payment shall be either the principal office of MDTA in such jurisdiction or the principal office of a bank or trust company in such jurisdiction.

## 13.2 Payment by Wire Transfer.

So long as any Section Noteholder or its nominee shall be the holder of any Section Note, and notwithstanding anything contained in Section 13.1 or in such Section Note to the contrary, MDTA will pay all sums becoming due on such Section Note for principal, including in the case of an early redemption, any unamortized premium, interest and all other amounts becoming due hereunder by the method and at the address specified for such purpose in Section 13.1, or by such other method or at such other address as such Section Noteholder shall have from time to time specified to MDTA in writing for such purpose, without the presentation or surrender of such Section Note or the making of any notation thereon, except that upon written request of MDTA made concurrently with or reasonably promptly after payment or prepayment in full of any Section Note, such Section Noteholder shall surrender such Section Note for cancellation, reasonably promptly after any such request, to MDTA at its principal office or at the place of payment most recently designated by MDTA pursuant to Section 13.1. Prior to any disposition of any Section Note held by the Section Noteholder or its nominee, such Section Noteholder will, at its election, either endorse thereon the amount of principal paid thereon and the last date to which interest has been paid thereon or surrender such Section Note to MDTA in exchange for a new Section Note or Section Notes pursuant to Section 12.4 (Replacement of Section Notes).

#### 14. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ENTIRE AGREEMENT.

All representations and warranties contained herein shall survive the execution and delivery of this Supplemental Trust Agreement and the Section Notes, the purchase or transfer by any Section Noteholder of any Section Note or portion thereof or interest therein, and the payment of any Section Note, and may be relied upon by any subsequent holder of a Section Note, regardless of any investigation made at any time by or on behalf of such Section Noteholder or any other holder of a Section Note. All statements contained in any certificate or other instrument delivered by or on behalf of MDTA pursuant to this Supplemental Trust Agreement shall be deemed representations and warranties of MDTA under this Supplemental Trust Agreement. Subject to the preceding sentence, this Supplemental Trust Agreement and the Section Notes embody the entire agreement and understanding between each Section Noteholder, each Section Developer and MDTA and supersede all prior agreements and understandings relating to the subject matter hereof.

## 15. **NOTICES.**

- (a) Any notice, demand, direction, request or other instrument authorized or required by this Supplemental Trust Agreement to be given to or filed with MDTA, the Section Noteholder or the Trustee shall be deemed to have been sufficiently given or filed for all purposes of this Supplemental Trust Agreement if and when sent by (i) personal delivery, (ii) certified mail, (iii) recognized overnight mail, (iv) email communication followed by hard copy, or (v) registered mail, return receipt requested.
- (b) Notices under Section 15(a) must be sent to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

- (i) if to MDTA or the Trustee, to the address set forth in Section 8.3(b) (*Manner of Giving Notices*) in the Master Trust Agreement; and
- (ii) if to the Section Noteholder or the Section Developer, at the address specified for such communications in Appendix 2 (Section Noteholder Schedule), or at such other address as the Section Noteholder shall have specified to MDTA in writing.
- (c) All documents received by the Trustee under the provisions of this Supplemental Trust Agreement, or copies thereof, shall be retained in its possession until this Supplemental Trust Agreement shall be released, subject at all reasonable times to the inspection of MDTA and the agents and representatives thereof.

#### 16. **MISCELLANEOUS**

#### 16.1 Amendments and Future Supplemental Trust Agreements.

This Supplemental Trust Agreement and the Section Notes may be amended only with the written consent of MDTA, the Section Developer and the Section Noteholder.

Any amendment consented to as provided in this Section 16.1 is binding upon each future holder of any Section Note and upon MDTA without regard to whether such Section Note has been marked to indicate such amendment. No such amendment will extend to or affect any obligation, covenant or agreement not expressly amended, or impair any right consequent thereon. No course of dealing between MDTA, the Section Developer and the Section Noteholder, and no delay in exercising any rights hereunder or under any Section Note shall operate as a waiver of any rights of the Section Noteholder or Section Developer, as applicable.

Before the Trustee shall enter into any amendment pursuant to this paragraph, there shall have been filed with the Trustee an Opinion of Bond Counsel stating that such amendment is authorized or permitted by this Supplemental Trust Agreement and complies with its terms, and that upon execution it will be valid and binding upon MDTA in accordance with its terms.

The Section Developer and Section Noteholder for this Supplemental Agreement have no influence or approval rights with respect to any future supplemental trust agreement.

#### 16.2 **Taxes.**

Interest on the Section Notes is expected to be taxable to the extent provided under applicable federal and State law.

#### 16.3 **Waiver.**

- (a) No waiver of any obligation, term, condition or other provision of this Supplement Trust Agreement will be valid unless in writing and signed by the waiving party.
- (b) No party's waiver of any breach or failure to enforce any of the obligations, terms, conditions or other provisions of this Supplemental Trust Agreement at any time will in any way limit or waive that party's right to subsequently enforce or compel strict compliance with every obligation, term, condition or other provision of this Supplemental Trust Agreement, despite any course of dealing or custom of the trade (other than the waived breach or failure in accordance with the terms of such waiver).
- (c) If the parties make and implement any interpretation of this Supplemental Trust Agreement without documenting such interpretation by an instrument in writing signed

by all parties, such interpretation and implementation will not be binding in the event of any future disputes.

## 16.4 Parties and Holders and Owners of Section Notes Alone Have Rights.

With the exception of rights expressly conferred in the Master Trust Agreement, nothing expressed or mentioned in or to be implied from this Supplemental Trust Agreement or the Section Notes is intended or shall be construed to give to any person other than the parties to this Supplemental Trust Agreement any legal or equitable right, remedy or claim under or with respect to this Supplemental Trust Agreement or any covenants, conditions and provisions contained in the Master Trust Agreement; this Supplemental Trust Agreement or any covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties to this Supplemental Trust Agreement.

#### 16.5 **Successors and Assigns.**

All covenants and other agreements contained in this Supplemental Trust Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns (including any subsequent holder of a Section Note) whether so expressed or not, except that, subject to Section 12.3 (*Transferability Restrictions*), (a) the Section Noteholder may not assign or otherwise transfer any of its rights or obligations hereunder or under the Section Notes without the prior written consent of MDTA; and (b) the Section Developer may not assign or otherwise transfer its rights or obligations hereunder without the prior written consent of MDTA. Nothing in this Supplemental Trust Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto and their respective successors and assigns permitted hereby) any legal or equitable right, remedy or claim under or by reason of this Supplemental Trust Agreement.

#### 16.6 Effect of Partial Invalidity; Severability.

If any one or more provisions of this Supplemental Trust Agreement or of the Section Notes is held illegal or invalid by any court, the illegality or invalidity shall not affect any other provision of this Supplemental Trust Agreement or of the Section Notes, but this Supplemental Trust Agreement or the Section Notes, as applicable, shall be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, agreement or obligation contained in this Supplemental Trust Agreement or the Section Notes is held to be in violation of law, then such covenant, stipulation, agreement or obligation shall nevertheless be determined to be the covenant, stipulation, agreement or obligation of MDTA or the Trustee, as the case may be, to the full extent permitted by law.

#### 16.7 **Execution in Several Counterparts.**

This Supplemental Trust Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original for all purposes; and all such counterparts shall together constitute but one and the same instrument.

## 16.8 Section 4-313 of Enabling Legislation Not Applicable.

As provided in Section 4-313 of the Enabling Legislation, Section 4-313 of the Enabling Legislation does not apply to any Section Note.

#### 16.9 **Governing Law.**

This Supplemental Trust Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

#### 16.10 **Security Agreement**

This Supplemental Trust Agreement constitutes a security agreement under the Uniform Commercial Code as in effect in the State of Maryland.

## 16.11 Jurisdiction and Process; Waiver of Jury Trial.

The Section Noteholder, Section Developer and Trustee irrevocably submit to the non-exclusive jurisdiction of any State court, over any suit, action or proceeding arising out of or relating to this Supplemental Trust Agreement or the Section Notes. To the fullest extent permitted by applicable law, the Section Noteholder, Section Developer and Trustee irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such court, any objection that they may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

The Section Noteholder, Section Developer and Trustee agree, to the fullest extent permitted by applicable law, that a final judgment in any suit, action or proceeding of the nature referred to in this Section 16.11 brought in any such court shall be conclusive and binding upon it subject to rights of appeal, as the case may be, and may be enforced in the courts of the United States of America or the State (or any other courts to the jurisdiction of which it or any of its assets is or may be subject) by a suit upon such judgment.

The Section Noteholder, Section Developer and Trustee consent to process being served by or on behalf of MDTA in any suit, action, or proceeding of the nature referred to in this Section 16.11 by mailing a copy thereof by registered, certified, priority or express mail (or any substantially similar form of mail), postage prepaid, return receipt or delivery confirmation requested, to it at its address specified in Article 15 (Notices) or at such other address of which the other parties shall then have been notified pursuant to Article 15 (Notices). The Section Noteholder, Section Developer and Trustee agree that such service upon receipt (a) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding and (b) shall, to the fullest extent permitted by applicable law, be taken and held to be valid personal service upon and personal delivery to it. Notices hereunder shall be conclusively presumed received as evidenced by a delivery receipt furnished by the United States Postal Service or any reputable commercial delivery service. Nothing in this Section 16.11 shall affect the right of MDTA to serve process in any manner permitted by law, or limit any right that MDTA may have to bring proceedings against the Section Noteholder, Section Developer or Trustee in the courts of any appropriate jurisdiction or to enforce in any lawful manner a judgment obtained in one jurisdiction in any other jurisdiction.

THE SECTION DEVELOPER, SECTION NOTEHOLDER AND MDTA HEREBY WAIVE TRIAL BY JURY IN ANY ACTION BROUGHT ON OR WITH RESPECT TO THIS SUPPLEMENTAL TRUST AGREEMENT, THE SECTION NOTES OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION HEREWITH OR THEREWITH.

Any disputes that arise under the Section P3 Agreement or the Tolling Services Agreement shall be resolved in accordance with the dispute resolution provisions set out in those agreements, including any disputes regarding the calculation of the Section Developer Toll Payment or any other calculations determined under such agreements.

## 16.12 Application of Provisions of Master Trust Agreement.

The provisions of this Supplemental Trust Agreement are intended to supplement and amend those of the Master Trust Agreement as in effect immediately prior to the execution and delivery hereof. Except as amended by this Supplemental Trust Agreement, the Master Trust Agreement shall remain in full force and effect and the provisions of the Master Trust Agreement shall apply with like force and effect to the Section Notes except to the extent that the provisions of the Master Trust Agreement are expressly modified or their application expressly limited by the terms of this Supplemental Trust Agreement.

## 16.13 Assignment by MDTA

MDTA may transfer and assign all or any portion of its rights, title and interests in and to this Supplemental Trust Agreement in accordance with Section [8.1] (Successorship of MDTA) of the Master Trust Agreement.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Supplemental Trust Agreement as of the date set forth above.

|  | MARYLAND TRANSPORTATION AUTHORITY                            |
|--|--|
| (SEAL)                                     |  |
|  | Name:<br>Title: Executive Director                           |
|  | THE BANK OF NEW YORK MELLON, as Trustee                      |
| (SEAL)                                     |  |
|  | Name:<br>Title:  |
| ATTEST:                                    |  |
| Name:                                      |  |
| Title:                                     |  |
|  | [ ], as Section Noteholder and as Section Developer          |
|  | Name:  |
|  | Title:   |
| Approved as to form and legal sufficiency: |  |
|  | Assistant Attorney General Maryland Transportation Authority |

#### **FORM OF SECTION NOTE**

#### MARYLAND TRANSPORTATION AUTHORITY

| []%Note Due [,]   |   |  |
|---|---|--|
| No. []<br>\$[]  | <b>[Date]</b> PPN[]   |  |
| For Value Received, the undersigned, MARYLAND TRAIN agency of the State ("MDTA"), hereby promises to pay to [   | ], or registered assigns, the ch thereof as shall not have been st (computed on the basis of a 360-f at the rate of []% per annum, ear, commencing from the third full ion, and on the Maturity Date, and |  |
| This Note (the " <b>Note</b> ") is issued pursuant to the Supplem. [], 20[] (as from time to time amended, the " <b>Supplem</b> MDTA, the Trustee, the Section Developer and the Section Noteholde benefits thereof. Each holder of this Note will be deemed, by its ac representations set forth in Article 7 of the Supplemental Trust Agrecapitalized terms used in this Note shall have the respective mean Supplemental Trust Agreement. | ental Trust Agreement"), among<br>er named therein and entitled to the<br>ceptance hereof, to have made the<br>ement. Unless otherwise indicated,   |  |
| Principal shall be payable in accordance with the amortiz Schedule ${\bf 1}.$   | ation schedule attached hereto as   |  |
| Payments of principal of, and interest on, this Note are to be States of America at [] or at such other place as MDTA shall he holder of this Note as provided in the Supplemental Trust Agree  | ave designated by written notice to   |  |
| This Note is a registered Note and, as provided in the Su   | pplemental Trust Agreement, upon  |  |

surrender of this Note for registration of transfer accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder's attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, MDTA may treat the Person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and

MDTA will not be affected by any notice to the contrary.

MDTA will make required prepayments of principal on the dates and in the amounts specified in the Supplemental Trust Agreement. This Note is subject to prepayment only in accordance with Sections 10.1 (*Maturity and Option Redemption*) and 11.1 (*Mandatory Prepayment of the Section Notes*) of the Supplemental Trust Agreement.

Sole recourse for any non-payment under this Note is set forth in Section 10.4 (*Limited Remedies for Non-Payment*) of the Supplemental Trust Agreement.

Following the termination of the Section P3 Agreement, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price, including in the case of an early redemption, any unamortized premium, and with the effect provided in the Supplemental Trust Agreement.

This Note shall not be deemed to constitute a debt or liability of the State, of any political subdivision thereof, of the Maryland Department of Transportation, a principal department of the State including the State Highway Administration ("MDOT") or of MDTA, or a pledge of the faith and credit of the State, any political subdivision thereof, MDOT, or MDTA, but shall be payable solely from the revenues and other amounts pledged to such payment under the Supplemental Trust Agreement. Neither the State nor any political subdivision thereof, nor MDOT, nor MDTA shall be obligated to pay this Note or the interest hereon except from such sources, and neither the faith and credit nor the taxing power of the State, any political subdivision thereof or MDTA is pledged to the payment of the principal of or the interest on this Note. This Note is not a general obligation of MDTA. Neither MDTA, nor MDOT have taxing power.

This Note shall be construed and enforced in accordance with, and the rights of MDTA and the holder of this Note shall be governed by, the law of the State of Maryland excluding choice-of-law principles of the law of the State that would permit the application of the laws of a jurisdiction other than the State.

No recourse shall be had for the payment of the principal of and interest on this Note or for any claims based thereon or on the Supplemental Trust Agreement against any member or other officer of MDTA or any person executing this Note, all such liability, if any, being expressly waived and released by the registered owner of this Note by the acceptance of this Note.

| IN WITNESS WHEREOF, Maryland Trans  | portation Authority has caused this Note to bear the |
|---|--|
| manual or facsimile signatures of the Chairman of   | MDTA and the Executive Director of MDTA and the      |
| official seal of MDTA to be imprinted hereon, all as $% \left( \frac{1}{2}\right) =\left( \frac{1}{2}\right) \left( \frac{1}{2}\right)$ | of the date above.                                   |
|   |  |
|   |  |
| [SEAL]  |  |
|   |  |
|   |  |
| MARYLAND TRANSPORTATION AUTHORITY   |  |
|   |  |
| D   | D  |
| By  | By   |
| [Name]  | [Name]   |
| Chairman  | Executive Director                                   |

## Schedule 1 Amortization Schedule

| Date | Principal Amount | Interest Amount |  |
|------|------------------|-----------------|--|
|      |                  |                 |  |

#### CERTIFICATE OF AUTHENTICATION

Date of Authentication: [●], 202[●]

This Section Note is one of the Section Notes designated therein and issued under the provisions of the Supplemental Trust Agreement. A signed original opinion of bond counsel, [McKennon Shelton & Henn LLP, Baltimore, Maryland], is on file with the undersigned.

| [   | ], as Trustee      |
|-----|--------------------|
| By: | Authorized Officer |
|     |                    |

## **SECTION NOTEHOLDER SCHEDULE**

## [NAME AND ADDRESS OF SECTION NOTEHOLDER]

## Information relating to Section Noteholder

|     | Name and Address of Section Noteholder  | PRINCIPAL AMOUNT OF NOTES TO BE PURCHASED |
|-----|---|---|
|     | [NAME OF SECTION NOTEHOLDER]  | \$  |
| (1) | All payments by wire transfer of immediately available funds to:                  |   |
|     | with sufficient information to identify the source and application of such funds. |   |
| (2) | All notices of payments and written confirmations of such wire transfers:         |   |
| (3) | E-mail address for Electronic Delivery:   |   |
| (4) | All other communications:   |   |
| (5) | U.S. Tax Identification Number:   |   |

## **AMORTIZATION SCHEDULE<sup>6</sup>**

| Date | Principal Amount | Interest Amount |  |
|------|------------------|-----------------|--|
|      |                  |                 |  |

 $<sup>^{\</sup>rm 6}$  NTD: This schedule will be populated from the financial model at Financial Close.

#### TRUSTEE INSTRUCTIONS

[FORM OF SECTION DEBT SERVICE PAYMENT ACCOUNT FUNDS TRANSFER CERTIFICATE]

[Trustee]

| Ladies and Gentlemen:   |  |
|---|--|
| Account Funds Transfer Certificate is being sub Supplemental Trust Agreement, dated as of $[\bullet]$ , | thority ("MDTA"), this Section Debt Service Payment mitted pursuant to Section [6.2] of that certain 202[•] between MDTA; [Section Noteholder], as a developer (the "Section Developer"); and The Bank |
| MDTA requests the Trustee make the following with Account to the Section Noteholder:                    | drawal and payment from the Debt Service Payment   |
| 1. the amount of $[]^7$ into the following ban  | k account [ <i>insert bank details</i> ].  |
| Date of Transfer:   |  |
| (SEAL)  | MARYLAND TRANSPORTATION AUTHORITY  |
|   | Name:  |

<sup>7</sup> NTD: This shall be equal to the Section Notes P&I Payment due to the Section Noteholder on the applicable Section Toll Payment Date.

## [FORM OF SECTION NOTE PROCEEDS ACCOUNT FUNDS TRANSFER CERTIFICATE]

| thority ("MDTA"), this Section Note Proceeds Account uant to Section [6.1(a)] of that certain Supplemental en MDTA, [Section Noteholder], as purchaser (the he "Section Developer"), and The Bank of New York |
|---|
| ndrawal and payment from the Section Note Proceeds  |
| ree] <sup>8</sup> to [ <i>bank account details</i> ]. <sup>9</sup>  |
|   |
| MARYLAND TRANSPORTATION AUTHORITY   |
| Name:<br>Title:   |
|   |

[Trustee]

<sup>&</sup>lt;sup>8</sup> **NTD**: Insert name of payee.

 $<sup>^{\</sup>rm 9}$   ${\rm NTD}\colon {\rm Include}$  multiple instructions if necessary.



Larry Hogan, Governor

Boyd K. Rutherford, Lt. Governor Gregory Slater, Chairman

#### **Board Members:**

Dontae Carroll
William H. Cox, Jr.
William C. Ensor, III
W. Lee Gaines, Jr.
Wario J. Gangemi, P.E.
Cynthia D. Penny-Ardinger
Jeffrey S. Rosen
John F. von Paris

James F. Ports, Jr., Executive Director

#### **MEMORANDUM**

**TO**: MDTA Board

**FROM**: Mr. Jim F. Ports, Executive Director, MDTA

Ms. Jaclyn Hartman, Chief Financial Officer, MDOT

**SUBJECT**: First Amended and Restated I-495 & I-270 Public-Private Partnership Program (P3)

Interagency Agreement (IAA) between Maryland Department of Transportation

(MDOT) State Highway Administration (SHA), MDOT and MDTA

**DATE**: August 26, 2021

#### PURPOSE OF MEMORANDUM

To request approval of the amended Interagency Agreement (Amended IAA) relating to the I-495 & I-270 Public-Private Partnership Program between MDTA, MDOT and MDOT SHA.

#### **SUMMARY**

MDTA will amend and restate the Amended IAA to (i) align it with the P3 Master Trust Agreement and the P3 Supplemental Trust Agreement that have been prepared for the I-495 & I-270 P3 Program (P3 Program) and are also being provided to the MDTA Board for approval under a separate board summary and (ii) to amend and clarify certain other terms of the original Interagency Agreement (Original IAA) to align with changes made to the approach to delivering the P3 Program or add additional detail to the agreement. The Original IAA was approved by the MDTA Board in April 2019 and executed on April 25, 2019. The Amended IAA will be executed in order to facilitate the development and tolling of the P3 Program.

## **ANALYSIS**

The Original IAA will be amended to align with the updated approach to delivering the P3 Program through multiple predevelopment public-private partnership agreements ("Phase P3 Agreements") for each phase of the P3 Program and subsequently the execution of multiple design, build, finance, operate, maintain public-private partnership agreements ("Section P3 Agreements") for each section of a Phase.

The Amended IAA includes updated and additional details setting out the responsibilities of each party with respect to the administration of the P3 Master Trust Agreement and P3 Supplemental Trust

First Amended and Restated I-495 & I-270 P3 IAA between MDOT SHA, MDOT and MDTA Page Two

Agreements. The Amended IAA is expected to be entered into concurrently with the execution of the P3 Master Trust Agreement.

Under the Amended IAA, MDTA agrees to comply with the P3 Master Trust Agreement and each P3 Supplemental Trust Agreement, and that it will only apply funds in the Upfront Payment Account (under the P3 Master Trust Agreement) or excess funds in the Operating Reserve Account (under the P3 Master Trust Agreement), in accordance with direction from MDOT. The IAA also sets out details with respect to the timing of payment by MDTA of different types of toll revenue to the P3 Program Account, and MDTA agrees to apply funds in the P3 Program Account only as set out in the Master Trust Agreement.

MDOT will be required to ensure that amounts standing to the credit of the Operating Reserve Account are at all times sufficient to satisfy the Section Developer Toll Payments due by MDTA to each Section Developer under the terms of each P3 Supplemental Trust Agreement then in effect. MDOT agrees to fund the Operating Reserve Account up to a required balance if there is any projected shortfall between inflows into the Operating Reserve Account and amounts payable to the Section Developer from the Operating Reserve Account on a six-month look-forward basis. If there are insufficient funds in the account or there is projected to be a shortfall, MDOT will be required to deposit additional funds into the Operating Reserve Account. If there are excess funds in the Operating Reserve Account, MDOT may direct MDTA to instruct the trustee to transfer the excess amount to MDOT.

The Amended IAA clarifies certain terms regarding the P3 Program-related costs that MDTA may recover under the Master Trust Agreement. MDTA shall be reimbursed for all costs and expenses incurred by it in connection with tolling related services, collection and enforcement of unpaid tolls for the P3 Program, together with certain other costs, in accordance with the terms of the Amended IAA. Further details relating to the administration of cost reimbursement shall be set out in policy documents to be agreed between MDOT and MDTA.

MDTA agrees that it shall not (unless compelled to by law), reduce the civil penalty for late payment of tolls, citation fees, or enforcement fees applicable to the P3 Program, or take other rate setting action that causes P3 Program revenues to decrease.

The Term will be extended to 60 years from the execution date of the Amended IAA.

#### **ATTACHMENTS**

- Amended and Restated Interagency Agreement (clean)
- Amended and Restated Interagency Agreement (redline)

#### FIRST AMENDED AND RESTATED INTERAGENCY AGREEMENT

#### **AMONG**

# MARYLAND DEPARTMENT OF TRANSPORTATION STATE HIGHWAY ADMINISTRATION

#### **AND**

#### MARYLAND TRANSPORTATION AUTHORITY

#### **AND**

#### MARYLAND DEPARTMENT OF TRANSPORTATION

This Amended and Restated Interagency Agreement (this "Agreement") is entered into as of [•, 2021] by and among the State Highway Administration, a modal administration of the Maryland Department of Transportation ("MDOT SHA"), the Maryland Transportation Authority ("MDTA") and the Maryland Department of Transportation ("MDOT") (collectively referred to herein as the "Parties").

#### **RECITALS**

WHEREAS, the Parties wish to facilitate private sector investment and participation in the development of improvements to I-495 and I-270 through public-private partnership ("P3") agreements (the "I-495 & I-270 P3 Program").

WHEREAS, pursuant to Title 10A of the State Finance and Procurement Article of the Annotated Code of Maryland, the Parties are authorized to undertake the solicitation, program management and delivery of the I-495 & I-270 P3 Program.

WHEREAS, pursuant to Sections 4-101 through 4-405 of the Transportation Article of the Annotated Code of Maryland (the "**Transportation Article**"), MDTA is authorized to finance, construct, operate, maintain and repair "transportation facilities projects" as defined in Section 4-

<sup>&</sup>lt;sup>1</sup> Date to be inserted.

101 of the Transportation Article, and to perform any and all actions necessary or convenient to carry out the powers granted by the Transportation Article, including issuing revenue bonds.

WHEREAS, pursuant to Section 4-312 of the Transportation Article, MDTA is the only entity in the State of Maryland (the "**State**") with the authority to set and fix tolls for State transportation facilities.

WHEREAS, MDOT SHA owns interstate highways in Maryland upon which the I-495 & I-270 P3 Program will be developed, including: (i) I-495 (Capital Beltway) from the American Legion Bridge over the Potomac River to east of the Woodrow Wilson Bridge and (ii) I-270 (Dwight D. Eisenhower Memorial Highway) from I-495 to I-70, including the east and west I-270 spurs (the "**Premises**").

WHEREAS, the Parties have determined that the design, construction, operations, maintenance and financing of the I-495 & I-270 P3 Program on the Premises is an authorized undertaking by the Parties under State law.

WHEREAS, the MDTA Board, pursuant to Resolution 18-04 approved on November 29, 2018, and amended on June 8, 2021 by Resolution 21-02 (the "**Approving Resolution**"), adopted the pre-solicitation report and conditionally designated the I-495 & I-270 P3 Program as a "transportation facilities project," subject to the execution of the Lease Agreements (as defined below) for the relevant parts of the I-495 & I-270 P3 Program and corresponding Phase P3 Agreements for the relevant parts of the I-495 & I-270 P3 Program.

WHEREAS, MDOT SHA has agreed to serve as agent for MDTA during the solicitation, program management and delivery of I-495 & I-270 P3 Program.

WHEREAS, the Parties intend to develop the Premises through multiple predevelopment public-private partnership agreements ("Phase P3 Agreements") for each phase of the I-495 & I-270 P3 Program ("Phase") leading to the execution of multiple design, build, finance, operate and maintain public-private partnership agreements ("Section P3 Agreements") for each section of a Phase ("Section"). The Phase P3 Agreements and the Section P3 Agreements are together referred to as the "P3 Agreements."

WHEREAS, MDOT SHA plans to select a developer for each Phase (each a "**Phase Developer**") pursuant to a competitive solicitation, and the Phase Developer shall establish subsidiaries (each a "**Section Developer**") to enter into the Section P3 Agreements for each Section within the relevant Phase.

WHEREAS, as part of the delivery of the I-495 & I-270 P3 Program, MDTA will enter into a Master Trust Agreement and Supplemental Trust Agreements to segregate the revenues received from each Section from its other revenues (including the revenues it receives for all other transportation facilities projects).

WHEREAS, the MDTA intends to enter into one or more lease agreement and such other instruments of transfer as may be necessary (collectively, the "Lease Agreements") for the Premises (or parts thereof) and to provide certain collection, enforcement and/or management responsibilities as further set forth herein.

WHEREAS, on April 25, 2019, the Parties entered into the original Interagency Agreement (the "**Original Interagency Agreement**") setting out the terms upon which the Parties would coordinate the delivery of the I-495 & I-270 Program.

WHEREAS, the Parties wish to amend and restate the Original Interagency Agreement as set forth herein.

**NOW THEREFORE**, for and in consideration of the mutual entry into this Agreement by the Parties hereto and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each Party hereto, the Parties hereto agree to the following terms of this Agreement:

#### 1. **DEFINITIONS**

Terms not otherwise defined in this Agreement shall have the following meanings.

"Agreement" is defined in the opening paragraph.

"Approving Resolution" is defined in the Recitals.

"**BPW**" is defined in Section 3.1(b)(v).

"Business Day" means any day that is not a Saturday, a Sunday, a State public holiday, or a federal public holiday or a day on which banking institutions in the State or in the city in which the office of the Trustee is located are authorized or obligated to remain closed.

"Developer Transaction Fee" means the fee due to MDTA with respect to each Trip submitted to MDTA for processing by any Section Developer as determined and defined in the Tolling Services Agreement(s).

"I-495 & I-270 P3 Program" is defined in the Recitals.

"**Image-Based Transaction**" means a Toll Transaction where the vehicle is identified by a photographic image of the license plate.

"Improvements to MDTA's System" shall mean those improvements that MDTA makes to its existing tolling system prior to the commencement of tolling for a Section in order to accommodate the receipt and processing of Trips from the applicable Section Developer and the collection tolls for the Section, as further set out the applicable Tolling Services Agreement.

"Lease Agreements" is defined in the Recitals.

"Master Trust Agreement" is defined in Section 7.1.

"MDOT" is defined in the opening paragraph.

"MDOT SHA" is defined in the opening paragraph.

"MDOT Transaction Fee" means the fee due to MDTA with respect to non-Transponder Trips submitted to MDTA for processing by any Section Developer as further described in Section 12.3.

"MDTA" is defined in the opening paragraph.

"MDTA P3 Program Costs" means MDTA's back office and collection costs, and other expenses and costs incurred in relation to the I-495 & I-270 P3 Program.

"Monthly Program Toll Collections Projected Shortfall" is defined in Section 7.4(i).

"Noteholder" means each Section Noteholder under any Supplemental Trust Agreement.

"Operating Reserve Account" is defined in Section 7.1.

"Operating Reserve Required Balance" is defined in Section 7.4(h).

"Original Interagency Agreement" is defined in the Recitals.

"P3" is defined in the Recitals.

"P3 Agreements" is defined in the Recitals.

"P3 Program Account" means the P3 program account established and maintained by MDTA.

"P3 Program ETC Away Collections" means toll revenues received by MDTA with respect to the P3 Program relating to any Trip based on Transponder Transactions associated with *E-ZPass®* transponders that are issued by toll agencies other than MDTA (or by any other interoperable toll account providers as approved by MDTA).

"P3 Program ETC Home Collection" shall mean the toll revenues received by MDTA with respect to the P3 Program relating to any Trip based on Transponder Transactions associated with *E-ZPass* transponders that are issued by MDTA.

"P3 Program Note" means any note issued for each Section under any Supplemental Trust Agreement.

- "P3 Program Preregistered Video Toll Collections" means the toll revenues collected through a Trip (based on Image-Based Transactions) for which the license plate associated with such Trip is associated with an account that permits tolls to be automatically billed to a credit card or other approved payment method.
- "P3 Program Revenues" means all Section Toll Revenues (as described and defined in any Supplemental Trust Agreement) collected across all Sections (including all payments of tolls received via *E-ZPass* or other Transponder Transaction, all payments of tolls received via any means other than Transponder Transactions, including but not limited to all video toll premiums, account service charges, late fees, penalties, or other amounts arising out of or relating to the payment of tolls by users of Sections).
- "P3 Program Video Toll Collection" means revenues collected through a Trip (based on Image-Based Transactions) for which MDTA is required to invoice the user of the I-495 & I-270 P3 Program prior to receiving payment, assuming customer does not proactively pay the toll online.

"Parties" is defined in the opening paragraph.

"Phase" is defined in the Recitals.

"Phase Developer" is defined in the Recitals.

"Phase P3 Agreements" is defined in the Recitals.

"Premises" is defined in the Recitals.

"Rate Covenant Shortfall" means, for any month:

- (i) all amounts projected to be payable from the Operating Reserve Account to all Section Developers across all Sections during such month and all principal and interest that shall be due and payable during such month to all Noteholders under any P3 Program Notes issued pursuant to each Supplemental Trust Agreement as calculated by MDTA; *minus*
- (ii) the projected P3 Program Revenues with respect to such month less projected MDTA P3 Program Costs with respect to such month,

provided that only Sections that have been in operation for at least 24 months following substantial completion of such Sections shall be included in such calculation; provided further, if the Rate Covenant Shortfall for any month is less than zero it shall be deemed to be zero for such month. A Rate Covenant Shortfall shall be deemed to have "occurred" in any month if the projected Rate Covenant Shortfall amount is greater than zero. Projections for (i) and (ii) of this definition shall use the current best estimate of toll revenues and prior twelve-month historical observations for establishing assumptions of

the distribution of payment method, vehicle classification and in-state vs. out-of-state vehicles. Reasonable adjustments shall be made to these assumptions to account for changes in collections.

"**Section**" is defined in the Recitals.

"Section Developer" is defined in the Recitals.

"Section Developer Toll Payment" means each section developer toll payment payable in accordance with the terms of each applicable Supplemental Trust Agreement.

"Section Note Proceeds Accounts" means each section note proceed account created under each Supplemental Trust Agreement.

"Section P3 Agreement" is defined in the Recitals.

"State" is defined in the Recitals.

"Substantial Completion" means the satisfaction of all the substantial completion conditions for the applicable Section.

"Substantial Completion Date" means the date Substantial Completion has been achieved for the applicable Section. "Supplemental Trust Agreement" is defined in Section 7.1.

"**Toll Transaction**" means an electronic record of a toll and a related set of contemporaneous vehicle images representing a vehicle that passes through a specific tolling point on the I-495 & I-270 P3 Program. A Toll Transaction may be either a Transponder Transaction or an Image-Based Transaction.

"Tolling Services Agreement" means a tolling services agreement entered into between MDTA and the relevant Section Developer for the applicable Section.

"**Transponder Transaction**" means a Toll Transaction with respect to a vehicle equipped with an active *E-ZPass* or an interoperable transponder.

"Transportation Article" is defined in the Recitals.

"**Trip**" means a bundled group of Toll Transactions relating to a single trip or passage on the priced managed lanes by a vehicle.

"**Trustee**" means the trustee under the Master Trust Agreement and each Supplemental Trust Agreement.

"Upfront Payment Account" means the upfront payment account created by the Trustee under the Master Trust Agreement.

### 2. TERM

This Agreement shall commence on the date set forth above and continue until the sixtieth (60th) anniversary thereof, unless sooner terminated by either Party.

#### 3. SCOPE OF WORK

## 3.1 MDTA Rights and Responsibilities

- (a) MDTA hereby appoints MDOT SHA to act as its agent in the solicitation, program management and delivery of the I-495 & I-270 P3 Program for the State as set forth in Section 3.2 (MDOT SHA Rights and Responsibilities); provided, that the foregoing appointment shall not extend to (i) the setting, collection or enforcement of tolls and fees on users of any portion of the I-495 & I-270 P3 Program; or (ii) any act or decision which may only be taken by the MDTA Board or its Executive Director pursuant to applicable law, which activities shall be performed solely by MDTA, its Board, its Executive Director or its designated agents (as applicable), in each case in accordance with applicable law or this Agreement. MDTA acknowledges that the Phase Developers and Section Developers under the P3 Agreements will be entitled to rely on MDTA's appointment of MDOT SHA for such purposes, and MDTA shall not act (or fail to act) or issue any instruction to a Phase Developer or Section Developer under a P3 Agreement, with respect to any matter for which MDOT SHA has been appointed as MDTA's agent hereunder (except for such ministerial or administrative actions of MDTA which may be necessary to permit MDOT SHA to perform its obligations).
- (b) Subject to the approval of the MDTA Board and to the extent permitted by applicable law, MDTA shall take all reasonable action as may be necessary or appropriate to support and enable MDOT SHA and the applicable Phase Developer or Section Developer to deliver each Phase or Section, as applicable, including the following, in each case in coordination with MDOT SHA:
  - (i) reviewing, commenting on and approving, as applicable, any solicitation and associated documentation (including the applicable P3 Agreements) necessary to deliver each Phase or Section, in each case prior to the date on which such documents are released by MDOT SHA to prospective offerors, and following the selection of a Phase Developer or Section Developer in respect of a Phase or Section, as applicable, executing and delivering the relevant P3 Agreement in the form agreed;
  - (ii) sharing information and participating in meetings where reasonably requested by MDOT or MDOT SHA to advance each Phase or Section, P3 Agreement and associated solicitation;

- (iii) submitting a joint Pre-Solicitation Report as required by State law to all applicable State entities;
- (iv) jointly submitting a joint Final Agreement Report for each P3 Agreement and each proposed P3 Agreement as required by State law to all applicable State entities;
- (v) leasing from MDOT SHA the Premises, in whole or in part for each Phase and entering into the appropriate Lease Agreements, subject to the approval of the Board of Public Works (the "BPW");
- (vi) establishing a new trust indenture, issuing P3 Program Notes for each Section to fund various costs related to the State's delivery of the I-495 & I-270 P3 Program, in compliance with applicable law, and directing the trustee over the life of the notes;
- (vii) engaging in the toll rate setting process established under State law; and
- (viii) providing (either directly or through a third-party contractor) toll collection, and account administration support services and disbursement of revenue to the Section Developer in accordance with toll collection agreements in the forms to be attached to the Section P3 Agreements, the form and terms of which shall be reasonably satisfactory to MDTA and MDOT SHA.
- (c) MDTA will maintain separate financial and supplemental records, to the extent reasonable and cost effective, for each Phase of the I-495 & I-270 P3 Program.
- (d) MDTA will exercise the same due diligence, control structure, policies, procedures and monitoring when collecting tolls and fees for the I-495 & I-270 P3 Program as it exercises when collecting toll revenues for MDTA's other toll facilities; provided that MDTA agrees that, in the event that a force majeure event or any other circumstance causes MDTA to elect to cease collecting all or some tolls or fees at any of its facilities, and such circumstances do not prevent MDTA from collecting tolls and fees in relation to the I-495 & I-270 P3 Program, MDTA shall continue to use reasonable efforts to collect tolls and fees at the I-495 & I-270 P3 Program facilities unless MDOT SHA consents to the cessation of tolling on any part of the I-495 & I-270 P3 Program.
- (e) MDTA will make available to the I-495 & I-270 P3 Program customers the same payment and system functionality available to tolling customers outside the I-495 & I-270 P3 Program.
- (f) MDTA's I-495 & I-270 P3 Program financial records will be audited annually by an independent, external auditing firm in order to issue audited financial statements. At MDTA's cost, its external auditors will conduct a Statement on Standards for

Attestation Engagements (SSAE) 18, Type II, SOC I audit and a copy will be provided to MDOT SHA. Any audits conducted by MDTA Internal Audit Office will include the total population of toll transactions processed by the MDTA, including those from each Section of the I-495 & I-270 P3 Program, and MDTA will provide a copy of any such audit to MDOT SHA following its completion. MDOT SHA may request for additional audits to be completed and documents as set out in Section 15 (*Reporting and Coordination*) with respect to the P3 Program (and the cost shall paid by MDOT SHA). MDTA shall provide a copy of any such additional audit to MDOT SHA following its completion.

(g) To the extent MDTA recovers lost revenue or any other sum resulting from the default of MDTA contractor(s), MDTA will deposit the I-495 & I-270 P3 Program pro rata portion of such sums in the Operating Reserve Account (as defined below) within 30 Business Days after receipt of such funds less the cost of collecting such lost revenue. MDTA will not be liable for any actions of other State agencies involved in the toll collection process, except for actions carried out at the direction of MDTA.

## 3.2 MDOT SHA Rights and Responsibilities

- (a) MDOT SHA shall serve as the lead State agency in the solicitation, program management and delivery of the I-495 & I-270 P3 Program for the State.
- (b) MDOT SHA agrees to act as agent of MDTA (at MDOT SHA's sole cost and expense, and subject to Section 3.1 (MDTA Rights and Responsibilities)) in connection with:
  - (i) the solicitation of each Phase of the I-495 & I-270 P3 Program, which shall be solicited and contracted for separately as may be determined by MDOT SHA;
  - (ii) the oversight, administration and management of each P3 Agreement entered into in connection with the I-495 & I-270 P3 Program for the State, including all design, construction, financing, operation and maintenance activities carried out thereunder (other than such matters as are specified in Section 3.1 (MDTA Rights and Responsibilities) as being retained by MDTA, in respect of which MDOT SHA shall have no right or obligation to act); and
  - (iii) the overall delivery of the I-495 & I-270 P3 Program for the State.
- 3.3 MDOT SHA shall use its best efforts to cause the design, construction, financing, operation and maintenance of the I-495 & I-270 P3 Program to be carried out in accordance with the P3 Agreement for each Phase or Section (as applicable) and this

- Agreement. MDOT SHA shall act in a manner consistent with the best interests of the State. MDOT SHA shall timely perform its obligations as MDTA's agent.
- 3.4 MDOT SHA shall have the right to review the key performance indicators submitted to MDTA by MDTA's tolling contractor. If key performance indicators fall below established levels, the MDTA shall use its best efforts to claim against and recover from such contractor in accordance with the terms of the applicable contract.
- 3.5 MDOT and MDOT SHA shall have the right to conduct (either directly or through a third-party contractor) an agreed upon procedures audit to establish that (a) the Developer Transaction Fee charged to the Section Developer for MDTA's toll collection services is in accordance with the agreed upon transaction cost model, (b) waivers of tolls and citations are in accordance with established waiver guidelines, and (c) costs charged to the P3 Program Account by MDTA for collection and enforcement are in accordance with MDTA's then-established procedures for the Developer Transaction Fee and MDOT Transaction Fee. MDTA shall provide reasonable access to information to MDOT SHA and its contractors for the purpose of performing such audits. Whenever reasonably possible, MDOT SHA will rely on information contained in other audit reports and provided by MDTA to MDOT SHA pursuant to Section 3.1(f) (MDTA Rights and Responsibilities) rather than conducting additional audits or reviews. Any audits requested by MDOT or MDOT SHA above those required of MDTA in Section 3.1(f) shall be paid for by MDOT, and copies provided to the MDTA upon completion.

#### 4. LEASE AND TRANSFER INSTRUMENTS

- 4.1 MDOT SHA shall lease parts of the Premises to MDTA pursuant to Lease Agreements to permit MDTA to satisfy the condition designating the P3 Program a "transportation facilities project" pursuant to Section 4-204 of the Transportation Article, subject to the approval of the Lease Agreements by the BPW (as required by the Approving Resolution).
- 4.2 The Parties agree to execute the Lease Agreements prior to such date as may be necessary to permit MDTA to designate the P3 Program a "transportation facilities project."

## 5. REPRESENTATIONS

## **5.1** Representations of MDOT SHA

- (a) MDOT SHA is a modal administration of the Maryland Department of Transportation, a principal department of the State.
- (b) MDOT SHA has the requisite power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations under this Agreement.

(c) By proper action, MDOT SHA has been duly authorized to execute and deliver this Agreement.

## **5.2** Representations of MDTA

- (a) MDTA is an agency of the State of Maryland governed by a Board consisting of eight (8) individuals appointed by the Governor with the consent of the Maryland Senate, and chaired by the Secretary of Transportation.
- (b) MDTA has the requisite power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations under this Agreement.
- (c) By proper action, MDTA has been duly authorized to execute and deliver this Agreement.

## **5.3** Representations of MDOT

- (a) MDOT is a principal department of the State.
- (b) MDOT has the requisite power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations under this Agreement.
- (c) By proper action, MDOT has been duly authorized to execute and deliver this Agreement.

## 6. CONTINGENT LIABILITIES

- 6.1 Subject to availability of funds in the Upfront Payment Account or appropriation by the Maryland General Assembly, to the extent any Phase Developer or Section Developer under a P3 Agreement is entitled to receive any amount for a compensation event or termination compensation, MDOT SHA will pay such amount to such Phase Developer or Section Developer, as applicable, on or before the date when such amount becomes due and payable. MDOT will take such actions as are necessary from time to time to request sufficient appropriations from the Maryland General Assembly to pay such amounts as and when they come due.
- Agreement (or any obligation to fund the Operating Reserve Account pursuant to Section 7.4 (*Operating Reserve Account*)) arises as a result of MDTA's breach of this Agreement (as amended from time to time, and including a breach of MDTA's obligations pursuant to Section 7.4(a) (*Operating Reserve Account*)), subsequent Agreements amongst the Parties, or any P3 Agreement, or any other act or omission of MDTA, MDOT or MDOT SHA shall have the right to seek reimbursement from MDTA for any amounts paid by

MDOT or MDOT SHA to such Phase Developer or Section Developer (or funded to the Operating Reserve Account), as applicable, and MDTA shall pay such amounts to MDOT or MDOT SHA within sixty (60) days (as applicable) after receipt of a written request therefor (or at such other time and subject to such other conditions as the Parties may agree in connection with any claim for reimbursement) provided, that if a breach of this Agreement or a P3 Agreement is directly caused by a contractor of MDTA breaching a contractual obligation to MDTA or a State agency failing to perform its obligations with respect to collections, then MDTA's obligation to reimburse MDOT or MDOT SHA pursuant to this Section 6.2shall be limited to the extent of any recovery by MDTA against such contractor or State agency, unless MDTA shall have failed to use its best efforts to claim against and recover the applicable amount from such contractor or recover the applicable amounts from the State agency. For the avoidance of doubt, MDTA shall have no obligation to pursue claims against other agencies of the State, however, MDTA will use its best efforts to recover from State agencies.

6.3 Except to the extent set forth in this Article 6, MDTA shall have no liability for contingent liabilities arising under any P3 Agreement and MDOT SHA will be responsible for administering and paying any and all claims, including compensation events and termination compensation, arising under any P3 Agreement.

## 7. TRUST INDENTURES AND RELATED ACCOUNTS

#### 7.1 Trust Indentures

MDTA shall establish a new master trust indenture with The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee") (such indenture, the "Master Trust Agreement") establishing the Operating Reserve Account for the payment of the Section Developer Toll Payment (the "Operating Reserve Account") and setting out certain other terms, in a form agreed with MDOT. In connection with financial close of each Section, MDTA will issue bonds or notes to fund certain costs in which the State is best equipped to manage and reduce the overall risk. Revenue to the Section Developer will be subject to the terms of a supplemental trust indenture (each a "Supplemental Trust Agreement") in a form agreed with MDOT and the applicable Section Developer. Further terms shall be set out in the Master Trust Agreement and each Supplemental Trust Agreement, including terms regarding the payment of toll revenues, issuance of the bonds or notes, establishment of certain segregated accounts, the minimum required balance of the Operating Reserve Account and a rate covenant under which MDTA may be required in the case of a shortfall to engage in the toll and fee setting process allowed by statute and COMAR (as referred to in Article 8 (*Rate Covenant*) hereto).

## 7.2 P3 Program Account

(a) In accordance with Section 3.3 (*P3 Program Account*) of the Master Trust Agreement, MDTA shall establish and maintain the P3 Program Account.

- (b) The P3 Program Account is not a trust account.
- (c) MDTA shall pay all P3 Program Revenues collected in relation to the I-495 & I-270 P3 Program from its comingled accounts into the P3 Program Account in compliance with this Section 7.2(c).
  - (i) **P3 Program ETC Home Collections**. MDTA shall transfer all P3 Program ETC Home Collections to the P3 Program Account no later than seven (7) days following the posting of the applicable Trip to the customer's Toll Account.
  - (ii) P3 Program Preregistered Video Toll Collections. MDTA shall transfer all P3 Program Preregistered Video Toll Collections to the P3 Program Account no later than one (1) Business Day following deposit of such P3 Program Preregistered Video Toll into the MDTA commingled account.
  - (iii) **P3 Program Video Toll Collections**. MDTA shall transfer all P3 Program Video Toll Collections to the P3 Program Account no later than one (1) Business Day following deposit of such P3 Program Video Toll Collection into the MDTA commingled account.
  - (iv) **P3 Program ETC Away Collections**. MDTA shall transfer all P3 Program ETC Away Collections to the P3 Program Account no later than the last day of the month following the month in which the Trip was reported to the relevant *E-ZPass* member and subsequently received from the *E-ZPass* member.
  - (v) Future Toll Collections. To the extent there is any future change in the manner in which tolls are paid by users and collected by MDTA such that any toll revenues relating to the I-495 & I-270 P3 Program do not fall into one of the categories set out in clause (i) to (iv) above, MDTA, MDOT and MDOT SHA shall agree to reasonable amendments to the terms of this Section 7.2(c) to accommodate prompt payment of such collection into the P3 Program Account.
- (d) MDTA shall apply funds in the P3 Program Account only in accordance with Section 3.3 (*P3 Program Account*) of the Master Trust Agreement.
- (e) To the extent (i) there are excess funds in the P3 Program Account in any month after the transfers required to be made under Section 3.3 (*P3 Program Account*) of the Master Trust Agreement have been made and (ii) there is a potential shortfall in the balance of the Operating Reserve Account, MDOT may request that MDTA transfer such excess funds to the Operating Reserve Account in an amount sufficient to cover the potential shortfall. Any such transfer shall be deemed to be an early

payment of amounts otherwise due to be transferred from the P3 Program Account to the Operating Reserve Account. Requests for early payment shall be on an exception basis and not to extend beyond three (3) consecutive months.

## 7.3 Upfront Payment Account

- (a) Any payment that MDOT or MDTA receives in connection with the I-495 & I-270 P3 Program and that MDTA directs, or that MDOT directs MDTA to direct, for payment into the Upfront Payment Account, or any payment received by the Trustee that is not paid into any other account pursuant to the terms hereof, shall be credited to the Upfront Payment Account pursuant to Section 3.2 (*Upfront Payment Account*) of the Master Trust Agreement. Such payments may include, but are not limited to, (a) any development rights fee or similar payment received from a P3 Program phase developer, any proceeds of the drawing on a letter of credit or other security related to any development rights fee, (b) any upfront payment received from the Section Developer, (c) any proceeds from drawing on the letter of credit provided as closing security received from any Section Developer, or (d) any other fees or funds directed into the Upfront Payment Account by MDTA or MDOT.
- (b) Funds in the Upfront Payment Account shall be held by the Trustee pursuant to Section 3.1(a) (*Upfront Payment Account*) of the Master Trust Agreement. MDTA shall direct the Trustee to make disbursements only upon and in accordance with the written direction of MDOT.
- (c) Funds in the Upfront Payment Account may be used for those items set forth in Section 3.2 (*Upfront Payment Account*) of the Master Trust Agreement, which, for avoidance of doubt, shall include (as a I-495 & I-270 P3 Program cost) any amounts required to fund the Operating Reserve Account.
- (d) MDTA shall, if so instructed in writing by MDOT, provide written instructions to the Trustee to draw on any letter of credit or other security provided by any Phase Developer in connection with the development rights fee or any payment. Such instruction shall specify the terms by which the Trustee shall make such drawing.
- (e) MDTA agrees that it shall not direct the Trustee to make any payments from the Upfront Payment Account without written authorization from MDOT.

## 7.4 Operating Reserve Account

(a) The Parties acknowledge and agree that MDTA will, in connection with collecting tolls from users of each Section, pay (in accordance with the applicable Section P3 Agreement or associated Supplemental Trust Agreement) to the applicable Section Developer each month a Section Developer Toll Payment from the Operating Reserve Account, which may not be equal to the amount of toll revenue actually

- collected by MDTA for the applicable Section during such month. Any shortage in the amount due to the Section Developer(s) will also be paid from the Operating Reserve Account.
- (b) MDTA shall direct the Trustee to make payments to each Section Developer from the Operating Reserve Account in accordance with Section 3.4 (*Operating Reserve Account*) of the Master Trust Agreement.
- (c) MDOT or MDOT SHA shall fund and maintain the Operating Reserve Required Balance in the Operating Reserve Account and shall ensure that amounts standing to the credit of the Operating Reserve Account are at all times sufficient to satisfy the Section Developer Toll Payments due by MDTA to each Section Developer under the terms of each Supplemental Trust Agreement then in effect.
- (d) If, after the Trustee has made all payments referred to in paragraph *First* and paragraph *Second* of Section 3.4 (*Operating Reserve Account*) of the Master Trust Agreement, the balance of the Operating Reserve Account (including any amount funded by way of letter of credit delivered in accordance with Section 7.4(e) below) is in excess of the Operating Reserve Required Balance, then MDTA shall (if so instructed in writing by MDOT) instruct the Trustee to pay such excess to MDOT pursuant to paragraph *Third* of Section 3.4 (*Operating Reserve Account*) of the Master Trust Agreement.
- (e) MDOT may fund any amount of the Operating Reserve Required Balance with a letter of credit delivered to the Trustee in accordance with the terms of the Master Trust Agreement. The amount of any such letter of credit shall be counted towards the Operating Reserve Required Balance. If MDTA determines that the funds in the Operating Reserve Account are insufficient to satisfy the Section Developer Toll Payments next due and payable, it may, upon written notice to MDOT, instruct the Trustee to draw on the letter of credit in an amount necessary to satisfy all Section Developer Toll Payments next due.
- (f) Six months prior to the projected Substantial Completion Date of the each Section, MDOT, MDOT SHA and MDTA shall arrange to meet and agree on the initial Operating Reserve Required Balance. Ninety (90) days prior to the projected Substantial Completion Date of the first Section, MDOT or MDOT SHA shall cause the Operating Reserve Account to be funded with the initial Operating Reserve Required Balance. Thereafter:
  - (i) MDTA shall recalculate the Operating Reserve Required Balance on a monthly basis;
  - (ii) in the event that the balance of the Operating Reserve Account is less than the Operating Reserve Required Balance, within 90 days of such

determination (but in no case later than two Business Days before the funds are required to be paid to any relevant Section Developer), MDOT (or, if MDOT so elects, MDOT SHA) shall make a payment in the amount of such projected shortfall into the Operating Reserve Account or direct MDTA to make such transfer from the Upfront Payment Account; and

- (iii) to the extent that the amount on deposit in the Operating Reserve Account exceeds the Operating Reserve Required Balance, such excess shall be paid to MDOT pursuant to Section 7.4(d).
- (g) All amounts payable by MDOT, including MDOT SHA, from the Transportation Trust Fund to MDTA under this Agreement will be subject to appropriations by the Maryland General Assembly in accordance with and to the extent required under applicable law. MDTA shall have no obligation to use any of its funds or resources in the event there is no such appropriation, and the Trustee, Noteholders, Section Developers, or other third parties will not have any recourse against MDTA.
- (h) "Operating Reserve Required Balance" means, in any month the aggregate of the Monthly Program Toll Collections Projected Shortfall for each of the next six months.
- (i) "Monthly Program Toll Collections Projected Shortfall" means, for any month:
  - (i) all Section Developer Toll Payments projected to be payable from the Operating Reserve Account to all Section Developers across all Sections during such month pursuant to each Supplemental Trust Agreement; *minus*
  - (ii) the greater of:
    - (A) zero, and
    - (B) all projected Section Toll Revenues (as described and defined in any Supplemental Trust Agreement) collected across all Sections (including all payments of tolls received via *E-ZPass* or other Transponder Transaction, all payments of tolls received via any means other than Transponder Transactions, all video toll premiums, account service charges, late fees, penalties, or other amounts arising out of or relating to the payment of tolls by users of the Sections) to be received during such month *less* projected MDTA P3 Program Costs with respect to such month, *less* all principal and interest that shall be due and payable during such month,

provided that if the Monthly Program Toll Collection Projected Shortfall for any month is less than zero it shall be deemed to be zero for such month. Projections for (a) and (b) above shall use the current best estimate of toll revenues and prior

twelve-month historical observations for establishing assumptions of the distribution of payment method, vehicle classification and in-state vs. out-of-state vehicles. Reasonable adjustments shall be made by MDTA and MDOT to these assumptions to account for changes in toll rates, citation fees and other factors which shall be documented in the policy referred to in Section 8 (*Rate Covenant*).

## 7.5 Section Note Proceeds Accounts

Upon written direction from MDOT, MDTA shall direct the Trustee to make payments from the Section Note Proceeds Accounts for each Section to pay (a) upfront Trustee fees and Trustee fees incurred in relation to the relevant Section prior to Substantial Completion of that Section; and (b) costs relating to such Section as permitted in accordance with the terms of the relevant Supplemental Trust Agreement.

#### 8. RATE COVENANT

MDTA shall comply with the rate covenant set out in Article 5 (*Rate Covenant*) of the Master Trust Agreement. If there is projected to be a Rate Covenant Shortfall in six or more consecutive months during the next 24 months, MDTA shall notify MDOT in writing of such projected Rate Covenant Shortfall. MDOT reserves the right to request MDTA to take certain actions as are reasonably necessary to eliminate the Rate Covenant Shortfall as set out in the Master Trust Agreement.

MDOT and MDTA shall develop and agree on a policy that will determine the specific historical assumptions to be used in calculating the Rate Covenant Shortfall under Article 5 (*Rate Covenant*) of the Master Trust Agreement and the Monthly Program Toll Collections Projected Shortfall under this Agreement. Such policy will set out the method for calculating such shortfall amounts on a per-month basis.

## 9. INVESTMENT

MDTA shall instruct the Trustee to invest amounts in any accounts held by the Trustee pursuant to the Master Trust Agreement or any Supplemental Trust Agreement and in conformance with MDOT's directed strategy and investment policy. Quarterly investment meetings with MDOT and MDTA are required to coordinate investment strategy and review the funding adequacy of the Operating Reserve Account. MDOT and MDTA shall develop an investment policy and strategy that will establish permissible investment types and maturities and guide the MDTA's daily investment discretion.

## 10. NON-INTERFERENCE

No Party shall interfere with or impede any other Party's performance of its obligations under this Agreement or any P3 Agreement. The Parties shall not interfere with the performance by any Phase Developer or Section Developer of its obligations under a P3 Agreement, except as may be expressly permitted by the terms of such P3 Agreement.

#### 11. REAL PROPERTY

MDOT SHA agrees, when it deems appropriate and to the extent permitted by applicable law, to exercise its condemnation authority in support of delivering the I-495 & I-270 P3 Program.

#### 12. COST REIMBURSEMENT

- 12.1 Prior to the execution of the Phase P3 Agreement for the first Phase of the P3 Program, each Party shall be responsible for its own internal staffing costs in fulfilling its respective obligations under this Agreement and related to the Phase P3 Agreement. MDOT SHA shall pay all external costs directly or reimburse MDTA for all approved external costs incurred.
- 12.2 After the execution of the Phase P3 Agreement for the first Phase of the P3 Program, but prior to the commencement of tolling of the first Section of the first Phase of the P3 Program, MDTA shall be reimbursed for its internal and external costs documented in fulfilling its respective obligations under this Agreement, each Phase P3 Agreement, and each Section P3 Agreement. All internal and external costs incurred shall be identified as either project costs or Improvements to MDTA's System prior to commencement of tolling. Improvements to MDTA's System prior to commencement of tolling shall be reimbursed to MDTA by the Phase Developer, by the Section Developer, through the P3 Program Notes or by MDOT. MDOT SHA shall reimburse MDTA for all pre-approved internal and external project costs incurred prior to commencement of tolling. Project cost services shall be provided with the explicit understanding that MDTA has an obligation to only provide such services that are pre-approved by MDOT or MDOT SHA. All Improvements to MDTA's System and project costs referenced in this Section 12.2 shall be for efforts and/or costs that are solely for the benefit of the P3 Program and would not otherwise be performed or costs incurred.
- 12.3 Upon the commencement of tolling of the first Section of the first Phase of the P3 Program, MDTA will provide certain tolling-related services including back office and collection services. MDTA will be reimbursed for these services through the Developer Transaction Fee and the MDOT Transaction Fee. The Developer Transaction Fee will include costs associated with *E-ZPass* tolling. The MDOT Transaction Fee will include the incremental costs associated with the collection and enforcement of unpaid transactions. The Developer Transaction Fee and MDOT Transaction Fee will be determined based on a cost model maintained by the MDTA in compliance with the applicable Tolling Services Agreement and be inclusive of empirical data, capital and operating contracts, personnel and other toll related expenses, forecast transactions, shared cost allocation, and prior year true-up adjustment.
  - (a) MDTA will document the model mechanics and provide supporting documentation for all model inputs for MDOT and MDOT SHA's review.

- (b) The Parties shall develop and agree on a policy that establishes the required documentation. This policy may be revised from time to time upon agreement by the Parties.
- (c) MDTA shall be reimbursed via the Developer Transaction Fee and MDOT Transaction Fee from the P3 Program Account.
- (d) MDTA agrees that it shall only seek reimbursement from the P3 Program Account as permitted under this Section 12.3.
- 12.4 Upon the commencement of tolling of the first Section of the first Phase of the P3 Program, any pre-approved MDTA internal or external costs not reimbursed through the Developer Transaction Fee or the MDOT Transaction Fee shall be reimbursed through ad-hoc direct payments by the Phase Developer, Section Developer, MDOT, or MDOT SHA. MDTA has an obligation to only provide such services that are pre-approved.
- 12.5 In the event that there are insufficient funds in the P3 Program Account to reimburse MDTA, MDOT (if applicable, subject to appropriation by the Maryland General Assembly) shall reimburse MDTA for its outstanding pre-approved costs. In the event MDTA is not reimbursed by MDOT, the Phase Developer, or Section Developer, the amount owed will remain outstanding until reimbursed.

#### 13. REVENUE SHARING

To the extent MDOT receives any revenue from a Section Developer under a Section P3 Agreement pursuant to any revenue sharing arrangements described therein, the Parties acknowledge and agree that such revenue be deposited in the Transportation Trust Fund pursuant to Section 3-216 of the Transportation Article. MDTA is not entitled to any portion of revenue sharing.

#### 14. FEES AND CITATION COVENANT

MDTA shall not, except to the extent compelled to by applicable law or with the written consent of MDOT, reduce the civil penalty for late payment of tolls, citation fees, or enforcement fees applicable to the P3 Program, or take other rate setting action that causes P3 Program Revenues to decrease.

#### 15. REPORTING AND COORDINATION

MDTA shall:

- (a) coordinate with MDOT in relation to the transactions contemplated by the Master Trust Agreement and each Supplemental Trust Agreement;
- (b) maintain accurate and complete records relating to the I-495 & I-270 P3 Program, Master Trust Agreement and each Supplemental Trust Agreement, including details

of all toll revenue received in relation to the P3 Program and all payments to or from the P3 Program Account. Such records shall include details of the flow of funds to and from each account, account balances, payments of costs and expenses, and receipts from all tolling transactions related to the I-495 & I-270 P3 Program. MDTA shall share such information with MDOT and MDOT SHA at times and in a level of detail agreed between the Parties, including information provided or available from the Trustee relating to all accounts held by the Trustee under the Master Trust Agreement and each Supplemental Trust Agreement; and

(c) share with MDOT and MDOT SHA monthly reconciliation reports setting out details for all payments MDTA makes into or from the P3 Program Account or that MDTA directs the Trustee to make from any accounts held by the Trustee under the Master Trust Agreement and each Supplemental Trust Agreement, the content of which shall be agreed between MDOT, MDOT SHA and MDTA (which may include the reconciliation of (i) amounts received by MDTA with respect to the I-495 & I-270 P3 Program, (ii) fees paid to MDTA, (iii) payments made to each Section Developer and each Noteholder, (iv) any amounts subject to clawback, (v) amounts received from MDOT or MDOT SHA, and (vi) all I-495 & I-270 P3 Program account balances).

## 16. TRUST DOCUMENT ADMINISTRATION POLICIES

The Parties shall agree to detailed policies regarding the implementation and administration of this Agreement, the Master Trust Agreement, each Supplemental Trust Agreement, and any other related documents. The Parties shall update such policies as required from time to time by mutual agreement.

## 17. O&M OF GENERAL PURPOSE LANES

MDOT SHA shall retain all operations and maintenance obligations with respect to the I-495 & I-270 P3 Program's general-purpose lanes and associated infrastructure, unless such responsibilities are transferred to a Section Developer under a P3 Agreement. Law enforcement is to be performed by the Maryland State Police. MDTA does not have any responsibilities for providing law enforcement services for the P3 Program.

#### 18. TERMINATION OF P3 AGREEMENTS

18.1 Following a Section P3 Agreement's termination prior to the original expiration of its term, MDOT SHA shall have the option to operate and maintain (or enter into a contract with a third party providing for the operation and maintenance of) the tolled lanes and continue to require that users of the tolled lanes pay a toll. If MDOT SHA exercises such right, the Lease Agreement related to that Section will continue in effect and MDTA shall continue to perform all applicable toll setting, collection and enforcement services (and will cooperate with MDOT SHA to take such other actions as may be reasonably necessary to

permit the continued operations and maintenance of such tolled lanes by MDOT SHA or its contractor). Further, the revenue collected from users of the toll lanes for the applicable Section (net of (a) principal and interest payable on the debt issued by MDTA and (b) a per-Trip processing fee to cover MDTA's cost of collections and enforcement), shall be applied in accordance with the Master Trust Agreement and applicable Supplemental Trust Agreement.

- 18.2 In the alternative, following a Section P3 Agreement's termination prior to the original expiration of its term, if the outstanding bonds or notes issued by MDTA under the applicable Supplemental Trust Agreement are defeased, MDOT SHA shall have the option to operate and maintain (or enter into a contract with a third party providing for the operation and maintenance of) the tolled lanes and no longer require that users of the lanes pay a toll. If MDOT SHA exercises such right, the Lease Agreement related to that Section will terminate with respect to that Section and MDTA shall have no further right or obligation with respect to such tolled lanes.
- 18.3 If MDOT SHA elects not to exercise either of its options pursuant to Section 18.1 or 18.2, then MDTA shall (unless and until any debt issued by MDTA which is secured by the revenue collected from users of the tolled lanes for the applicable Section is defeased) continue to perform toll setting, collection and enforcement services, and disburse the revenues in accordance with the Master Trust Agreement and applicable Supplemental Trust Agreement.
- 18.4 Prior to the expiration of the original term of a Section P3 Agreement, the Parties will meet to discuss the measures to be taken with respect to their rights and obligations under this Agreement, including whether any new or amended agreement(s) should be entered into with respect to such Section.
- 18.5 Upon termination of any Section P3 Agreement, in connection with its rights under this Section 18, MDOT may direct MDTA to redeem the outstanding P3 Program Notes, or permit the assignment or transfer of the Noteholder's rights and obligations under the outstanding P3 Program Notes related to such Section P3 Agreement to another party or MDOT or MDOT SHA may assume the rights and obligations of such Noteholder. MDTA shall cooperate with such request, provided that MDOT or MDOT SHA shall fund any payment due to any Noteholder with respect thereto. Upon any termination of a Section P3 Agreement, the Parties shall coordinate and agree to any new financing to be issued against the toll revenues for the relevant Section and the use of the proceeds of such issue.

## 19. NO LIABILITY

MDTA will have no liability to MDOT SHA for any actions or claims arising solely out of MDTA's lease of the Premises pursuant to Article 4 (*Lease and Transfer Instruments*).

#### 20. GENERAL

### 20.1 Notices

All notices, statements, reports, demands, requests, consents, approvals, waivers and authorizations required by this Agreement to be given by any Party to the others will be by email to the address set forth below, or such other email address as may be notified by a Party to the other in accordance with this Section 20.1 from time to time, the receipt of which shall be confirmed by the other Parties by email:

MDOT SHA Contact: Jeffrey Folden

Email: JFolden1@mdot.maryland.gov

MDTA Contact: Deborah Sharpless

Email: desharpless@mdta.state.md.us

MDOT Contact: Jaclyn Hartman

Email: jhartman1@mdot.maryland.gov

## 20.2 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the State of Maryland.

#### 20.3 Survival

This Article 20 and all other provisions which by their inherent character should survive the termination of or completion of the obligations of the Parties under this Agreement will survive the termination of or the completion of the obligations of the Parties under this Agreement.

## **20.4** No Personal Liability

No officer, agent, representative or employee of any of the Parties will be personally liable under any provision of this Agreement, or because of the execution or attempted execution of this Agreement, or because of any breach of this Agreement.

#### 20.5 Effectiveness

This Agreement will, as of the date first set forth above, inure to the benefit of and shall be binding upon the Parties hereto and their respective successors and permitted assigns, subject, however, to the limitations contained in this Agreement.

## 20.6 Severability

In the event any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision of this Agreement.

## 20.7 Amendments, Changes and Modifications

Except as otherwise expressly provided in this Agreement, this Agreement may not be effectively amended, changed, modified, altered or terminated without the express written consent of the Parties. Upon the reasonable request of a Party, all Parties shall cooperate in good faith to negotiate and enter into such amendments to this Agreement as may be necessary to give further effect to its intended purposes and otherwise address such matters as may be necessary or appropriate amongst each other for purposes of implementing the I-495 & I-270 P3 Program.

# 20.8 Master Trust Agreement and Supplemental Trust Agreement Amendments, Changes and Modifications

MDTA shall not enter into or amend the terms of the Master Trust Agreement, any Supplemental Trust Agreement, or any other document that would affect the rights or obligations of MDOT or MDOT SHA under this Agreement without the prior consent of MDOT and MDOT SHA.

## 20.9 Counterparts

This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

## 20.10 Captions

The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

## 20.11 Effect of this Agreement; Reaffirmation

It is the intention of each of the Parties hereto that the Original Interagency Agreement be amended and restated in its entirety. This Agreement amends and restates in its entirety (but without written novation) the Original Interagency Agreement.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

| IN WITNESS WHEREOF, the Parties have e                           | executed this Agreement as of the date set forth above. |  |
|--|---|--|
|  | MARYLAND DEPARTMENT OF TRANSPORTATION                   |  |
| APPROVED AS TO FORM AND LEGAL<br>SUFFICIENCY:                    | Gregory Slater Secretary                                |  |
| Assistant Attorney General Maryland Department of Transportation |   |  |

| WITNESS:  | MARYLAND DEPARTMENT OF<br>TRANSPORTATION STATE HIGHWAY<br>ADMINISTRATION |  |
|---|--|--|
|   | Tim Smith Administrator  |  |
| APPROVED AS TO FORM AND SUFFICIENCY:                        | LEGAL  |  |
| Assistant Attorney General Maryland Department of Transport | tation   |  |
| State Highway Administration                                |  |  |

| WITNESS:   | MARYLAND TRANSPORTATION<br>AUTHORITY    |
|--|---|
|  | James F. Ports Jr<br>Executive Director |
| APPROVED AS TO FORM AND LEG<br>SUFFICIENCY:                  | AL                                      |
| Assistant Attorney General Maryland Transportation Authority |   |

#### FIRST AMENDED AND RESTATED INTERAGENCY AGREEMENT

#### **AMONG**

# MARYLAND DEPARTMENT OF TRANSPORTATION STATE HIGHWAY ADMINISTRATION

#### **AND**

#### MARYLAND TRANSPORTATION AUTHORITY

#### AND

#### MARYLAND DEPARTMENT OF TRANSPORTATION

This Amended and Restated Interagency Agreement ("(this "Agreement") is entered into as of this 25th day of April, 2019[•, 2021]¹ by and among the State Highway Administration, a modal administration of the Maryland Department of Transportation ("MDOT SHA"), the Maryland Transportation Authority ("MDTA") and the Maryland Department of Transportation ("MDOT") (collectively referred to herein as the "Parties").

#### RECITALS

WHEREAS, the Parties wish to facilitate private sector investment and participation in the development of improvements to I-495 and I-270 through public-private partnership ("P3") agreements (the "I-495 & I-270 P3 Program").

WHEREAS, pursuant to Title 10A of the State Finance and Procurement Article of the Annotated Code of Maryland, the Parties are authorized to undertake the solicitation, program management and delivery of the I-495 & I-270 P3 Program.

<sup>&</sup>lt;sup>1</sup> Date to be inserted.

WHEREAS, pursuant to Sections 4-101 through 4-405 of the Transportation Article of the Annotated Code of Maryland, (the "Transportation Article"), MDTA is authorized to finance, construct, operate, maintain and repair "transportation facilities projects" as defined in Section 4-101 of the Transportation Article, and to perform any and all actions necessary or convenient to carry out the powers granted by the Transportation Article, including issuing revenue bonds.

WHEREAS, pursuant to Section 4-312 of the Transportation Article, MDTA is the only entity in the State of Maryland (the "**State**") with the authority to set and fix tolls for State transportation facilities.

WHEREAS, MDOT SHA owns interstate highways in Maryland upon which the I-495 & I-270 P3 Program will be developed, including: (i) I-495 (Capital Beltway) from the American Legion Bridge over the Potomac River to east of the Woodrow Wilson Bridge and (ii) I-270 (Dwight D. Eisenhower Memorial Highway) from I-495 to I-70, including the east and west I-270 spurs (the "**Premises**").

WHEREAS, the Parties have determined that the design, construction, operations, maintenance and financing of the I-495 & I-270 P3 Program on the Premises is an authorized undertaking by the Parties under State law.

WHEREAS, the MDTA Board, pursuant to Resolution 18-04 approved on November 29, 2018, and amended on June 8, 2021 by Resolution 21-02 (the "**Approving Resolution**"), adopted the presolicitation report and conditionally designated the I-495 & I-270 P3 Program as a "transportation facilities project", "subject to the execution of the Lease Agreements (as defined below) for the relevant Phasesparts of the I-495 & I-270 P3 Program and corresponding Phase P3 Agreements for the relevant parts of the I-495 & I-270 P3 Program.

WHEREAS, MDOT SHA has agreed to serve as agent for MDTA during the solicitation, program management, and delivery of I-495 & I-270 P3 Program.

WHEREAS, the Parties intend to develop the Premises through multiple <u>predevelopment public-private partnership agreements</u> ("**Phase P3 Agreements**") for each phase of the I-495 & I-270 P3 Program ("**Phase**") leading to the execution of multiple design, build, finance, operate, and maintain ("**DBFOM"**) public-private partnership agreements ("**Phases"**). Section P3 Agreements") for each section of a Phase ("Section"). The Phase P3 Agreements and the Section P3 Agreements are together referred to as the "**P3 Agreements.**"

WHEREAS, MDOT SHA plans to select a developer for each Phase (the "each a "Phase Developer") pursuant to a competitive solicitation, and the Phase Developer shall establish subsidiaries (each a "Section Developer") to enter into the Section P3 Agreements for each Section within the relevant Phase.

WHEREAS, as part of the delivery of the I-495 & I-270 P3 Program, MDTA will enter into a Master Trust Agreement and Supplemental Trust Agreements to segregate the revenues received from each Section from its other revenues (including the revenues it receives for all other transportation facilities projects).

WHEREAS, the MDTA intends to enter into <u>none or more</u> lease agreement and such other instruments of transfer as may be necessary (collectively, the "**Lease Agreements**") for the Premises <u>(or parts thereof)</u> and to provide certain collection, enforcement and/or management responsibilities as further set forth herein.

WHEREAS, on April 25, 2019, the Parties entered into the original Interagency Agreement (the "Original Interagency Agreement") setting out the terms upon which the Parties would coordinate the delivery of the I-495 & I-270 Program.

WHEREAS, the Parties wish to amend and restate the Original Interagency Agreement as set forth herein.

**NOW THEREFORE**, for and in consideration of the mutual entry into this Agreement by the Parties hereto and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each Party hereto, the Parties hereto agree to the following terms of this Agreement:

#### 1. <u>1. DEFINITIONS</u>

Terms not otherwise defined in this Agreement shall have the following meanings.

"Agreement" is defined in the opening paragraph.

"Approving Resolution" is defined in the Recitals.

"BPW" is defined in Section 3.1(b)(v).

"Business Day" means any day that is not a Saturday, a Sunday, a State public holiday, or a federal public holiday or a day on which banking institutions in the State or in the city in which the office of the Trustee is located are authorized or obligated to remain closed.

"Developer Transaction Fee" means the fee due to MDTA with respect to each Trip submitted to MDTA for processing by any Section Developer as determined and defined in the Tolling Services Agreement(s).

"I-495 & I-270 P3 Program" is defined in the Recitals.

"Image-Based Transaction" means a Toll Transaction where the vehicle is identified by a photographic image of the license plate.

"Improvements to MDTA's System" shall mean those improvements that MDTA makes to its existing tolling system prior to the commencement of tolling for a Section in order to accommodate the receipt and processing of Trips from the applicable Section Developer and the collection tolls for the Section, as further set out the applicable Tolling Services Agreement.

"Lease Agreements" is defined in the Recitals.

"Master Trust Agreement" is defined in Section 7.1.

"MDOT" is defined in the opening paragraph.

"MDOT SHA" is defined in the opening paragraph.

"MDOT Transaction Fee" means the fee due to MDTA with respect to non-Transponder Trips submitted to MDTA for processing by any Section Developer as further described in Section 12.3.

"MDTA" is defined in the opening paragraph.

"MDTA P3 Program Costs" means MDTA's back office and collection costs, and other expenses and costs incurred in relation to the I-495 & I-270 P3 Program.

"Monthly Program Toll Collections Projected Shortfall" is defined in Section 7.4(i).

"Noteholder" means each Section Noteholder under any Supplemental Trust Agreement.

"Operating Reserve Account" is defined in Section 7.1.

"Operating Reserve Required Balance" is defined in Section 7.4(h).

"Original Interagency Agreement" is defined in the Recitals.

"P3" is defined in the Recitals.

"P3 Agreements" is defined in the Recitals.

"P3 Program Account" means the P3 program account established and maintained by MDTA.

"P3 Program ETC Away Collections" means toll revenues received by MDTA with respect to the P3 Program relating to any Trip based on Transponder Transactions associated with *E-ZPass*® transponders that are issued by toll agencies other than MDTA (or by any other interoperable toll account providers as approved by MDTA).

"P3 Program ETC Home Collection" shall mean the toll revenues received by MDTA with respect to the P3 Program relating to any Trip based on Transponder Transactions associated with *E-ZPass* transponders that are issued by MDTA.

"P3 Program Note" means any note issued for each Section under any Supplemental Trust Agreement.

"P3 Program Preregistered Video Toll Collections" means the toll revenues collected through a Trip (based on Image-Based Transactions) for which the license plate associated with such Trip is associated with an account that permits tolls to be automatically billed to a credit card or other approved payment method.

"P3 Program Revenues" means all Section Toll Revenues (as described and defined in any Supplemental Trust Agreement) collected across all Sections (including all payments of tolls received via *E-ZPass* or other Transponder Transaction, all payments of tolls

received via any means other than Transponder Transactions, including but not limited to all video toll premiums, account service charges, late fees, penalties, or other amounts arising out of or relating to the payment of tolls by users of Sections).

"P3 Program Video Toll Collection" means revenues collected through a Trip (based on Image-Based Transactions) for which MDTA is required to invoice the user of the I-495 & I-270 P3 Program prior to receiving payment, assuming customer does not proactively pay the toll online.

"Parties" is defined in the opening paragraph.

"**Phase**" is defined in the Recitals.

"Phase Developer" is defined in the Recitals.

"Phase P3 Agreements" is defined in the Recitals.

"**Premises**" is defined in the Recitals.

"Rate Covenant Shortfall" means, for any month:

- (i) all amounts projected to be payable from the Operating Reserve Account to all Section Developers across all Sections during such month and all principal and interest that shall be due and payable during such month to all Noteholders under any P3 Program Notes issued pursuant to each Supplemental Trust Agreement as calculated by MDTA; minus
- (ii) the projected P3 Program Revenues with respect to such month less projected MDTA P3 Program Costs with respect to such month,

provided that only Sections that have been in operation for at least 24 months following substantial completion of such Sections shall be included in such calculation; provided further, if the Rate Covenant Shortfall for any month is less than zero it shall be deemed to be zero for such month. A Rate Covenant Shortfall shall be deemed to have "occurred" in any month if the projected Rate Covenant Shortfall amount is greater than zero. Projections for (i) and (ii) of this definition shall use the current best estimate of toll revenues and prior twelve-month historical observations for establishing assumptions of the distribution of payment method, vehicle classification and in-state vs. out-of-state vehicles. Reasonable adjustments shall be made to these assumptions to account for changes in collections.

"Section" is defined in the Recitals.

"Section Developer" is defined in the Recitals.

"Section Developer Toll Payment" means each section developer toll payment payable in accordance with the terms of each applicable Supplemental Trust Agreement.

"Section Note Proceeds Accounts" means each section note proceed account created under each Supplemental Trust Agreement.

"Section P3 Agreement" is defined in the Recitals.

"State" is defined in the Recitals.

"Substantial Completion" means the satisfaction of all the substantial completion conditions for the applicable Section.

"Substantial Completion Date" means the date Substantial Completion has been achieved for the applicable Section. "Supplemental Trust Agreement" is defined in Section 7.1.

"Toll Transaction" means an electronic record of a toll and a related set of contemporaneous vehicle images representing a vehicle that passes through a specific tolling point on the I-495 & I-270 P3 Program. A Toll Transaction may be either a Transponder Transaction or an Image-Based Transaction.

"Tolling Services Agreement" means a tolling services agreement entered into between MDTA and the relevant Section Developer for the applicable Section.

"Transponder Transaction" means a Toll Transaction with respect to a vehicle equipped with an active *E-ZPass* or an interoperable transponder.

"Transportation Article" is defined in the Recitals.

"Trip" means a bundled group of Toll Transactions relating to a single trip or passage on the priced managed lanes by a vehicle.

"Trustee" means the trustee under the Master Trust Agreement and each Supplemental Trust Agreement.

"Upfront Payment Account" means the upfront payment account created by the Trustee under the Master Trust Agreement.

#### 2. TERM

This Agreement shall commence on the date set forth above and continue until the sixtieth (60th) anniversary thereof, unless sooner terminated by either Party.

#### 3. 2. SCOPE OF WORK

#### 3.1 2.1 MDTA RIGHTS AND RESPONSIBILITIES Rights and Responsibilities

(a) MDTA hereby appoints MDOT SHA to act as its agent in the solicitation, program management and delivery of the I-495 & I-270 P3 Program for the State as set forth in Section 2.2;3.2 (MDOT SHA Rights and Responsibilities); provided, that the foregoing appointment shall not extend to (i) the setting, collection or enforcement of tolls and fees on users of any portion of the I-495 & I-270 P3 Program; or (ii) any act or decision which may only be taken by the MDTA Board or

- its Executive Director pursuant to applicable law, which activities shall be performed solely by MDTA, its Board, its Executive Director, or its designated agents (as applicable), in each case in accordance with applicable law, or this Agreement. MDTA acknowledges that the Phase Developers and Section Developers under the P3 Agreements will be entitled to rely on MDTA's appointment of MDOT SHA for such purposes, and MDTA shall not act (or fail to act), or issue any instruction to a Phase Developer or Section Developer under a P3 Agreement, with respect to any matter for which MDOT SHA has been appointed as MDTA's agent hereunder (except for such ministerial or administrative actions of MDTA which may be necessary to permit MDOT SHA to perform its obligations).
- (b) Subject to the approval of the MDTA Board and to the extent permitted by applicable law, MDTA shall take all reasonable action as may be necessary or appropriate to support and enable MDOT SHA and the applicable <a href="Phase Developer or Section">Phase Developer or Section</a> Developer to deliver each Phase or Section, as applicable, including the following, in each case in coordination with MDOT SHA:
  - i-(i) reviewing, commenting on and approving, as applicable, any solicitation and associated documentation (including the applicable agreement with respect to such Phase (the "P3 Agreement")) Agreements) necessary to deliver each Phase or Section, in each case prior to the date on which such documents are released by MDOT SHA to prospective offerors, and following the selection of a Phase Developer or Section Developer in respect of a Phase or Section, as applicable, executing and delivering the relevant P3 Agreement in the form incorporated into such solicitationagreed;
  - ii.(ii) sharing information and participating in meetings where reasonably requested by MDOT or MDOT SHA to advance each Phase or Section, P3 Agreement and associated solicitation;
  - iii.(iii)submitting a joint Pre-Solicitation Report as required by State law to all applicable State entities, including the State Comptroller, State Treasurer, Senate Budget and Taxation Committee, House Ways and Means Committee, House Appropriations Committee, Department of Legislative Services, and the Maryland Board of Public Works (the "Maryland BPW");
  - iv.(iv) jointly submitting thea joint Final Agreement Report for each P3 Agreement and each proposed P3 Agreement as required by State law to all applicable State entities, including the State Comptroller, State Treasurer, Senate Budget and Taxation Committee, House Ways and Means Committee, House Appropriations Committee, Department of Legislative Services, and the Maryland BPW;
  - v:(v) leasing from MDOT SHA the Premises, in whole or in part for each Phase and entering into the appropriate Lease Agreements, subject to the approval of the Maryland BPW;Board of Public Works (the "BPW");

- vi.(vi) establishing a new trust indenture and, issuing limited recourse toll revenue bondsP3 Program Notes for each Phase Section to fund various costs related to the State's delivery of the I-495 & I-270 P3 Program, in compliance with applicable law, and directing the trustee over the life of the notes;
- vii.(vii) engaging in the toll rate setting process established under State law prior to issuance of the "Final Request for Proposals" (as designated by MDOT SHA) for the first Phase; and
- viii.(viii) providing (either directly or through a third-party contractor) toll collection, and account administration support services and disbursement of revenue to the <a href="Section">Section</a> Developer in accordance with toll collection agreements in the forms to be attached to the <a href="Section">Section</a> P3 Agreements, the form and terms of which shall be reasonably satisfactory to MDTA and MDOT SHA.
- (c) MDTA will maintain separate financial and supplemental records, to the extent reasonable and cost effective, for each Phase of the I-495 & I-270 P3 Program.
- (d) MDTA will exercise the same due diligence, control structure, policies, procedures and monitoring when collecting tolls and fees for the I-495 & I-270 P3 Program as exercised when collecting toll revenues pledged under the second amended and restated trust agreement by and between MDTA and the Bank of New York, Trustee, dated as of September 1, 2007 it exercises when collecting toll revenues for MDTA's other toll facilities; provided that MDTA agrees that, in the event that a force majeure event or any other circumstance causes MDTA to elect to cease collecting all or some tolls or fees at any of its facilities, and such circumstances do not prevent MDTA from collecting tolls and fees in relation to the I-495 & I-270 P3 Program, MDTA shall continue to use reasonable efforts to collect tolls and fees at the I-495 & I-270 P3 Program facilities unless MDOT SHA consents to the cessation of tolling on any part of the I-495 & I-270 P3 Program.
- (e) MDTA will make available to the I-495 & I-270 P3 Program customers the same payment and system functionality available to tolling customers outside the I-495 & I270I-270 P3 Program.
- (f) MDTA's I-495 & I-270 P3 Program financial records will be audited annually by an independent, external auditing firm- in order to issue audited financial statements. At MDTA's cost, its external auditors will conduct a Statement on Standards for Attestation Engagements (SSAE) 18, Type II, SOC I audit and a copy will be provided to MDOT SHA. Any audits conducted by MDTA Internal Audit Office will include the total population of toll transactions processed by the MDTA, including those from each <a href="PhaseSection">PhaseSection</a> of the I-495 & I-270 P3 Program, and MDTA will provide a copy of any such audit to MDOT SHA following its completion. <a href="MDOT SHA">MDOT SHA</a> may request for additional audits to be completed and documents as set out in Section 15 (Reporting and Coordination) with respect to the P3 Program (and the cost shall paid by MDOT SHA). MDTA shall provide a copy of any such additional audit to MDOT SHA following its completion.

(g) To the extent the MDTA recovers lost revenue or any other sum resulting from the default of MDTA contractor(s), the MDTA will deposit the I-495 & I-270 P3 Program *pro rata* portion of such sums in an Operationsthe Operating Reserve Account (as defined below) within 30 Business Days after receipt of such funds less the cost of collecting such lost revenue. MDTA will not be liable for any actions of other State agencies involved in the toll collection process, except for actions carried out at the direction of MDTA.

#### **3.2 2.2** MDOT SHA RIGHTS AND RESPONSIBILITIES Rights and Responsibilities

- (a) (a) MDOT SHA shall serve as the lead State agency in the solicitation, program management and delivery of the I-495 & I-270 P3 Program for the State.
- (b) (b) MDOT SHA agrees to act as agent of MDTA (at MDOT SHA's sole cost and expense, and subject to Section 2.13.1 (MDTA Rights and Responsibilities)) in connection with:
  - i.(i) the solicitation of each Phase of the I-495 & I-270 P3 Program, which shall be solicited and contracted for separately as may be determined by MDOT SHA;
  - ii.(ii) the oversight, administration and management of each P3 Agreement entered into in connection with the I-495 & I-270 P3 Program for the State, including all design, construction, financing, operation and maintenance activities carried out thereunder (other than such matters as are specified in Section 2.13.1 (MDTA Rights and Responsibilities) as being retained by MDTA, in respect of which MDOT SHA shall have no right or obligation to act); and
  - iii.(iii)the overall delivery of the I-495 & I-270 P3 Program for the State.
- 3.3 (e) MDOT SHA shall use its best efforts to cause the design, construction, financing, operation and maintenance of the I-495 & I-270 P3 Program to be carried out in accordance with the P3 Agreement for each Phase or Section (as applicable) and this Agreement. MDOT SHA shall act in a manner consistent with the best interests of the State. MDOT SHA shall timely perform its obligations as MDTA's agent.
- 3.4 (d) MDOT SHA shall have the right to review the key performance indicators submitted to MDTA by MDTA's tolling contractor. If key performance indicators fall below established levels, the MDTA shall use its best efforts to claim against and recover from such contractor in accordance with the terms of the applicable contract.
- 3.5 (e)MDOT and MDOT SHA shall have the right to conduct (either directly or through a third-party contractor) an agreed upon procedures review of laudit to establish that (a) the per transaction feeDeveloper Transaction Fee charged to the Section Developer for MDTA's toll collection services is in accordance with the agreed upon transaction cost model, 2(b) waivers of tolls and citations isare in accordance with established waiver guidelines, and 3(c) costs charged to the Operations ReserveP3 Program Account (as defined below) by MDTA for collection and enforcement are in accordance with MDTA's

then-established procedures for the Developer Transaction Fee and MDOT Transaction Fee. MDTA shall provide reasonable access to information to MDOT SHA and its contractors for the purpose of performing such audits. Whenever reasonably possible, MDOT SHA will rely on information contained in other audit reports and provided by MDTA to MDOT SHA pursuant to Section 2.1(f) (MDTA Rights and Responsibilities) rather than conducting additional audits or reviews. Any audits requested by MDOT or MDOT SHA above those required of MDTA in Section 3.1(f) shall be paid for by MDOT, and copies provided to the MDTA upon completion.

#### 4. 3. LEASE AND TRANSFER INSTRUMENTS

- 4.1 3.1-MDOT SHA shall lease <u>parts of the Premises entirely or by Phase to MDTA pursuant to Lease Agreements to permit MDTA to satisfy the condition designating each such <u>Phase the P3 Program</u> a "transportation facilities project" pursuant to Section 4-204 of the Transportation Article, subject to the approval of the Lease Agreements by the <u>Maryland BPW</u> (as required by the Approving Resolution).</u>
- 4.2 3.2 The Parties agree to execute the Lease Agreements for a Phase as soon as practicable after the commencement by MDOT SHA of the solicitation for such Phase, and in any event-prior to such date as may be necessary to permit MDTA to designate the applicable PhaseP3 Program a "transportation facilities project" by the date set forth in the applicable P3 Agreement.."

#### **5. 4. REPRESENTATIONS**

#### **5.1 4.1** Representations of MDOT SHA

- i.(a) MDOT SHA is a modal administration of the Maryland Department of Transportation, a principal department of the State.
- ii.(b) MDOT SHA has the requisite power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations under this Agreement.
- iii.(c) By proper action, MDOT SHA has been duly authorized to execute and deliver this Agreement.

#### **5.2 4.2** Representations of MDTA

- i.(a) MDTA is an agency of the State of Maryland governed by a Board consisting of eight (8) individuals appointed by the Governor with the consent of the Maryland Senate, and chaired by the Secretary of Transportation.
- ii.(b) MDTA has the requisite power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations under this Agreement.
- Hii.(c) By proper action, MDTA has been duly authorized to execute and deliver this Agreement.

#### **5.3 4.3** Representations of MDOT

- (a) i.—MDOT is a principal department of the State.
- ii.(b) MDOT has the requisite power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations under this Agreement.
- iii.(c) By proper action, MDOT has been duly authorized to execute and deliver this Agreement.

#### **6. 5. CONTINGENT LIABILITIES**

- 5.1 Subject to <u>availability of funds in the Upfront Payment Account or appropriation</u> by the Maryland General Assembly, to the extent <u>theany Phase Developer or Section</u> Developer under a P3 Agreement is entitled to receive any amount for a compensation event or termination compensation, MDOT SHA will pay such amount to such <u>Phase</u> Developer <u>or Section Developer</u>, <u>as applicable</u>, on or before the date when such amount becomes due and payable. MDOT will take such actions as are necessary from time to time to request sufficient appropriations from the Maryland General Assembly to pay such amounts as and when they come due.
- **6.2** 5.2 To the extent any amount due to a Phase Developer or Section Developer under a P3 Agreement (or any obligation to fund the Operating Reserve Account pursuant to Section 7.4 (*Operating Reserve Account*)) arises as a result of MDTA's breach of this Agreement (as amended from time to time, and including a breach of MDTA's obligations pursuant to Section 5.3), 7.4(a) (*Operating Reserve Account*)), subsequent Agreements amongst the Parties, or any P3 Agreement, or any other act or omission of MDTA, MDOT or MDOT SHA shall have the right to seek reimbursement from MDTA for any amounts paid by MDOT or MDOT SHA to such Phase Developer or Section Developer (or funded to the Operating Reserve Account), as applicable, and MDTA shall pay such amounts to MDOT or MDOT SHA within sixty (60) days (as applicable) after receipt of a written request therefor (or at such other time and subject to such other conditions as the Parties may agree in connection with any claim for reimbursement) provided, that if a breach of this Agreement or a P3 Agreement is directly caused by a contractor of MDTA breaching a contractual obligation to MDTA or a State agency failing to perform its obligations with respect to collections, then MDTA's obligation to reimburse MDOT or MDOT SHA pursuant to this Section 5.2-6.2 shall be limited to the extent of any recovery by MDTA against such contractor or State agency, unless MDTA shall have failed to use its best efforts to claim against and recover the applicable amount from such contractor or recover the applicable amounts from the State agency. For the avoidance of doubt, MDTA shall have no obligation to pursue claims against other agencies of the State, however, MDTA will use its best efforts to recover from State agencies.

5.3 The Parties acknowledge and agree that MDTA will, in connection with collecting tolls from users of each Phase, pay (in accordance with the applicable P3 Agreement) to the applicable Developer each month a Developer Toll Payment (as defined in the applicable

- P3 Agreement), which may not be equal to the amount of toll revenue actually collected by MDTA for the applicable Phase during such month. Any shortage in the amount due to the Developer(s) will be paid from the Operations Reserve Account.
- (a) In furtherance of MDTA's obligation to pay Developer Toll Payments, MDOT SHA will deposit a sum with respect to each Phase (the amount of which will be determined by MDOT SHA prior to deposit thereof) into a segregated account (the "Operations Reserve Account") under the master trust indenture pursuant to which MDTA will issue bonds to permit MDTA to toll the applicable Phase and remit revenue to the Developer (such indenture, the "Master Trust Indenture").
- (b) To the extent the Developer Toll Payment in any month exceeds the amount of toll revenue actually collected by MDTA in respect of such month (inclusive of electronic toll payments received via E-ZPass, video toll premiums, account service charges, late fees, penalties, or other amounts arising out of or relating to the payment of tolls by users of the Phase (such amounts, exclusive of electronic toll payments received via E-ZPass, the "Operations Reserve Amounts"), MDTA shall be entitled to withdraw an amount from the Operations Reserve Account equal to such excess, and use such amount to pay the full amount of the Developer Toll Payment to the Developer. To the extent MDTA receives Operations Reserve Amounts in excess of the amount required to pay the Developer Toll Payment in any month, MDTA will deposit such excess into the Operations Reserve Account.
- (c) To the extent the amount on deposit in the Developer Operations Reserve Account is (or MDTA notifies MDOT SHA that it reasonably projects such amount, as of the date when the Developer Toll Payment will be due and payable, is reasonably likely to be) insufficient to pay the full amount of the Developer Toll Payment to the Developer, MDOT SHA shall deposit to the Operations Reserve Account an amount equal to such insufficiency at least three (3) Business Days prior to the date when the Developer Toll Payment is due to the Developer.
- (d) MDTA will work jointly with MDOT and MDOT SHA to evaluate the sustainability of the Operations Reserve Account, and in collaboration with MDOT SHA will forecast the projected Operations Reserve Account activity and balances semi-annually. If the Operations Reserve Amounts are insufficient, MDTA will engage in the toll and fee setting process allowed by statute and COMAR and in accordance with the Master Trust Indenture.
- (e) The Master Trust Indenture will contain additional provisions regarding the treatment of Operations Reserve Account balances, including but not limited to the right of MDOT SHA to receive transfers therefrom in the event the balance of the Operations Reserve Account exceeds certain thresholds, and the right of the Parties to adjust the required balance of the Operations Reserve Account from time to time.
- 5.4 Except to the extent set forth in Sections 5.2 or 5.3, this Article 6, MDTA shall have no liability for contingent liabilities arising under any P3 Agreement and MDOT SHA will be responsible for administering and paying any and all claims, including compensation events and termination compensation, arising under any P3 Agreement.

#### 7. TRUST INDENTURES AND RELATED ACCOUNTS

#### 7.1 Trust Indentures

MDTA shall establish a new master trust indenture with The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee") (such indenture, the "Master Trust Agreement") establishing the Operating Reserve Account for the payment of the Section Developer Toll Payment (the "Operating Reserve Account") and setting out certain other terms, in a form agreed with MDOT. In connection with financial close of each Section, MDTA will issue bonds or notes to fund certain costs in which the State is best equipped to manage and reduce the overall risk. Revenue to the Section Developer will be subject to the terms of a supplemental trust indenture (each a "Supplemental Trust Agreement") in a form agreed with MDOT and the applicable Section Developer. Further terms shall be set out in the Master Trust Agreement and each Supplemental Trust Agreement, including terms regarding the payment of toll revenues, issuance of the bonds or notes, establishment of certain segregated accounts, the minimum required balance of the Operating Reserve Account and a rate covenant under which MDTA may be required in the case of a shortfall to engage in the toll and fee setting process allowed by statute and COMAR (as referred to in Article 8 (Rate Covenant) hereto).

#### 7.2 P3 Program Account

- (a) In accordance with Section 3.3 (*P3 Program Account*) of the Master Trust Agreement, MDTA shall establish and maintain the P3 Program Account.
- (b) The P3 Program Account is not a trust account.
- (c) MDTA shall pay all P3 Program Revenues collected in relation to the I-495 & I-270
  P3 Program from its comingled accounts into the P3 Program Account in compliance with this Section 7.2(c).
  - (i) P3 Program ETC Home Collections. MDTA shall transfer all P3 Program ETC Home Collections to the P3 Program Account no later than seven (7) days following the posting of the applicable Trip to the customer's Toll Account.
  - (ii) P3 Program Preregistered Video Toll Collections. MDTA shall transfer all P3 Program Preregistered Video Toll Collections to the P3 Program Account no later than one (1) Business Day following deposit of such P3 Program Preregistered Video Toll into the MDTA commingled account.
  - (iii) P3 Program Video Toll Collections. MDTA shall transfer all P3 Program
    Video Toll Collections to the P3 Program Account no later than one (1)
    Business Day following deposit of such P3 Program Video Toll Collection
    into the MDTA commingled account.
  - (iv) P3 Program ETC Away Collections. MDTA shall transfer all P3 Program ETC Away Collections to the P3 Program Account no later than the last day

- of the month following the month in which the Trip was reported to the relevant *E-ZPass* member and subsequently received from the *E-ZPass* member.
- (v) Future Toll Collections. To the extent there is any future change in the manner in which tolls are paid by users and collected by MDTA such that any toll revenues relating to the I-495 & I-270 P3 Program do not fall into one of the categories set out in clause (i) to (iv) above, MDTA, MDOT and MDOT SHA shall agree to reasonable amendments to the terms of this Section 7.2(c) to accommodate prompt payment of such collection into the P3 Program Account.
- (d) MDTA shall apply funds in the P3 Program Account only in accordance with Section 3.3 (*P3 Program Account*) of the Master Trust Agreement.
- (e) To the extent (i) there are excess funds in the P3 Program Account in any month after the transfers required to be made under Section 3.3 (P3 Program Account) of the Master Trust Agreement have been made and (ii) there is a potential shortfall in the balance of the Operating Reserve Account, MDOT may request that MDTA transfer such excess funds to the Operating Reserve Account in an amount sufficient to cover the potential shortfall. Any such transfer shall be deemed to be an early payment of amounts otherwise due to be transferred from the P3 Program Account to the Operating Reserve Account. Requests for early payment shall be on an exception basis and not to extend beyond three (3) consecutive months.

#### 7.3 Upfront Payment Account

- (a) Any payment that MDOT or MDTA receives in connection with the I-495 & I-270 P3 Program and that MDTA directs, or that MDOT directs MDTA to direct, for payment into the Upfront Payment Account, or any payment received by the Trustee that is not paid into any other account pursuant to the terms hereof, shall be credited to the Upfront Payment Account pursuant to Section 3.2 (*Upfront Payment Account*) of the Master Trust Agreement. Such payments may include, but are not limited to, (a) any development rights fee or similar payment received from a P3 Program phase developer, any proceeds of the drawing on a letter of credit or other security related to any development rights fee, (b) any upfront payment received from the Section Developer, (c) any proceeds from drawing on the letter of credit provided as closing security received from any Section Developer, or (d) any other fees or funds directed into the Upfront Payment Account by MDTA or MDOT.
- (b) Funds in the Upfront Payment Account shall be held by the Trustee pursuant to Section 3.1(a) (*Upfront Payment Account*) of the Master Trust Agreement. MDTA shall direct the Trustee to make disbursements only upon and in accordance with the written direction of MDOT.
- (c) Funds in the Upfront Payment Account may be used for those items set forth in Section 3.2 (*Upfront Payment Account*) of the Master Trust Agreement, which, for

- avoidance of doubt, shall include (as a I-495 & I-270 P3 Program cost) any amounts required to fund the Operating Reserve Account.
- (d) MDTA shall, if so instructed in writing by MDOT, provide written instructions to the Trustee to draw on any letter of credit or other security provided by any Phase Developer in connection with the development rights fee or any payment. Such instruction shall specify the terms by which the Trustee shall make such drawing.
- (e) MDTA agrees that it shall not direct the Trustee to make any payments from the Upfront Payment Account without written authorization from MDOT.

#### 7.4 Operating Reserve Account

- The Parties acknowledge and agree that MDTA will, in connection with collecting tolls from users of each Section, pay (in accordance with the applicable Section P3 Agreement or associated Supplemental Trust Agreement) to the applicable Section Developer each month a Section Developer Toll Payment from the Operating Reserve Account, which may not be equal to the amount of toll revenue actually collected by MDTA for the applicable Section during such month. Any shortage in the amount due to the Section Developer(s) will also be paid from the Operating Reserve Account.
- (b) MDTA shall direct the Trustee to make payments to each Section Developer from the Operating Reserve Account in accordance with Section 3.4 (*Operating Reserve Account*) of the Master Trust Agreement.
- (c) MDOT or MDOT SHA shall fund and maintain the Operating Reserve Required

  Balance in the Operating Reserve Account and shall ensure that amounts standing
  to the credit of the Operating Reserve Account are at all times sufficient to satisfy
  the Section Developer Toll Payments due by MDTA to each Section Developer
  under the terms of each Supplemental Trust Agreement then in effect.
- (d) If, after the Trustee has made all payments referred to in paragraph *First* and paragraph *Second* of Section 3.4 (*Operating Reserve Account*) of the Master Trust Agreement, the balance of the Operating Reserve Account (including any amount funded by way of letter of credit delivered in accordance with Section 7.4(e) below) is in excess of the Operating Reserve Required Balance, then MDTA shall (if so instructed in writing by MDOT) instruct the Trustee to pay such excess to MDOT pursuant to paragraph *Third* of Section 3.4 (*Operating Reserve Account*) of the Master Trust Agreement.
- (e) MDOT may fund any amount of the Operating Reserve Required Balance with a letter of credit delivered to the Trustee in accordance with the terms of the Master Trust Agreement. The amount of any such letter of credit shall be counted towards the Operating Reserve Required Balance. If MDTA determines that the funds in the Operating Reserve Account are insufficient to satisfy the Section Developer Toll Payments next due and payable, it may, upon written notice to MDOT, instruct the

- Trustee to draw on the letter of credit in an amount necessary to satisfy all Section Developer Toll Payments next due.
- (f) Six months prior to the projected Substantial Completion Date of the each Section, MDOT, MDOT SHA and MDTA shall arrange to meet and agree on the initial Operating Reserve Required Balance. Ninety (90) days prior to the projected Substantial Completion Date of the first Section, MDOT or MDOT SHA shall cause the Operating Reserve Account to be funded with the initial Operating Reserve Required Balance. Thereafter:
  - (i) MDTA shall recalculate the Operating Reserve Required Balance on a monthly basis;
  - (ii) in the event that the balance of the Operating Reserve Account is less than the Operating Reserve Required Balance, within 90 days of such determination (but in no case later than two Business Days before the funds are required to be paid to any relevant Section Developer), MDOT (or, if MDOT so elects, MDOT SHA) shall make a payment in the amount of such projected shortfall into the Operating Reserve Account or direct MDTA to make such transfer from the Upfront Payment Account; and
  - (iii) to the extent that the amount on deposit in the Operating Reserve Account exceeds the Operating Reserve Required Balance, such excess shall be paid to MDOT pursuant to Section 7.4(d).
- (g) All amounts payable by MDOT, including MDOT SHA, from the Transportation Trust Fund to MDTA under this Agreement will be subject to appropriations by the Maryland General Assembly in accordance with and to the extent required under applicable law. MDTA shall have no obligation to use any of its funds or resources in the event there is no such appropriation, and the Trustee, Noteholders, Section Developers, or other third parties will not have any recourse against MDTA.
- (h) "Operating Reserve Required Balance" means, in any month the aggregate of the Monthly Program Toll Collections Projected Shortfall for each of the next six months.
- (i) "Monthly Program Toll Collections Projected Shortfall" means, for any month:
  - (i) all Section Developer Toll Payments projected to be payable from the Operating Reserve Account to all Section Developers across all Sections during such month pursuant to each Supplemental Trust Agreement; *minus*
  - (ii) the greater of:
    - (A) zero, and
    - (B) all projected Section Toll Revenues (as described and defined in any Supplemental Trust Agreement) collected across all Sections (including all payments of tolls received via E-ZPass or other

Transponder Transaction, all payments of tolls received via any means other than Transponder Transactions, all video toll premiums, account service charges, late fees, penalties, or other amounts arising out of or relating to the payment of tolls by users of the Sections) to be received during such month *less* projected MDTA P3 Program Costs with respect to such month, *less* all principal and interest that shall be due and payable during such month,

provided that if the Monthly Program Toll Collection Projected Shortfall for any month is less than zero it shall be deemed to be zero for such month. Projections for (a) and (b) above shall use the current best estimate of toll revenues and prior twelvemonth historical observations for establishing assumptions of the distribution of payment method, vehicle classification and in-state vs. out-of-state vehicles. Reasonable adjustments shall be made by MDTA and MDOT to these assumptions to account for changes in toll rates, citation fees and other factors which shall be documented in the policy referred to in Section 8 (*Rate Covenant*).

#### **7.5** Section Note Proceeds Accounts

Upon written direction from MDOT, MDTA shall direct the Trustee to make payments from the Section Note Proceeds Accounts for each Section to pay (a) upfront Trustee fees and Trustee fees incurred in relation to the relevant Section prior to Substantial Completion of that Section; and (b) costs relating to such Section as permitted in accordance with the terms of the relevant Supplemental Trust Agreement.

#### 8. RATE COVENANT

MDTA shall comply with the rate covenant set out in Article 5 (*Rate Covenant*) of the Master Trust Agreement. If there is projected to be a Rate Covenant Shortfall in six or more consecutive months during the next 24 months, MDTA shall notify MDOT in writing of such projected Rate Covenant Shortfall. MDOT reserves the right to request MDTA to take certain actions as are reasonably necessary to eliminate the Rate Covenant Shortfall as set out in the Master Trust Agreement.

MDOT and MDTA shall develop and agree on a policy that will determine the specific historical assumptions to be used in calculating the Rate Covenant Shortfall under Article 5 (*Rate Covenant*) of the Master Trust Agreement and the Monthly Program Toll Collections Projected Shortfall under this Agreement. Such policy will set out the method for calculating such shortfall amounts on a per-month basis.

#### 9. INVESTMENT

MDTA shall instruct the Trustee to invest amounts in any accounts held by the Trustee pursuant to the Master Trust Agreement or any Supplemental Trust Agreement and in conformance with MDOT's directed strategy and investment policy. Quarterly investment meetings with MDOT and MDTA are required to coordinate investment strategy and review the funding adequacy of the Operating Reserve Account. MDOT and MDTA shall

develop an investment policy and strategy that will establish permissible investment types and maturities and guide the MDTA's daily investment discretion.

#### 6.10. NON-INTERFERENCE

Neither No Party shall interfere with or impede the any other Party's performance of its obligations under this Agreement or any P3 Agreement. The Parties shall not interfere with the performance by any Phase Developer or Section Developer of its obligations under a P3 Agreement, except as may be expressly permitted by the terms of such P3 Agreement.

#### **7.11. REAL PROPERTY**

MDOT SHA agrees, when deemedit deems appropriate and to the extent permitted by applicable law, to exercise its condemnation authority in support of delivering the I-495 & I-270 P3 Program.

### 8.12. COST REIMBURSEMENT; REVENUE SHARING AND UPFRONT PAYMENTS

- Program, each Party shall be responsible for its own internal staffing costs in fulfilling its respective obligations under this Agreement and each P3 Agreement, other than costs and expenses associated with MDTA's performance of its tolling related obligations, including any costs and expenses of collection enforcement, which amounts shall be reimbursed by Developer (through payment of the per transaction fee) or MDOT SHA (through releases from the Operations Reserve Account). The Parties acknowledge and agree that all such costs will be included in the transaction cost model related to the Phase P3 Agreement. MDOT SHA shall pay all external costs directly or reimburse MDTA for all approved external costs incurred.
- After the execution of the Phase P3 Agreement for the first Phase of the P3 Program, but 12.2 prior to the commencement of tolling of the first Section of the first Phase of the P3 Program, MDTA shall be reimbursed for its internal and external costs documented in fulfilling its respective obligations under this Agreement, each Phase P3 Agreement, and each Section P3 Agreement. All internal and external costs incurred shall be identified as either project costs or Improvements to MDTA's System prior to commencement of tolling. Improvements to MDTA's System prior to commencement of tolling shall be reimbursed to MDTA by the Phase Developer, by the Section Developer, through the P3 Program Notes or by MDOT. MDOT SHA shall reimburse MDTA for all pre-approved internal and external project costs incurred prior to commencement of tolling. Project cost services shall be provided with the explicit understanding that MDTA has an obligation to only provide such services that are pre-approved by MDOT or MDOT SHA. All Improvements to MDTA's System and project costs referenced in this Section 12.2 shall be for efforts and/or costs that are solely for the benefit of the P3 Program and would not otherwise be performed or costs incurred.
- Upon the commencement of tolling of the first Section of the first Phase of the P3 Program,
   MDTA will provide certain tolling-related services including back office and collection

services. MDTA will be reimbursed for these services through the Developer Transaction Fee and the MDOT Transaction Fee. The Developer Transaction Fee will include costs associated with *E-ZPass* tolling. The MDOT Transaction Fee will include the incremental costs associated with the collection and enforcement of unpaid transactions. The Developer Transaction Fee and MDOT Transaction Fee will be determined based on a cost model maintained by the MDTA in compliance with the applicable Tolling Services Agreement and be inclusive of empirical data, capital and operating contracts, personnel and other toll related expenses, forecast transactions, shared cost allocation, and prior year true-up adjustment.

- (a) MDTA will document the model mechanics and provide supporting documentation for all model inputs for MDOT and MDOT SHA's review.
- (b) The Parties shall develop and agree on a policy that establishes the required documentation. This policy may be revised from time to time upon agreement by the Parties.
- (c) MDTA shall be reimbursed via the Developer Transaction Fee and MDOT Transaction Fee from the P3 Program Account.
- (d) MDTA agrees that it shall only seek reimbursement from the P3 Program Account as permitted under this Section 12.3.
- Upon the commencement of tolling of the first Section of the first Phase of the P3 Program, any pre-approved MDTA internal or external costs not reimbursed through the Developer Transaction Fee or the MDOT Transaction Fee shall be reimbursed through ad-hoc direct payments by the Phase Developer, Section Developer, MDOT, or MDOT SHA. MDTA has an obligation to only provide such services that are pre-approved.
- In the event that there are insufficient funds in the P3 Program Account to reimburse MDTA, MDOT (if applicable, subject to appropriation by the Maryland General Assembly) shall reimburse MDTA for its outstanding pre-approved costs. In the event MDTA is not reimbursed by MDOT, the Phase Developer, or Section Developer, the amount owed will remain outstanding until reimbursed.

REVENUE SHARING 8.2 Developer (to the extent set forth in the P3 Agreement) or MDOT SHA (subject to appropriation by the Maryland General Assembly) shall reimburse MDTA for all documented external costs and expenses incurred by MDTA solely in connection with the performance of its obligations under this Agreement; provided, that such external costs shall have been pre-approved by the Developer or MDOT SHA (it being acknowledged and agreed that MDTA will have no obligation to incur such external costs or expenses, or undertake the work or services relating thereto, unless and until the same shall have been pre-approved by the Developer or MDOT SHA, as applicable).

#### <u>13.</u> <u>8.3</u>

To the extent MDOT SHA receives any revenue from a Section Developer under a Section P3 Agreement pursuant to any revenue sharing arrangements described therein, the Parties

acknowledge and agree that such revenue shall be deposited in the Transportation Trust Fund pursuant to Section 3-216 of the Transportation Article. MDTA is not entitled to any portion of revenue sharing.

#### 14. 8.4 TO FEES AND CITATION COVENANT

MDTA shall not, except to the extent MDOT SHA receives an upfront compelled to by applicable law or with the written consent of MDOT, reduce the civil penalty for late payment from of tolls, citation fees, or enforcement fees applicable to the P3 Program, or take other rate setting action that causes P3 Program Revenues to decrease.

#### 15. REPORTING AND COORDINATION

#### MDTA shall:

- (a) coordinate with MDOT in relation to the transactions contemplated by the Master Trust Agreement and each Supplemental Trust Agreement;
- (b) maintain accurate and complete records relating to the I-495 & I-270 P3 Program, Master Trust Agreement and each Supplemental Trust Agreement, including details of all toll revenue received in relation to the P3 Program and all payments to or from the P3 Program Account. Such records shall include details of the flow of funds to and from each account, account balances, payments of costs and expenses, and receipts from all tolling transactions related to the I-495 & I-270 P3 Program. MDTA shall share such information with MDOT and MDOT SHA at times and in a Developer under a P3 Agreement, level of detail agreed between the Parties acknowledge and agree that such payment shall be deposited, including information provided or available from the Trustee relating to all accounts held by the Trustee under the Master Trust Agreement and each Supplemental Trust Agreement; and
- details for all payments MDTA makes into a segregated account or from the P3

  Program Account or that MDTA directs the Trustee to make from any accounts held by the Trustee under the Master Trust Indenture, and MDTA shall have no right to withdraw Agreement and each Supplemental Trust Agreement, the content of which shall be agreed between MDOT, MDOT SHA and MDTA (which may include the reconciliation of (i) amounts received by MDTA with respect to the I-495 & I-270 P3 Program, (ii) fees paid to MDTA, (iii) payments made to each Section Developer and each Noteholder, (iv) any amounts subject to clawback, (v) amounts received from MDOT or MDOT SHA, and (vi) all I-495 & I-270 P3 Program account balances).

#### 16. TRUST DOCUMENT ADMINISTRATION POLICIES

The Parties shall agree to detailed policies regarding the implementation and administration of this Agreement, the Master Trust Agreement, each Supplemental Trust Agreement, and any other related documents. The Parties shall update such amount except in accordance with and pursuant to a written instruction delivered by MDOT SHA in

accordance with the Master Trust Indenture policies as required from time to time by mutual agreement.

#### 9.17. O&M OF GENERAL PURPOSE LANES

MDOT SHA shall retain all operations and maintenance obligations with respect to the I495I-495 & I-270 P3 Program's general—purpose lanes and associated infrastructure, unless such responsibilities are transferred to a Section Developer under a P3 Agreement. Law enforcement is to be performed by the Maryland State Police. MDTA does not have any responsibilities for providing law enforcement services for the P3 Program.

#### **10.18. TERMINATION OF P3 AGREEMENTS**

- 18.1 Hollowing a Section P3 Agreement's termination prior to the original expiration of its term, MDOT SHA shall have the option to operate and maintain (or enter into a contract with a third party providing for the operation and maintenance of) the tolled lanes and continue to require that users of the tolled lanes pay a toll. If MDOT SHA exercises such right, the Lease Agreement forrelated to that PhaseSection will continue in effect and MDTA shall continue to perform all applicable toll setting, collection and enforcement services (and will cooperate with MDOT SHA to take such other actions as may be reasonably necessary to permit the continued operations and maintenance of such tolled lanes by MDOT SHA or its contractor). Further, the revenue collected from users of the toll lanes for the applicable PhaseSection (net of (a) principal and interest payable on the debt issued by MDTA to permit MDTA to toll the applicable Phase and remit revenue to the Developer (the amount and terms of which shall be satisfactory to MDOT SHA and MDOT) and (b) a per-transaction Trip processing fee to cover MDTA's cost of collections and enforcement), shall be applied in accordance with the Master Trust Indenture Agreement and applicable Supplemental Trust Agreement.
- 18.2 10.2 In the alternative, following a Section P3 Agreement's termination prior to the original expiration of its term, if the outstanding bonds or notes issued by MDTA under the Masterapplicable Supplemental Trust Indenture Agreement are defeased, MDOT SHA shall have the option to operate and maintain (or enter into a contract with a third party providing for the operation and maintenance of) the tolled lanes, and no longer require that users of the lanes pay a toll. If MDOT SHA exercises such right, the Lease Agreement for related to that Phase Section will terminate with respect to that Section and MDTA shall have no further right or obligation with respect to such tolled lanes.
- 18.3 10.3 If MDOT SHA elects not to exercise either of its options pursuant to Section 1018.1 or 18.2, then MDTA shall (unless and until any debt issued by MDTA which is secured by the revenue collected from users of the tolled lanes for the applicable PhaseSection is defeased) continue to perform toll setting, collection and enforcement services, and disburse the revenues in accordance with the Master Trust Agreement and applicable Supplemental Trust Agreement.
- 18.4 Prior to the expiration of the original term of a Section P3 Agreement for a Phase of the P3 Program, the Parties will meet to discuss the measures to be taken with respect to

their rights and obligations under this Agreement, including whether any new or amended agreement(s) should be entered into with respect to such **Phase Section**.

Upon termination of any Section P3 Agreement, in connection with its rights under this Section 18, MDOT may direct MDTA to redeem the outstanding P3 Program Notes, or permit the assignment or transfer of the Noteholder's rights and obligations under the outstanding P3 Program Notes related to such Section P3 Agreement to another party or MDOT or MDOT SHA may assume the rights and obligations of such Noteholder. MDTA shall cooperate with such request, provided that MDOT or MDOT SHA shall fund any payment due to any Noteholder with respect thereto. Upon any termination of a Section P3 Agreement, the Parties shall coordinate and agree to any new financing to be issued against the toll revenues for the relevant Section and the use of the proceeds of such issue.

#### **11.19.** NO LIABILITY

MDTA will have no liability to MDOT SHA for any actions or claims arising solely out of MDTA's lease of the Premises pursuant to <u>Section 3Article</u> 4 (*Lease and Transfer Instruments*).

#### **20. 12. GENERAL**

#### 20.1 **12.1** Notices

All notices, statements, reports, demands, requests, consents, approvals, waivers and authorizations required by this Agreement to be given by either of the Partiesany Party to the other others will be by email to the address set forth below, or such other email address as may be notified by onea Party to the other in accordance with this Section 12.120.1 from time to time, the receipt of which shall be confirmed by the other PartyParties by email:

MDOT SHA Contact: Lisa Choplin
Email: lchoplin@sha.state.md.us

Jeffrey Folden

Email: JFolden1@mdot.maryland.gov

MDTA Contact: John O'Neill Deborah Sharpless

Email: joneill@mdta.state.md.us

**MDOT Contact: Lisa Webb** 

Email: lwebb@mdot.maryland.gov

#### **12.2 Governing Law**

Email: desharpless@mdta.state.md.us

MDOT Contact: Jaclyn Hartman

Email: jhartman1@mdot.maryland.gov

#### **20.2** Governing Law

This Agreement will be governed by and construed in accordance with the laws of the State of Maryland.

#### **20.3 12.3** Survival

This Article <u>12 (General)</u>20 and all other provisions which by their inherent character should survive the termination of or completion of the obligations of the Parties under this Agreement will survive the termination of or the completion of the obligations of the Parties under this Agreement.

#### **20.4 12.4** No Personal Liability

No officer, agent, representative or employee of any of the Parties will be personally liable under any provision of this Agreement, or because of the execution or attempted execution of this Agreement, or because of any breach of this Agreement.

#### 20.5 12.5 Effectiveness

This Agreement shallwill, as of the date first set forth above, inure to the benefit of and shall be binding upon the Parties hereto and their respective successors and permitted assigns, subject, however, to the limitations contained in this Agreement.

#### **20.6 12.6** Severability

In the event any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision of this Agreement.

#### **20.7 12.7** Amendments, Changes and Modifications

Except as otherwise expressly provided in this Agreement, this Agreement may not be effectively amended, changed, modified, altered or terminated without the express written consent of the Parties. Upon the reasonable request of a Party, all Parties shall cooperate in good faith to negotiate and enter into such amendments to this Agreement as may be necessary to give further effect to its intended purposes and otherwise address such matters as may be necessary or appropriate amongst each other for purposes of implementing the I-495 & I-270 P3 Program.

## 20.8 <u>12.8 Master Trust Agreement and Supplemental Trust Agreement Amendments, Changes and Modifications</u>

MDTA shall not enter into or amend the terms of the Master Trust Agreement, any Supplemental Trust Agreement, or any other document that would affect the rights or obligations of MDOT or MDOT SHA under this Agreement without the prior consent of MDOT and MDOT SHA.

#### **20.9** Counterparts

This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

#### **20.10 12.9** Captions

The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

#### **20.11** Effect of this Agreement; Reaffirmation

It is the intention of each of the Parties hereto that the Original Interagency Agreement be amended and restated in its entirety. This Agreement amends and restates in its entirety (but without written novation) the Original Interagency Agreement.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

| WITNESS:            | MARYLAND DEPARTMENT OF TRANSPORTATION |
|---------------------|---------------------------------------|
|                     | <del></del> , ,                       |
|                     | Gregory Slater Pete K. Rahn           |
|                     | Secretary                             |
|                     |                                       |
| APPROVED AS TO FORM | AND LEGAL                             |
| SUFFICIENCY:        |                                       |
|                     |                                       |
|                     |                                       |

| WITNESS:   | MARYLAND DEPARTMENT OF TRANSPORTATION STATE HIGHWAY ADMINISTRATION |
|--|--|
|  | Tim Smith  Gregory Slater  Administrator                           |
| APPROVED AS TO FORM AND SUFFICIENCY:   | LEGAL  |
|  |  |
| Assistant Attorney General Maryland Department of Transport State Highway Administration | tation   |

| WITNESS:         | MARYLAND TRANSPORTATION _AUTHORITY |
|------------------|------------------------------------|
| Kevin C. Reigrut |                                    |
|                  |                                    |
|                  |                                    |
|                  |                                    |
|                  | James F. Ports Jr                  |
|                  | Executive Director                 |
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| APPROVED AS TO FORM AND LEGAL SUFFICIENCY: |
|--|
|  |
|  |

Assistant Attorney General

Maryland Transportation Authority

## **TAB 12**



**Larry Hogan, Governor** Boyd K. Rutherford, Lt. Governor Gregory Slater, Chairman

#### **Board Members:**

Dontae Carroll
William H. Cox, Jr.
William C. Ensor, III
W. Lee Gaines, Jr.
Wario J. Gangemi, P.E.
Cynthia D. Penny-Ardinger
Jeffrey S. Rosen
John F. von Paris

James F. Ports, Jr., Executive Director

#### **MEMORANDUM**

**TO:** MDTA Board

**FROM:** Mr. Carl Chamberlin, Project Manager

**SUBJECT:** Phase 1 South: American Legion Bridge I-270 to I-370 Toll Rate Range Setting

Process - Public Comment Final Report

**DATE:** August 26, 2015

#### **PURPOSE OF MEMORANDUM**

To provide a summary of comments received during the first public comment period for the Phase 1 South: American Legion Bridge I-270 to I-370Toll Rate Range Setting Process.

#### **SUMMARY**

On May 20, 2021, the Maryland Transportation Authority (MDTA) Board unanimously approved to proceed with holding public hearings and seeking public comment on the Phase 1 South: American Legion Bridge I-270 to I-370 Tolling Proposal as part of the toll rate range setting process. The public comment period began on May 20, 2021 and continued until 5PM, August 12, 2021. Public hearings were conducted on July 12th and July 14th (two sessions each day). The following report covers in greater detail the process MDTA utilized to gather public comments and a summary of the comments received.

#### **ATTACHMENT**

 Phase 1 South: American Legion Bridge I-270 to I-370 Toll Rate Range Setting Process -Public Comment Final Report

# Phase 1 South: American Legion Bridge I-270 to I-370 Toll Rate Range Setting Process Public Comment Summary Report August 12, 2021



# Maryland Transportation Authority Phase 1 South: American Legion Bridge I-270 to I-370 Toll Rate Range Setting Process – Public Comment Summary Report



#### **Executive Summary**

On May 20, 2021, the Maryland Transportation Authority (MDTA) Board unanimously approved to proceed with holding public hearings and seeking public comment on the Phase 1 South: American Legion Bridge I-270 to I-370 Tolling Proposal as part of the toll rate range setting process. The public comment period began on May 20, 2021 and continued until 5PM, August 12, 2021. Public hearings were conducted on July 12<sup>th</sup> and July 14<sup>th</sup> (two sessions each day).

The Phase 1 South: American Legion Bridge I-270 to I-370 Tolling Proposal presented to the public included:

- I. Minimum and maximum toll rate ranges
  - Toll rates will adjust as frequently as every 5 minutes, if needed to maintain a free-flowing level of traffic (45 mph or higher). The minimum toll rate is the lowest toll rate per mile that may be charged within any tolling segment for the proposed High-Occupancy Toll (HOT) lanes, or the lowest total toll a customer will pay regardless of how far they travel. Ensures that trips on the facility are charged a toll to cover toll collections costs. The maximum toll rate sets the highest toll rate per mile that may be charged within any tolling segment for the proposed HOT lanes, and under no circumstances will the maximum rate be exceeded.

#### II. Soft Rate Cap

- The per-mile toll rate that can only be exceeded when at least one of the following thresholds are met within a given tolling segment during the preceding 5-minute period:
  - i. Traffic volume exceeds 1,600 passenger car equivalent vehicles per hour per lane.
  - ii. Average speed is below 50 mph.
- Customers can choose to pay this toll for a faster, more reliable trip when traffic conditions meet the thresholds. The soft rate cap protects customers from price gouging when traffic conditions do not justify higher rates.

#### III. Process for annual escalation

• For the toll rates to effectively manage demand and ensure reliability for users of the proposed HOT lanes into the future, the maximum per mile rates, soft rate caps, and unregistered video surcharge will escalate annually to account for inflation, population employment, and income growth. The minimum per mile rates and the minimum tolls are both subject to escalation for inflation only.

#### IV. Toll discounts for certain types of vehicles

• Free passage discount will be granted along the proposed Phase 1 South HOT lanes for HOV 3+, buses and motorcycles.

# Maryland Transportation Authority Phase 1 South: American Legion Bridge I-270 to I-370 Toll Rate Range Setting Process – Public Comment Summary Report



Public comments for the official record were submitted through a number of methods. Five methods for providing public comment included an online comment form; U.S. mail; 24/7 voicemail; email; and verbal testimony during one of four public hearing sessions either given directly to MDTA Board Members, via one-on-one testimony collected by a court reporter at the in-person public hearing, or via voicemail. Comments received from respondents were categorized according to the element of the proposal that was being commented on. If a respondent provided multiple comments on several different elements of the proposal those comments were counted individually. A total of 290 respondents provided their comment, with their comments categorized into 666 total individual comments. Most comments received 62% (413) were received via the comment form (online and hard copy). Comments received via testimony at the public hearings accounted for 28% (187) of the comments received, email accounted for 8% (54), and 24/7 voicemails accounted for 2% (12). Categorizing the comments by element of the proposal, there were 94 comments (14%) regarding the minimum and maximum toll rate ranges, 48 comments (7%) regarding the soft rate cap, 50 comments (8%) regarding the process for annual escalation, 79 comments (12%) regarding the toll discounts, and 395 comments (59%) regarding different issues associated with the MDTA that were categorized as "other".

Of the 290 total respondents, 163 respondents provided their location via full address or just their zip code. The majority of comments were received from Montgomery County, accounting for 74% (120), followed by Frederick County at 6% (10), Prince George's County at 4% (7), Anne Arundel County at 2% (4), Baltimore City at 2% (3), Howard County at 2% (3), and Charles County at 2% (3). Those seven counties accounted for 92% of the total comments received. Most comments were received from areas near Rockville, MD.

Through the online comment form, the public was able to express their support or opposition to various aspects of the proposal. **Figure 1** shows the final breakdown of support and opposition for these topics.



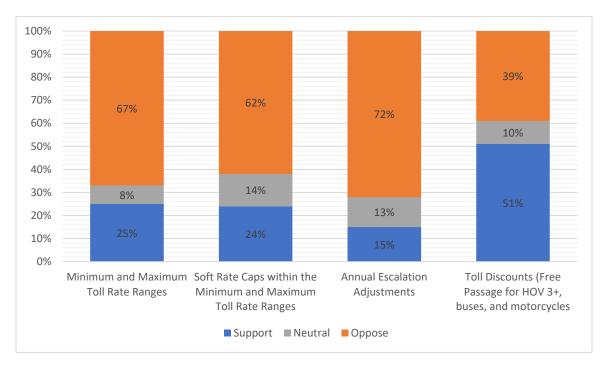


Figure 1 - Public Responses (Support, Neutral or Oppose) to Elements of the Tolling Proposal for Phase 1 South: American Legion Bridge I-270 to I-370

In addition, there were comments submitted by the public outside of the scope of the Phase 1 South: American Legion Bridge I-270 to I-370 Toll Rate Range Setting Process. These included expressing opposition to the Managed Lanes Study's Recommended Preferred Alternative for Phase 1 South, concern over a Public Private Partnership (P3), and requests for the exploration of mass transit alternatives to widening.

The following report covers in greater detail the process MDTA utilized to gather public comments and a summary of the comments received.



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## I. Public Comment Process

On May 20, 2021, the Maryland Transportation Authority (MDTA) Board unanimously approved to proceed with holding public hearings and seeking public comment on the Phase 1 South: American Legion Bridge I-270 to I-370 Tolling Proposal as part of the toll rate range setting process. The public comment period began on May 20, 2021 and continued until 5PM, August 12, 2021. Public hearings were conducted on July 12<sup>th</sup> and July 14<sup>th</sup> (two sessions each day).

The Phase 1 South: American Legion Bridge I-270 to I-370 Tolling Proposal presented to the public included:

- I. Minimum and maximum toll rate ranges
  - Toll rates will adjust as frequently as every 5 minutes, if needed to maintain a free-flowing level of traffic (45 mph or higher). The minimum toll rate is the lowest toll rate per mile that may be charged within any tolling segment for the proposed High-Occupancy Toll (HOT) lanes, or the lowest total toll a customer will pay regardless of how far they travel. Ensures that trips on the facility are charged a toll to cover toll collections costs. The maximum toll rate sets the highest toll rate per mile that may be charged within any tolling segment for the proposed HOT lanes, and under no circumstances will the maximum rate be exceeded.

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- Customers can choose to pay this toll for a faster, more reliable trip when traffic conditions meet the thresholds. The soft rate cap protects customers from price gouging when traffic conditions do not justify higher rates.

### III. Process for annual escalation

• For the toll rates to effectively manage demand and ensure reliability for users of the proposed HOT lanes into the future, the maximum per mile rates, soft rate caps, and unregistered video surcharge will escalate annually to account for inflation, population employment, and income growth. The minimum per mile rates and the minimum tolls are both subject to escalation for inflation only.

## IV. Toll discounts for certain types of vehicles

• Free passage discount will be granted along the proposed Phase 1 South HOT lanes for HOV 3+, buses and motorcycles.



A total of 666 comments from 290 respondents were received throughout the public comment period, which began on May 20, 2021 and continued until 5PM, August 12, 2021. Two public hearings were conducted between July 12<sup>th</sup> and July 14<sup>th</sup>, each with two sessions held from 2:00 PM to 4:00 PM and 6:00 PM to 8:00 PM (see **Appendix A**). The public hearings took place at the following locations:

- July 12 Hilton Washington D.C./Rockville Hotel & Executive Meeting Center in Rockville
- July 14 Call-in hearing (virtual)

At the public hearings, a quorum of MDTA Board Members, the MDTA Executive Director and the MDTA Chairman were in attendance. Comments from 3 elected officials were received during the comment period, representing various jurisdictions including State and County governments (see **Appendix B**).

### Submission Methods

In addition to providing public hearing testimony, public comments for the official record could be submitted through a number of methods including an online comment form, email, U.S. mail and 24/7 voicemail. All methods were advertised to the public. The distribution of submission methods is illustrated in **Figure 2**. A summary of the total comments received per each comment method is illustrated in **Figure 3**. Copies of the comment form are in **Appendix C**.

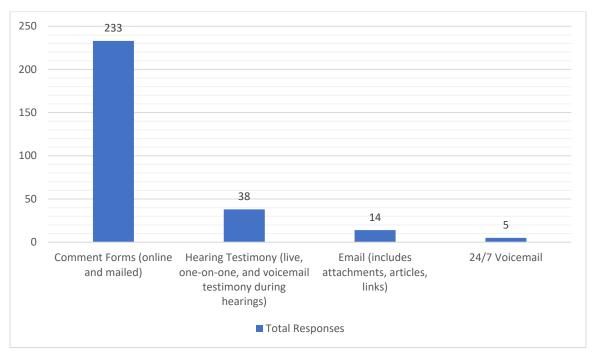


Figure 2 - Responses by Comment Method (Total Responses, 290)



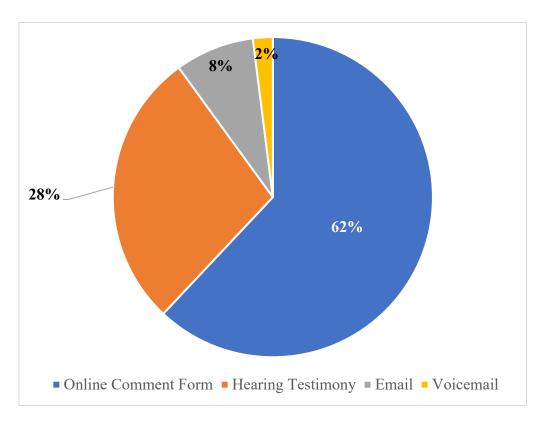


Figure 3 - Percentage of Comments by Source (Total Comments, 666)

Comments received from respondents were categorized according to the element of the proposal that was being commented on. If a respondent provided multiple comments on several different elements of the proposal those comments were counted individually. A total of 290 respondents provided 666 total individual comments. Most comments received 62% (413) were received via the comment form (online and hard copy). Comments received via testimony at the public hearings accounted for 28% (187) of the comments received, email accounted for 8% (54), and 24/7 voicemails accounted for 2% (12).

*Table 1 – Total Number of Respondents and Comments by Method* 

| Comment Method                          | Respondents<br>(No.) | Comments<br>(No. / % of Total) |
|---|----------------------|--------------------------------|
| Comment Form (online and hard copy)     | ) 233                | 413 / 62%                      |
| Testimony (in-person, call-in, voicemai | il) 38               | 187 / 28%                      |
| Email (attachments, letters, links)     | 14                   | 54 / 8%                        |
| Voicemail (24/7 line)                   | 5                    | 12 / 2%                        |
| Total                                   | 290                  | 666                            |



### Data Collection

In order to improve the quality of data collected and to better analyze the results of the specific proposals, MDTA utilized Public Input Community Engagement Software (Public Input). A comment form was developed and made available to the public via the project website online (via Public Input) and by hard copy. The online comment form could be completed electronically or downloaded to fill out and provide to the MDTA via email or U.S. Mail. Hard copies of the comment form were also available at the in-person hearing sessions. The comment form was tailored to prompt respondents to select (via check boxes) whether respondents supported, were in opposition to, or were neutral towards each tolling element. The comment form also included space for respondents to provide written comments to expand further on their selection. In addition to elements of the tolling proposal, the comment form also requested information from respondents on how often and which MDTA facilities they utilize, how they pay tolls, and their zip code, which enabled improved data quality and better data analysis. It also reduced data entry by MDTA staff as submissions were entered by the public directly into the database used for analysis.

In addition to capturing comment form responses, Public Input also captured all emails sent to the project email address (<u>ALB270TollSetting@mdta.state.md.us</u>) and produced audio recordings and written transcripts of the 24/7 voicemails and verbal public testimony received. Court reporters were utilized to capture testimony as well, including the one (1) one-on-one testimony provided during the in-person hearing on July 12.

Each comment received, regardless of method, was reviewed and categorized by MDTA staff.

## II. Respondent Data Analysis

Respondent location information was not required to be provided with each comment; however, this data was requested from each of the comment form respondents and was able to be obtained from addresses provided in emails, voicemails and testimony. Of the 290 total respondents, 163 respondents provided their location. While most of the respondents were from Maryland, some were from other states including Virginia, West Virginia, Georgia, District of Columbia, Pennsylvania, and North Carolina. **Figure 4** presents a map that indicates the location of comment respondents.

The majority of comments were received from Montgomery County, accounting for 74% (120), followed by Frederick County at 6% (10), Prince George's County at 4% (7), Anne Arundel County at 2% (4), Baltimore City at 2% (3), Howard County at 2% (3), and Charles County 2% (3). Those seven counties accounted for 92% of the total comments received. Details of the comments provided by zip code can be found in **Appendix D**.



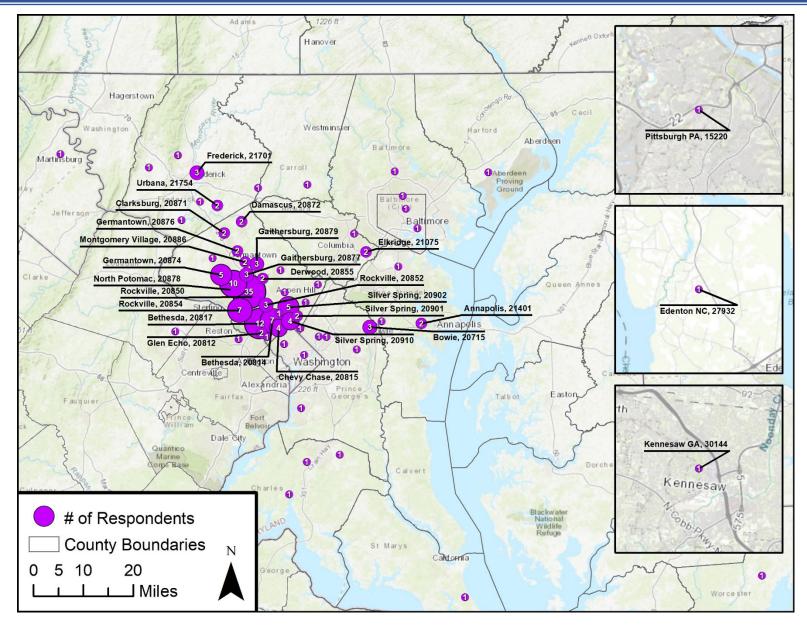


Figure 4 - Public Comments by Zip Code



Of the 233 comment forms received, 194 respondents provided input on how often they regularly travel within the project limits. A majority of the respondents (57%) answered that they travel within the Phase 1 South: American Legion Bridge I-270 to I-370 limits three or more times a week. The total number of respondents for each usage frequency are displayed in **Figure 5**.

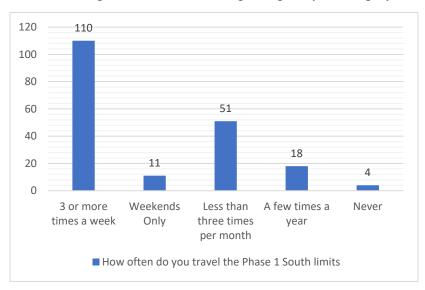


Figure 5 - Frequency of Usage

In addition to location data and frequency of usage, the comment form requested specific information regarding how toll facility users pay their tolls. Of the 233 comment forms received, 195 respondents provided input on how they pay for tolls. A majority of the respondents (81%) answered that they pay using E-Z Pass<sup>®</sup>. The total number of respondents for payment type are displayed in **Figure 6.** 

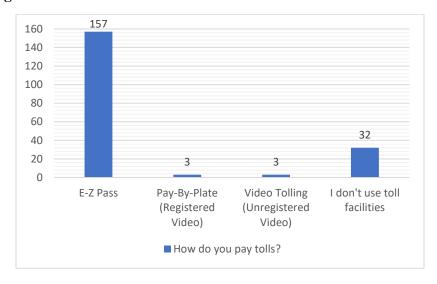


Figure 6 - Payment Types



## III. Comment Summary and Analysis

Public comments on the proposed Phase 1 South: American Legion Bridge I-270 to I-370 Tolling Proposal were solicited for each element, including minimum and maximum toll rate ranges, soft rate caps, annual escalation, and discounts. While testimony, voicemail and email comment methods all provided opportunities for the public to provide feedback on the tolling proposal, comments received by these methods did not always address the specific elements of the tolling proposal. Many comments received were in regard to the general concept of tolling, public-private partnerships (P3s), and the Managed Lanes Study's Recommended Preferred Alternative (RPA). Conversely, the comment form provided more structure than the testimony, voicemail and email methods; however, respondents still often provided feedback on the comment form that was general in nature or provided the same response for all elements of the tolling proposal, such as, "no tolls". It should also be noted that with the comment form, some respondents checked off their selection for "support", "oppose" or "neutral" for each element but did not leave a written comment. Others left written comments for certain elements but did not check off their selection for "support", "oppose" or "neutral".

Respondents' selections for "support", "oppose" or "neutral" on the comment forms were not counted as comments; only written comments provided in the additional space on the comment form or via other methods (email, testimony, voicemail) were counted as comments.

Given the various comment methods available, some respondents chose to provide comments through more than one method. For this analysis, comments were not counted in the totals if they were duplicative of a previously received comment by the same respondent. However, for example, if a respondent provided comments via both testimony (first) and email (second), any unique comments provided in the email that were not already captured by the testimony were counted in the totals shown in this summary report.

The discussion below shows results by proposal element and a summary on the type of comments received:



## Minimum and Maximum Toll Rate Ranges

Comment Form Results: Of the 233 comment forms received, 221 respondents selected a check box noting whether they support (25%), are neutral (8%), or oppose (67%) the proposed minimum and maximum toll rate ranges.

<u>All Comments:</u> Of the 666 total comments received (all methods), 94 provided an opinion regarding the minimum and maximum toll rate ranges.

The most common themes provided included general opposition to tolls and that the proposed toll rates are too high.

Comment from 7/14/2021 @ 7:38pm states:

"The toll rates will be and will become too expensive for the average driver to pay on a daily basis."

Comment from 7/12/2021 @ 6:14pm states:

"The proposed toll rate for the I-495 and 270 public/private partnership will just be too high for most drivers on a regular basis. The toll is highest when the traffic is greatest. The toll is high when you are most likely to use those toll lanes. The estimate -- the estimated maximum \$3.76 per mile means that the toll from the bridge to I-370 could be over \$40.00 at rush hour per trip. High price toll roads are inequitable. That means that the amount that a poor person or even an average income person pays is relatively greater. It's a greater chunk of their -- of their income. Wealthy people will be able to take the high occupancy toll lanes whenever they want, making congestion even worse for people in the regular lanes."

The following comments are from respondents that provided their support for the proposed minimum and maximum toll rate ranges.

Comment from 8/9/2021 @ 9:50am states:

"The tolls should be whatever keeps the lanes moving at speed."

Comment from 7/14/2021 @ 2:13pm states:

"We think that the toll rate structure proposed by MDTA is very in keeping with what is already happening in the Washington Metro area with the Express Lanes in Northern Virginia."

### Soft Rate Caps within the Minimum and Maximum Toll Rate Ranges

<u>Comment Form Results:</u> Of the 233 comment forms received, 195 respondents selected a check box noting whether they support (24%), are neutral (14%), or oppose (62%) the proposed soft rate caps within the minimum and maximum toll rate ranges.



<u>All Comments:</u> Of the 666 total comments received (all methods), 48 comments provided an opinion regarding the soft rate caps. The most common themes that developed were general opposition to tolls, that the soft rate caps are too high, that the soft rate cap mechanism is too complicated, or that a hard rate cap should be implemented.

Comment from 8/10/2021 @ 9:00pm states:

"The concept of soft rate caps is acceptable, but the proposed soft rate cap mechanism is not acceptable."

Comment from 8/9/2021 @ 2:19pm states:

"The soft rate cap of almost 8 times the minimum needs to be re-examined. What is the justification for this rate, other than this is what other jurisdictions charge. Likewise the 1600 passenger car equivalent miles is ridiculously low. By modern engineering standards (HCM) the CLV on a high speed straight one way limited access highway is over 2200pcu."

Comment from 7/14/2021 @ 1:25pm states:

"I should not need to get my calculator every trip to try to determine potential toll cost. How can a consumer make an informed choice on cost when the cost can change so drastically so quickly, in an environment like driving on a highway. The toll should have a set price and could change based on time or day."

Comment from 5/21/2021 @ 12:41am states:

"It is a fig leaf. You either have a cap or you don't. This is an almost-incomprehensible proposal--a cap which is not really a cap. The State should control the toll rates by setting the toll rates, period. Turn it over to the private sector and it is guaranteed that they will attempt to extract monopoly rents from the general public. It is the government's responsibility to protect the public from monopolistic practices."

Comment from 7/31/2021 @ 12:31pm states:

"If there were to be tolls, why is there not an option to support a hard rate cap?"

The following comments are from respondents that provide their support for the proposed soft rate caps.

Comment from 7/12/2021 @ 6:14pm states:

"It looks lower than most toll services provided elsewhere."

Comment from 7/14/2021 @ 2:11pm states:



"Maryland is one of only a couple of states with rate caps on their variable price toll lane systems. These statutory exceptions are essential protections for consumers."

### Annual Escalation Adjustments

<u>Comment Form Results:</u> Of the 233 comment forms received, 192 respondents selected a check box noting whether they support (15%), are neutral (13%), or oppose (72%) the proposed annual escalation adjustments.

<u>All Comments:</u> Of the 666 total comments received (all methods), 50 comments provided an opinion regarding the annual escalation adjustments. The most common themes that developed were general opposition to tolls, escalation should not be automatic, and escalation should be limited to the rate of inflation. Some examples of the reasons for opposing the proposed annual escalation adjustments included:

Comment from 8/9/2021 @ 9:58pm states:

"Inflation needs to be accounted for, and these segments primarily serve traffic from an area with higher-than-average income. However, on other projects serving a greater mix of local and long-distance traffic, I would not support using the local income or CPI since drivers from lower-income areas might be more frequent users."

The following comment is from a respondent that provides their support for the proposed annual escalation adjustments.

Comment from 8/8/2021 @ 7:14pm states:

"Good idea. Without setting this public expectation, MTA would have to fight a war for every escalation."

### Toll Discounts (Free passage for HOV 3+, buses and motorcycles)

<u>Comment Form Results:</u> Of the 233 comment forms received, 190 respondents selected a check box noting whether they support (51%), are neutral (10%), or oppose (39%) the proposed discounts.

<u>All Comments:</u> Of the 666 total comments received (all methods), 79 comments provided an opinion regarding the toll discounts. The most common theme that developed was overall support for the proposed discounts but are concerned with which vehicle types and HOV classification should or should not receive a discount. Some examples include:

Comment from 8/9/2021 @ 9:18am states:

"Setting the toll discount at HOV 3+ is a terrible idea, please consider making it HOV 2+. It's possible for a married couple to utilize the HOV 2 lane, but not HOV 3. HOV 3 will not be utilized by nearly enough people and will only cause further traffic problems for regular commuters. With a global pandemic still on-going it's dangerous to ask



commuters to share their cars with strangers. The current HOV 2 lane is already not fully utilized. If you creating additional toll lanes, why not just create one HOV 3 lane and keep one as HOV 2 but extend it to the American Legion Bridge."

Comment from 5/23/2021 @ 7:24pm states:

"Those who comply with HOV 3+ and buses should be able to participate. Motorcycles should be prohibited from toll discounts. They make tremendous noise, are unsafe and should be with the rest of the vehicles, and do not deserve special privileges on the Toll Discount issue. If anything, they should pay exactly the same as any non-HOV 3+ toll user."

Comment from 7/14/2021 @ 1:19pm states:

"I don't think motorcycles which are usually single driver, should be included."

Comment from 8/8/2021 @ 7:13pm states:

"Fully electric vehicles should get some type of discount as well."

Comment from 8/11/2021 @ 9:57am states:

"The MdTA should also consider a program for means-based toll discounts to improve the equity of this tolling program."

The following comments is from respondents that provided their support to the proposed discounts.

Comment from 8/8/2021 @ 10:38pm states:

"If there are tolls, there should be discounts or fees should be waived entirely for HOVs, buses, and electric vehicles."

Comment from 8/11/2021 @ 9:57am states:

"We support the State's position that all buses, motorcycles, and HOV 3+ vehicles, both public and private, have free access to the managed lanes."



## IV. Other Public Comments

Of the 666 total comments received (all methods) on the Phase 1 South: American Legion Bridge I-270 to I-370 Tolling Proposal, there were 395 comments submitted by the public on topics other than the specific tolling proposal elements. General themes from the "other" comments received are outlined below:

The most common theme was opposition to toll roads in general, and that they are economically unfair.

Comment from 5/30/2021 @ 2:07pm states:

"I think this plan is Garbage. I do not support the implementation of Toll Roads, and believe that they are a massive drain on our society and our economy. They may as well call them White People Roads, because that's who they are designed for (and who can afford it)."

Comment from 7/6/2021 @ 4:06pm states:

"There should be no tolls. Freeways are meant to be free."

Comment from 8/10/2021 @ 11:07pm states:

"There should be no tolls. Tolls are for the rich. Tolls don't reduce traffic since they don't make money if people don't use the toll lanes. No Lexus lanes! Why pay taxes to drive on our own roads!"

Comment from 7/12/2021 @ 2:49pm states:

"The vast majority of people who regularly use I-270 and I-495, will find the toll lanes outrageously unaffordable, the rush hour maximum. When the toll lanes open will be over \$4 a mile. The same people will find the free lanes, more congested than ever, and the cause of social and economic justice setbacks."

Comment from 8/5/2021 @ 10:12am states:

"Consider socioeconomic privilege and the discrimination implied in setting numbers."

Comment from 7/12/2021 @ 2:52pm states:

"And if you were to ask LBJ or, you know, the other authors as a civil rights act, people were put that law enacted that in Congress in 1964. How do you feel about this idea that we're going to force people Everyone who has to go to work to pay these kinds of prices. Is this fair? Is this a good deal for the people who are intended to be protected, including low income, in addition to those other classifications of people who are covered by the civil rights act, but it would be, I think there'll be astonishment and maybe some laughter and just, you know, kind of blank stares that the notion that any system that's going to



create this high cost for commuting would be in any way equitable to the people who the civil rights act was designed to protect."

Another theme is that respondents disagree with the involvement of a private company to manage the toll lanes.

Comment from 8/9/2021 @ 8:31am states:

"Really opposed to having private sector running this. Should be state road run by state govt."

Comment from 6/9/2021 @ 8:56am states:

"If revenue is short, raise Federal or State taxes on fuel to pay for roads. There is no reason for the State Government to give or lease public assets to any private entity, unless the State Government is unable to finance construction. In this case, the State of Maryland can finance the project at lower interest rates than any private sector entity could, resulting in lower total costs over the life of the project. The state should finance the project through direct collection of tolls, other forms of road pricing or through fuel taxes."

Comment from 7/12/2021 @ 6:14pm states:

"Furthermore, we can expect the toll rate ranges will continue to go higher each year based on the terms of the contract. Now, why are we predicting that the toll rates will increase? Because this is a private company. It has a fiduciary responsibility to its shareholders. We all know this. If it were a government program, it would be providing a service for the common good."

Another theme is that tolls will not fix congestion and that the State should consider other alternatives.

Comment from 5/25/2021 @ 9:29am states:

"The solution COVID has taught us. Government/State workers and those that can who Work from home should do so. The roads are starting to get CRAZY again. Toll Roads? New Roads? NO ROOM! at least here on 270 in Frederick County."

Comment from 8/9/2021 @ 2:38pm states:

"I am against the proposed tolls. They are not needed. The traffic problem is not between the American Legion Bridge and I-370, it is from Germantown and Frederick. At the beginning of I-270, there are 7 lanes heading westward, the lanes reduce to 2 lanes on I-270 at Germantown. 7 lanes to 2 lanes...terrible traffic management. A similar problem occurs heading into VA on the Beltway. At I-270 and the beltway intersection, the traffic goes from 6 lanes to 4 lanes heading into Virginia. The roadway from the Rt 193 to the



Dallas Access Road should be widen to 6 lanes from its current 4 lanes. Terrible traffic management by MD and VA."

Comment from 8/5/2021 @ 11:59am states:

"The phrase "tolling to subsidize the creation new lanes" is inherently disagreeable to society in that it creates potential economic inequities (tolling and being forced into potentially slower lanes) as well as a poor use of mass infrastructure funding that should better be spent on mass transit instead of the creation of new lanes for SOVs. New lanes could be better used by society as BRT or ROW for future Metro or public rail use."

## V. Recommendations from the Public

The following comments, in addition to providing feedback, also included specific recommendations on various elements of the tolling proposal:

### • Minimum and Maximum Tolls

- o "The minimum toll rates appear to be excessively high in comparison to current tolls on other regional facilities. The minimum toll for the I-495/I-270 Managed Lanes of \$0.20/mile is nearly identical to the current *peak* toll on MD 200 (\$0.22/mile). Similarly, the I-95 Express Toll Lanes north of Baltimore have *maximum* tolls of roughly \$0.20/mile. The Dulles Toll Road, where tolls have been set to fund the Metro Silver Line, has a toll of \$0.23/mile. The *maximum* rates on these other regional facilities are comparable to the *minimums* proposed for I-495/I-270. Based on this comparison, it appears that the minimum proposed toll should be sufficient to cover the cost of the project and might be more appropriate as the average toll rate."
- "Setting max and min rates might limit officials' ability to effectively respond to changes in traffic patterns--especially if those changes are unpredicted. If max/min must be announced, make sure they define a very wide range (3-4? Std. Dev.?)"
- o "The max toll should be no more than \$5 for a full length trip."

### Soft Rate Caps

- o "I would suggest a hard cap of \$10."
- o "The demand factors penalize drivers when traffic recovers. Assume that a bad accident closes the HOT lines for some time, and then the accident is completely cleared. Assume the case of passenger vehicle with soft rate cap of \$1.50 and maximum rate of \$3.76. Assume the demand factors of 1.25 and 0.9 are triggered by the increased congestion and then the later free flow of traffic. Time of increase: At maximum demand factor increase of 1.25, the rate cap would exceed the maximum rate in the fifth five-minute interval (\$3.66 after 20 minutes, \$4.58 capped at \$3.76 during the next five-minute period). Time of decrease: At the



recovery factor of 0.90, the rate cap declines to the minimum rate in the ninth five-minute interval (\$1.62 after 40 minutes, \$1.46 capped at \$1.50 in the next five-minute period). It takes approximately twice as long for the cap to decline as it does to rise."

### Escalation

- "Perhaps the tolls should be limited to escalation steps from the minimum based on specific operating conditions that are clear and transparent to the MDTA facility and customers, especially given the very high proposed minimum tolls and the very wide allowable toll range."
- o "The MDTA should play a key role in balancing the rate setting with the protection of the cost to the user of the toll lanes during the 50-year duration of the contract. MDTA should have final authority on the rate each year based on the input from the developer."
- o "As for growth in demand, it seems that these factors are based on population/income in general but not actually tied to more demand for the HOT lanes. I think that the private partner should have to present actual evidence that demand has increased for the HOT lanes or that its costs have gone up."
- o "Should be tied to rate of inflation. However most people don't get inflation adjusted income so increases should always be less than inflation rate."
- o "The user's escalation factor is unclear and no escalation cap established; a maximum cap is recommended to be set at 2% per year."

### Discounts

- o "MDTA should set a zero-toll or minimum-only toll for official State and Local Government Vehicles (highway maintenance, public service, public safety, etc.)
- o "Discounts should also apply for zero emission vehicles."
- o "Commute rate needs to be considered, as done for bay bridge and tunnel commuters."
- o "MDTA should consider a program for means-based toll discounts to improve the equity of this tolling program."
- o "Most people do not have three people in a car when they travel. At least change it to two to help people travel."

### • Tolls – General

- "Clearer boundaries defining the setting of tolls by the operator within the allowed ranges should be established and published."
- o "To increase access and improve utilization of the proposed facilities and to reduce the inequity of this approach, perhaps the toll rate could be indexed to achieve a minimum speed differential rather than a fixed minimum speed."
- o "The user rates should be set for the year that the facility opens."



- "The 1600 passenger car equivalent miles is ridiculously low. By modern engineering standards (HCM) the CLV on a high speed straight one way limited access highway is over 2200pcu."
- "Trucks should all be assessed the same minimum rate during non-peak times especially at night. They also should be extremely discouraged from running during peak times as heavy trucks by their operational limitations can quickly congest traffic."
- o "Motorcycles and trucks should not be eligible to use these lanes."
- o "Motorcycle drivers should also pay equitable tolls to use tolled roads as other motorists."

## Payment Types

- "The MDTA should consider applying a fixed charge (per trip/per mile/per segment) for processing non-E-ZPass transactions rather than a multiplier on the toll."
- "At most the additional charges for paying by plate should probably be no more than 5%. Documentation needs to be provided for justifying a 25% penalty cost. Likewise a 50% penalty cost for unregistered video tolling also seems excessive as this is also an automated process with marginal administrative costs perhaps the largest being the mailing costs."

## VI. Records Management

Public comments will be retained for further review and analysis as required. All public comments submitted during the public comment period, including public hearing transcripts, are available for review online at mdta.maryland.gov/ALB270TollSetting. Please email ALB270TollSetting@mdta.maryland.gov, for further information.



## Appendix A – MDTA Public Hearings

The MDTA held two public hearings. There were 38 people in attendance, including 3 elected officials. Of the 38 people in attendance, 31 testified publicly before the MDTA Board. The public was also able to submit official comments through one on one testimony, online comment form or voicemail. Throughout the hearings, 7 people provided voicemail testimony.

Total Attendance Numbers at Phase 1 South Toll Rate Range Setting Process Public Hearings

| Date/Location                  | Total Number Signed In (public and elected officials) | Number<br>Public<br>Testimony | Number<br>One-on-<br>One<br>Testimony | Number<br>of Elected<br>Officials | Number<br>of Written<br>Comment<br>Forms | Number of<br>Voicemail<br>Comments |
|--------------------------------|---|-------------------------------|---------------------------------------|-----------------------------------|--|------------------------------------|
| July 12 —<br>In-Person/ Hilton | 18  | 15                            | 11(0)                                 | 3                                 | 0  | 0                                  |
| July 14 – Call in              | 20  | 13                            | 0                                     | 0                                 | 0  | 12 <sup>2</sup> (7)                |
| Total                          | 38  | 28                            | 0                                     | 3                                 | 0  | 7                                  |

<sup>&</sup>lt;sup>1</sup>This person provided both public and one-on-one testimony, only counted once in the public total

Here are the general themes from the in-person verbal testimony:

- All project study information, including the SDEIS, is not available yet, so how can we move forward and approve tolls without all the data?
- With increased teleworking will the traffic congestion come back?
- Support for a reversible lane's alternative.
- Distrust towards Public Private Partnerships (P3s), and Transurban.
- Privatizing roadways can lead to significant control of regional transportation by private companies accountable to their shareholders rather than the public. The tolls on the proposed I-495 and I-270 Public-Private Partnership (P3) express toll lanes will deliberately be set high to guarantee profits for toll company shareholders.
- Toll rates will be too high for average drivers on a daily basis. The 2021 toll rate for a passenger vehicle with an E-ZPass on the I-270 portion will be 20 cents/mile and the maximum \$3.76/mile, depending on the traffic conditions. Video tolling rates would range as high as \$5.64/mile. That means the toll from the bridge to I-370 could be over \$40 at peak times!

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<sup>&</sup>lt;sup>2</sup>Five of these people provided public testimony in addition to voicemails, only counted once in the public total



- Actual toll rates will be higher when the road is operating. The toll rate ranges will continue to escalate every year for the 50 years of the contract to account for inflation and other escalation factors.
- High price toll roads are inequitable. This plan turns public land over to private investors to give a huge benefit to wealthy people. Wealthy people will be able to take the HOT lanes whenever they want while making congestion worse for people in the regular lanes.
- Expensive toll roads are a regressive form of taxation in which low-income drivers may spend a larger percentage of their income on tolls than high-income drivers. Maximum toll rates should be accessible to working class families.
- The proposed project is financially risky and does not show good stewardship of Maryland's financial well-being. The more expensive the project, the higher the tolls have to be to cover the costs. The cost of building the express lanes is based on assumptions and projections that no longer apply and the cost of building the express lanes is unknown.
- Congestion must be maintained on the free lanes to get people to pay to use expensive managed lanes. The bulk of revenue from express toll lanes needs to be collected at rush hour and it is unclear how teleworking will affect rush hour traffic.

Here are the general themes from the call-in verbal testimony:

### • Opposition themes:

- Commenters expressed opposition against the project as a whole. Cannot support results of toll rate range setting process due to deficiencies. Shouldn't be any toll roads at all. History of roadway expansion doesn't improve congestion. Issue of induced demand: more highway lanes = more cars will fill them. National Cap. Region TPB recently voted to take it out and doesn't seem worth pursuing. Little legal redress may be sought by citizens of MD after contract is in effect.
- Other alternatives of traffic relief should be considered. Reversible lanes would be more effective. Transit solutions would be better. Very impactive. Ramps to toll lanes will be destructive to environment and properties. Won't relieve congestion or reduce pollution which is #1 source of GHG (transportation). Focus efforts on state (transit, bike, ped) things that reduce need for people to travel by car on roadways. Inadequate traffic analyses, as well as inadequate transit studies. Doesn't create additional capacity only rearranges current capacity. Build housing so people can live where they work to reduce traffic problems. Pandemic may lessen volumes.
- o Environmental consequences of the project. Bad project, bad for environment, bad for our planet. Will have environmental impact and impact on people that live close to the planned expansion and the homes might be impacted by construction.
- o The toll lanes will be too expensive. Only wealthy can afford toll lanes; Unfair to middle- and lower-income populations. Will increase costs for average tax payer.



- Opposition to Public Private Partnerships. Private partner will get higher profit and not in public's best interest. Preliminary due diligence document states the developer can set tolls to maximize throughput OR maximize revenue, and is then noted that the rate must be set to maximize revenue what are actual P3 program goals & how does maximizing revenue help public interest? No one wants the project except ones that can make money off of it.
- More project details need to be provided. No information provided on what the total expected toll would be 'end to end' during rush hour. Need more detail on profit margins (does MD receive any excess revenue)? Note about toll rates shown in Virtual Information Room hearing materials being for illustrative purposes only and will be set by developer how does this support an informed decision? Unclear what tolls would actually be. Very expensive project with too many unknowns.

## • Support themes:

- Support for economic and personal purposes. No better way to finance improvements for the American Legion Bridge and I-270 because MD doesn't have funds or bonding capacity. Only other way would be to raise taxes. Significant share of tolls will be paid from out of state residents because they are passing through. Critical to the industry. Concerned about deteriorating condition of nation's roads, interstates, bridges, etc. in MD and national capital area.
- O The toll rate structure is consistent with other toll facilities and familiar to most drivers. MD is only one of few states with rate caps, which are essential protection measures for consumers. Compared potential toll rates to VA indicating they'd be less than VA rates. Toll rate structure proposed by MDTA is consistent with what is happening in VA. Drivers in the Metro area have already used express lane concept and it is not foreign to them. Proposed toll structure is equitable. Consumers/drivers can make their own choice to remain in HOT lanes or get into the GP lanes. Only people paying the toll are SOVs choosing to do so in order to guarantee a reliable trip.
- This project is necessary to improve the quality of life in the region. Purpose of managed lanes is to provide a reliable option 24 hours/day. Right now that opportunity doesn't exist including rush hour. These HOT lanes will benefit everyday people and will save time. Those not paying tolls will still benefit (toll rate for HOV3+; transit buses; bikes/peds on shared use path; and general purpose lanes is \$0.00). Time spent in traffic on highways makes estimating arrival times nearly impossible. Wasted time is expensive and drives up cost (employees going to work; inspectors going to facility; trucks going to jobs). Will help shift traffic and improve safety. HOT lanes will cut down on fuel consumption (use less fuel then if stuck idling or stop/go conditions). Option to spend money on tolls (not mandatory) to save minutes per day can be well worth it. Sitting in traffic impacts personal health.



## Appendix B – Elected Official Contacts

| Title                     | Name                   | Comment Method                         |  |  |
|---------------------------|------------------------|--|--|--|
|                           |                        | 7/12/2021: Verbal Public Testimony and |  |  |
| Senator – District 17     | Cheryl Kagan           | One-on-One Public Testimony            |  |  |
| Delegate – District 18    | Al Carr                | 7/12/2021: Verbal Public Testimony     |  |  |
| Mayor – City of Rockville | Bridget Donnell Newton | 7/12/2021: Verbal Public Testimony     |  |  |



## Appendix C – Public Comment Form

|              | COMMENT FORM  |          |           |
|--------------|---|----------|-----------|
|              | nment on the following elements of the tolling proposal<br>mation Room available at <u>mdta.maryland.gov/ALB270To</u> |          |           |
|              | and Maximum Toll Rate Ranges:   |          |           |
|              | ments as they relate to the above category:   Support al Comments:  | □ Oppose | ☐ Neutral |
|              |   |          |           |
|              | Caps within the Minimum and Maximum Toll Rate Rang  |          |           |
|              | ments as they relate to the above category:   Support al Comments:  | □ Oppose | ☐ Neutral |
|              |   |          |           |
| Annual E     | scalation Adjustments:  |          |           |
| My com       | ments as they relate to the above category:   Support al Comments:  | □ Oppose | ☐ Neutral |
| _            |   |          |           |
| ☐ Toll Disco | ounts (Free Passage for HOV 3+, buses and motorcycles):   |          |           |
|              | ments as they relate to the above category:   Support al Comments:  | □ Oppose | ☐ Neutral |
|              |   |          |           |
|              |   |          |           |



| 2.                     | How often do you travel within the Phase 1 South limits (the American Legion Bridge to I-270, and I-270 to I-370)?  Three times or more per week  Weekends only  Occasionally (Less than three times per month)  Rarely (A few times a year)   |
|------------------------|--|
| 3.                     | How do you pay tolls?  □ E-ZPass® □ Pay-By-Plate (Registered Video, available at Maryland toll facilities only) □ Video Tolling (Unregistered Video) □ I don't use toll facilities   |
|                        | Optional: Please provide the following information:  |
|                        | Name:  |
|                        | E-mail Address:  |
|                        | Community/Organization (if applicable):  |
|                        | Street Address:  |
|                        | City: State: Zip:  |
| fi<br>b<br>s           | Thank you for your comments! Comments may be submitted in a variety of ways during the comment period from May 20, 2021, through August 12, 2021, at 5:00 PM in order to be included in the official record reviewed by the MDTA Board. Comments submitted on this form will be part of the official record. Comments may be submitted by completing this comment form electronically at <a href="mailto:mdta.maryland.gov/ALB270TollSetting">mdta.maryland.gov/ALB270TollSetting</a> , or by mailing this completed comment form via e-mail to <a href="mailto:ALB270TollSetting@mdta.maryland.gov">ALB270TollSetting@mdta.maryland.gov</a> , or by mailing his completed comment form via U.S. Mail to:  Phase 1 South: American Legion Bridge I-270 to I-370  Toll Rate Range Setting Public Comment  Maryland Transportation Authority  2310 Broening Highway  Baltimore, MD 21224   |
| s<br>n<br>a<br>p<br>li | The MDTA is holding an in-person public hearing on July 12 and a call-in public hearing on July 14 as part of the toll atterange setting process public comment period for proposed High-Occupancy Toll (HOT) lanes within Phase 1 outh: American Legion Bridge I-270 to I-370. The hearings will provide an opportunity to comment for the official ecord through verbal public or one-on-one testimony or through written comment. Register to provide testimony at a public hearing at <a href="mailto:mdta.maryland.gov/ALB270TollSetting">mdta.maryland.gov/ALB270TollSetting</a> or call 888-725-0174. There will be no formal presentation during the public hearings, and no responses to questions will be given. The public will be able to esten live to the hearings via telephone or livestream at <a href="mailto:mdta.maryland.gov/ALB270TollSetting">mdta.maryland.gov/ALB270TollSetting</a> . ALL COMMENTS eccived, whether at the hearing or through other methods, will be given EQUAL CONSIDERATION. |
| W                      | If you are unable to access the hearing materials online, or if you require special accommodations under the Americans with Disabilities Act or require language translation services (free of charge), please contact the MDTA's Title VI Officer at modaeeo@mdta.maryland.gov or at 410-537-6720 at least ten days prior to the first public hearing.  |

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## Appendix D – Comments by Zip Code

| ZIP / Postal | Number of |                 |                 |       |
|--------------|-----------|-----------------|-----------------|-------|
| Code         | Comments  | Mailing City    | Jurisdiction    | State |
| 21710        | 1         | Adamstown       | Frederick       | MD    |
| 21401        | 2         | Annapolis       | Anne Arundel    | MD    |
| 21224        | 1         | Baltimore       | Baltimore City  | MD    |
| 21212        | 1         | Baltimore       | Baltimore City  | MD    |
| 21218        | 1         | Baltimore       | Baltimore City  | MD    |
| 20814        | 7         | Bethesda        | Montgomery      | MD    |
| 20816        | 1         | Bethesda        | Montgomery      | MD    |
| 20817        | 12        | Bethesda        | Montgomery      | MD    |
| 20715        | 3         | Bowie           | Prince George's | MD    |
| 20841        | 1         | Boyds           | Montgomery      | MD    |
| 20866        | 1         | Burtonsville    | Montgomery      | MD    |
| 20815        | 4         | Chevy Chase     | Montgomery      | MD    |
| 20871        | 2         | Clarksburg      | Montgomery      | MD    |
| 21114        | 1         | Crofton         | Anne Arundel    | MD    |
| 20872        | 2         | Damascus        | Montgomery      | MD    |
| 20855        | 2         | Derwood         | Montgomery      | MD    |
| 20166        | 1         | Dulles          | Loudoun         | VA    |
| 27932        | 1         | Edenton         | Chowan          | NC    |
| 21040        | 1         | Edgewood        | Harford         | MD    |
| 21784        | 1         | Eldersburg      | Carroll         | MD    |
| 21075        | 2         | Elkridge        | Howard          | MD    |
| 21043        | 1         | Ellicott City   | Howard          | MD    |
| 20744        | 1         | Fort Washington | Prince George's | MD    |
| 21701        | 3         | Frederick       | Frederick       | MD    |
| 21702        | 1         | Frederick       | Frederick       | MD    |
| 21704        | 1         | Frederick       | Frederick       | MD    |
| 20877        | 3         | Gaithersburg    | Montgomery      | MD    |
| 20878        | 1         | Gaithersburg    | Montgomery      | MD    |
| 20879        | 3         | Gaithersburg    | Montgomery      | MD    |
| 20874        | 5         | Germantown      | Montgomery      | MD    |
| 20876        | 2         | Germantown      | Montgomery      | MD    |
| 21061        | 1         | Glen Burnie     | Anne Arundel    | MD    |
| 20812        | 2         | Glen Echo       | Montgomery      | MD    |
| 30144        | 1         | Kennesaw        | Cobb            | GA    |
| 20895        | 1         | Kensington      | Montgomery      | MD    |
| 20653        | 1         | Lexington Park  | Montgomery      | MD    |
| 21093        | 1         | Lutherville     | Baltimore       | MD    |
| 25404        | 1         | Martinsburg     | Berkeley        | WV    |
| 22102        | 1         | McLean          | Fairfax         | VA    |



| 21769 | 1  | Middletown    | Frederick       | MD |
|-------|----|---------------|-----------------|----|
| 20721 | 1  | Mitchellville | Prince George's | MD |
| 20886 |    | Montgomery    | Montgomery      | MD |
|       | 2  | Village       |                 |    |
| 21771 | 1  | Mount Airy    | Frederick       | MD |
| 21841 | 1  | Newark        | Worcester       | MD |
| 20878 | 9  | North Potomac | Montgomery      | MD |
| 20832 | 1  | Olney         | Montgomery      | MD |
| 15220 | 1  | Pittsburgh    | Allegheny       | PA |
| 20677 | 1  | Port Tobacco  | Charles         | MD |
| 20854 | 1  | Potomac       | Montgomery      | MD |
| 20737 | 1  | Riverdale     | Prince George's | MD |
| 20738 | 1  | Riverdale     | Prince George's | MD |
| 20850 | 35 | Rockville     | Montgomery      | MD |
| 20852 | 3  | Rockville     | Montgomery      | MD |
| 20854 | 6  | Rockville     | Montgomery      | MD |
| 20901 | 2  | Silver Spring | Montgomery      | MD |
| 20902 | 5  | Silver Spring | Montgomery      | MD |
| 20904 | 1  | Silver Spring | Montgomery      | MD |
| 20906 | 1  | Silver Spring | Montgomery      | MD |
| 20910 | 4  | Silver Spring | Montgomery      | MD |
| 20912 | 1  | Takoma Park   | Montgomery      | MD |
| 21754 | 2  | Urbana        | Frederick       | MD |
| 20601 | 1  | Waldorf       | Charles         | MD |
| 20002 |    | Washington    | District of     | DC |
|       | 1  |               | Columbia        |    |
| 20008 |    | Washington    | District of     | DC |
|       | 1  |               | Columbia        |    |
| 20695 | 1  | White Plains  | Charles         | MD |

Total Respondents Providing Zip Codes = 163



## Appendix E – Public Notice

Two public notices were printed in the following newspapers:

Legal Ad #1 (announced opening of comment period on May 20, ways to comment and public hearing material availability in the Virtual Information Room):

- Afro American 5/29/21
- El Tiempo Latino 5/28/21
- The Enquirer-Gazette 5/27/21
- Frederick News-Post 5/27/21
- Laurel Leader 5/27/21
- Maryland Register 5/21/21
- Prince George's Post 5/27/21
- Washington Hispanic 5/28/21
- The Washington Post 5/27/21

### Legal Ad #2 (announced hearing dates and how to register to provide testimony at a hearing):

- Afro American 6/12/21
- El Tiempo Latino 6/11/21
- The Enquirer-Gazette 6/10/21
- Frederick News-Post 6/10/21
- Laurel Leader 6/10/21
- Maryland Register 6/4/21
- Prince George's Post 6/10/21
- Washington Hispanic 6/11/21
- The Washington Post -6/10/21

These legal ads were also included in the Maryland Register (Legal Ad #1 on May 21, 2021 and Legal Ad #2 on June 4, 2021).

Additionally, public outreach included the use of digital ads; project webpage; social media posts to Facebook, Twitter and Instagram; MDOT MVA monitor slide; e-blasts to stakeholders; and hard copy flyers. Outreach included contacting targeted environmental justice (low-income and minority) areas via email and mailing or leaving hard copy flyers (e.g., housing developments, churches, schools, grocery stores, etc.).



### Legal Ad #1

## Notice for Public Comment — PHASE 1 SOUTH: AMERICAN LEGION BRIDGE I-270 TO I-370 TOLL RATE RANGE SETTING PROCESS

The Maryland Transportation Authority (MDTA) has the responsibility under Maryland law to fix, revise, and set toll rates in accordance with the Transportation Article §4-312 of the Annotated Code of Maryland and Code of Maryland Regulations (COMAR) Title 11 Department of Transportation, Subtitle 07 MDTA, Chapter 05 Public Notice of Toll Schedule Revisions (11.07.05). As a partner in Phase 1: The American Legion Bridge I-270 to I-70 Relief Plan, the MDTA is seeking public comment on the tolling proposal as part of the toll rate range setting process for Phase 1 South: American Legion Bridge I-270 to I-370.

As of May 20, 2021, public comment is being accepted, and all public hearing materials are available in the Virtual Information Room at mata-maryland.gov/IALB270TollSetting. Written comments and call-in testimony through voicemail will be accepted for the official record through Thursday, August 12, 2021 at 5 p.m. Comments may be provided by submitting an electronic comment form at mata-maryland.gov/IALB270TollSetting; downloading and emailing a completed comment form to ALB270TollSetting@mdta.maryland.gov. printing and mailing a completed comment form to Phase 1 South: American Legion Bridge I-270 to I-370 Toll Rate Range Public Comment, Maryland Transportation Authority, 2310 Broening Highway, Baltimore, MD 21224; or providing call-in testimony at 855-701-1977 and leave a single voicemail that is limited to three minutes.

The table below provides proposed toll rate ranges in cost per mile (\$\text{Mnile}) for all vehicle and payment types associated with use of future High-Occupancy Toll (HOT) lanes within Phase 1 South: American Legion Bridge 1-270 to 1-370. The vehicle classifications, payment methods and associated multipliers are consistent with existing MDTA facilities. For example, the 3-axle light multiplier is 1.5 x the 2-axle rate for the same payment type and the multiplier between Video Tolling (unregistered video) and electronic toll collection (ETC) for the same vehicle classification is 1.5x. Tolls will be collected electronically at highway speeds, using overhead gantries, with no toll plazas or toll booths (cashless tolling). Overhead tolling gantries will be placed within each tolling segment along Phase 1 South: American Legion Bridge 1-270 to 1-370. The toll rates are determined on a segment-by-segment basis and summed to form a trip. The toll rate per mile may vary within each tolling segment based on traffic conditions, resulting in higher rates in the more congested segments and lower rates in the less congested segments.

PROPOSED TOLL RATE RANGES, SOFT RATE CAPS, DISCOUNTS, AND FREE PASSAGE FOR VEHICLE CLASSIFICATIONS BY PAYMENT TYPE

|                            |                  | HOT LANES   |   |                     |                            |                                |                      |
|----------------------------|------------------|---|---|---------------------|----------------------------|--------------------------------|----------------------|
| VEHICLE                    | GENERAL          |   | Proposed T                              | oll Rate Ranges (2) | 021\$/mile) <sup>3</sup>   | HOV 3+<br>Vanpools<br>Carpools | Buses<br>Motorcycles |
| CLASSIFICATIONS            | PURPOSE<br>LANES | Payment Type                                      | Minimum<br>Toll Rate Range <sup>2</sup> | Soft Rate Cap       | Maximum<br>Toll Rate Range |                                |                      |
| Passenger Vehicle (2-axle) |                  |   | \$ 0.20                                 | \$ 1.50             | \$ 3.76                    |                                |                      |
| Motorcycle                 |                  |   | \$ 0.00                                 | \$ 0.00             | \$ 0.00                    |                                |                      |
| 3-axle Light               |                  |   | \$ 0.30                                 | \$ 2.25             | \$ 5.64                    |                                |                      |
| 3-axle Heavy               | Free             | Electronic Toll                                   | \$ 0.40                                 | \$ 3.00             | \$ 7.53                    | Free                           | Free                 |
| 4-axle Light               | пее              | Collection (ETC)                                  | \$ 0.51                                 | \$ 3.75             | \$ 9.41                    | riee                           | riee                 |
| 4-axle Heavy               |                  | E:ZHess*  | \$ 0.61                                 | \$ 4.50             | \$ 11.29                   |                                |                      |
| 5-axle                     |                  | 2200  | \$ 1.21                                 | \$ 9.00             | \$ 22.58                   |                                |                      |
| 6+-axle                    |                  |   | \$ 1.52                                 | \$ 11.25            | \$ 28.22                   |                                |                      |
|                            |                  |   |   |                     |                            |                                |                      |
| Passenger Vehicle (2-axle) |                  | Pay-By-Plate<br>(Registered Video)<br>(1.25x ETC) | \$ 0.25                                 | \$ 1.88             | \$ 4.70                    | Free                           | Free                 |
| Motorcycle                 |                  |   | \$ 0.00                                 | \$ 0.00             | \$ 0.00                    |                                |                      |
| 3-axle Light               |                  |   | \$ 0.38                                 | \$ 2.81             | \$ 7.05                    |                                |                      |
| 3-axle Heavy               | Free             |   | \$ 0.50                                 | \$ 3.75             | \$ 9.41                    |                                |                      |
| 4-axle Light               | nee              |   | \$ 0.64                                 | \$ 4.69             | \$ 11.76                   |                                |                      |
| 4-axle Heavy               |                  | (1.23X ETC)                                       | \$ 0.76                                 | \$ 5.63             | \$ 14.11                   |                                |                      |
| 5-axle                     |                  |   | \$ 1.51                                 | \$ 11.25            | \$ 28.23                   |                                |                      |
| 6+-axle                    |                  |   | \$ 1.90                                 | \$ 14.06            | \$ 35.28                   |                                |                      |
|                            |                  |   |   |                     |                            |                                |                      |
| Passenger Vehicle (2-axle) |                  |   | \$ 0.30                                 | \$ 2.25             | \$ 5.64                    |                                |                      |
| Motorcycle                 |                  |   | \$ 0.00                                 | \$ 0.00             | \$ 0.00                    |                                |                      |
| 3-axle Light               |                  | Video Tolling <sup>1,4</sup>                      | \$ 0.46                                 | \$ 3.38             | \$ 8.47                    |                                |                      |
| 3-axle Heavy               | Free             | (Unregistered Video)                              | \$ 0.61                                 | \$ 4.50             | \$ 11.29                   | Free                           | Free                 |
| 4-axle Light               |                  | (1.5x ETC)  | \$ 0.76                                 | \$ 5.63             | \$ 14.11                   |                                |                      |
| 4-axle Heavy               |                  | (IIIIA ETC)                                       | \$ 0.91                                 | \$ 6.75             | \$ 16.93                   |                                |                      |
| 5-axle                     |                  |   | \$ 1.82                                 | \$ 13.50            | \$ 33.86                   |                                |                      |
| 6+-axle                    |                  |   | \$ 2.28                                 | \$ 16.88            | \$ 42.33                   |                                |                      |

Total unregistered video surcharge (difference between ETC toll and unregistered video toll amount) cannot exceed \$15 per trip. The surcharge is subject to escalation as defined below.

"The minimum trip toll (not per mile) by payment type for all vehicle types would be \$0.50 for customers using E-ZPass\*, \$0.63 for customers using Pay-By-Plate (Registered Video), and \$0.75 for customers using Video Toling (Unregistered Video).

casomers asing video foung (unregiseered video). Escalation formulas can be found at <u>midia manyland.cou/ALB27076(Setting.</u> \*Customers can receive an early payment discount of 15% of their foll up to \$5 for unregistered video trips if paid before notice is mailed.

- The minimum toll rate is the lowest per-mile toll rate a vehicle may be charged within any tolling segment for the HOT lanes or the lowest total toll that may be charged regardless of how far a vehicle has traveled on the HOT lanes (not per mile). The minimum toll rate ensures short trips on the HOT lanes facility are charged a flat minimum toll to cover the toll capture, processing, and collection costs.
- The soft rate cap is the per-mile toll rate that can only be exceeded when at least one of the following thresholds are met within a given tolling segment along the HOT lanes during the preceding 5-minute period: traffic volume exceeds 1,600 passenger car equivalent vehicles per hour per lane (PCEphpl) or the average speed in a tolling segment is below 50 mph. The soft rate cap will always be lower than the maximum toll rate and can be exceeded only temporarily to provide customers who choose to pay a toll, a faster and more reliable trip. Exceeding the soft rate cap would apply to a specific toll segment under certain defined conditions, not a whole trip. The soft rate cap will only be exceeded until the throughput and speed performance targets are achieved, and then the toll rate will gradually return to the soft cap or below. Although not standard practice in the tolling industry, the MDTA is choosing to be one of only two states in the United States to set a soft rate cap to constrain the toll rate was a protective measure for customers.
- The maximum toll rate is the highest per-mile toll rate that may be charged within any tolling segment for the HOT lanes. Under no circumstance will the maximum toll rate be exceeded. In extremely rare circumstances when traffic demand is very high within a given tolling segment (e.g., severe crashes or extreme weather events), the foll rate may reach the maximum toll rate. The toll rate is determined on a segment-by-segment basis. The probability is highest on the northbound portion of Phase 1 South, just north of the American Legion Bridge.
- Escalation The approved toll rate ranges are intended for the duration of the Phase 1 South: American Legion Bridge I-270 to I-370 agreement
  (anticipated to be 50 years). For the toll rates to effectively manage demand and ensure reliability for users of the HOT lanes into the future,
  the maximum per mile rates, soft rate caps, and unregistered video surcharge rates will escalate over time to account for inflation, population
  employment, and income growth. The minimum per mile toll rate ranges and the minimum trip tolls are both subject to escalation for inflation only.

The MDTA also is planning public hearings to seek public testimony on the proposed toll rate ranges for Phase 1 South: American Legion Bridge I-270 to I-370. The hearings will provide an opportunity to comment for the official record through verbal public or one-on-one testimony or through written comment. Public hearing materials should be reviewed prior to attending a public hearing.

The MDTA will provide dates and details in future armouncements for virtual and in-person public hearings to be scheduled during the comment period. Registration to provide testimony at a public hearing will open once the public hearing dates are armounced. For in-person hearings, all CDC guidelines related to COVID-19 will be followed. There will be no formal presentation during the public hearings, and no responses to questions will be given. The public will be able to listen live to the hearings via telephone or by watching a livestream at mdta marvland gow/ALE70TollSetting. ALL COMMENTS received, whether at the hearing or through other methods, will be given FOLIAL CONSIDEPATION.



Maryland If you are unable to access the hearing materials online, or if you require special accommodations under the Americans
Transportation with Disabilities Act or require language translation services (free of charge), please contact the MDTA's Title VI Officer
Authority at materials and manyland gov or at 410-537-6720.



### Legal Ad #2

### Notice for Public Comment - PHASE 1 SOUTH: AMERICAN LEGION BRIDGE I-270 TO I-370 TOLL RATE RANGE SETTING PROCESS PUBLIC HEARINGS

The Maryland Transportation Authority (MDTA) has the responsibility under Maryland law to fix, revise, and set full rates in accordance with the Transportation Article §4-312 of the Annotated Code of Maryland and Code of Maryland Regulations (COMAR) Title 11 Department of Transportation, Subtiltle 07 MDTA, Chapter 05 Public Notice of Toll Schedule Revisions (11.07.05). As part of the toll rate range setting process for Phase 1 South: American Legion Bridge 1-270 to 1-370, the MDTA opened the first public comment period on May 20, 2021 to obtain input on the tolling proposal available for review in the Virtual Information Room at mdta.maryland.gov/ALB270TollSetting.

Two public hearings will be held by the MDTA to provide opportunities for the public to comment on the proposed foll rate ranges for Phase 1 South: American Legion Bridge 1-270 to 1-370 for the official record through verbal public or one-on-one testimony, or through written comment. **Public hearing materials should be reviewed prior to attending a public hearing.** For in-person hearings, all CDC guidelines related to COVID-19 will be followed. There will be no formal presentation during the public hearings, and no responses to questions will be given. The public will be able to listen live to the hearings via telephone or by watching a livestream at <u>motar maryland gov/ALB22OTGISetting</u> ALL COMIVENTS received, whether at the hearing or through other methods, will be given EQUAL CONSIDERATION.

PRE-REGISTER IN ADVANCE TO ATTEND THE CALL-IN AND IN-PERSON TESTIMONY PUBLIC HEARINGS

In-Person Testimony Public Hearing - Monday, July 12 Hilton Washington DC/Rockville Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, Maryland 20852

The In-person testmony public hearing will have two sessions from 2 to 4 PM and 6 to 8 PM and will allow the public an opportunity to provide verbal public and one-on-one testimony. To participate in the in-person testimony public hearing, register online by visiting the webpage at mdla manyland.gov/ALE270TollSetting at 1889.725-0174. The public can listen live to the in-person testimony public hearing the person testimony public hearing to the person testimony hearing by calling 855-701-1977 or listen to the livestream of the hearing by visiting mdla manyland gov/ALE270TollSetting. Limited printed copies of the informational boards presented in the Virtual Information Room will be available at the in-person hearing for those that were unable to view the materials on the webpage. The public will also be able to submit a written comment form at the in-person testimony hearing.

Call-in Testimony Public Hearing - Wednesday, July 14

The call-in testimony public hearing will have two sessions from 2 to 4 PM and 6 to 8 PM and will allow the public an opportunity to provide verbal public testimony via telephone. To provide verbal public testimony at the call-in hearing, register by visiting the webpage at mdat.naryalnato.gov/IL 8270 ToliSetting or by calling 888-725-0174. The public can listen live to the call-in testimony by calling 885-701-1977 or watch the livestream of the hearing by visiting mdta manyland gov/AL 8270 ToliSetting.

### Additional Ways to Provide Comment

addition to providing testimony at a public hearing, written comments and call-in testimony through voicemail will be accepted for the official record through Thursday, August 12, 2021 at 5 PM. Comments may be provided by submitting an electronic comment form at midta-manyland.gov/ALB2701ollSetting, downloading and emailing a completed comment form to 
ALB2701ollSetting@midta.manyland.gov; printing and mailing a completed comment form to Phase 1 South: American Legion Bridge 1270 to 1-370 Toll Rate Range Public Comment, 
Maryland Transportation Authority, 2310 Broening Highway, Baltimore, MD 21224; or providing call-in testimory at 855-701-1977 and leave a single voicemail that is limited to three minutes

The table below provides proposed toll rate ranges in cost per mile (\$\text{mile}) for all vehicle and payment types associated with use of future High-Occupancy Toll (HOT) lanes within Phase 1 South: American Legion Bridge 1270 to 1370. The vehicle classifications, payment methods and associated multipliers are consistent with existing MDTA facilities. For example, the 3-axle light multiplier is 1.5x the 2-axle rate for the same payment type and the multiplier between Video Tolling (unregistered video) and electronic toll collection (ETC) for the same vehicle classification is 1.5x. Tolls will be collected electronically at highway speeds, using overhead gandries, with no toll plazas or toll booths (cashless tolling). Overhead tolling gandries will be placed within each tolling segment along Phase 1 South: American Legion Bridge 1-270 to 1-370. The toll rates are determined on a segment-by-segment basis and summed to form a trip. The toll rate per mile may vary within each tolling segment based on traffic conditions, resulting in higher rates in the more congested segments and lower rates in the less congested segments.

PROPOSED TOLL RATE RANGES, SOFT RATE CAPS, DISCOUNTS, AND FREE PASSAGE FOR VEHICLE CLASSIFICATIONS BY PAYMENT TYPE

| *                          |                             |                                    |   |               |                            |                      |                      |  |
|----------------------------|-----------------------------|------------------------------------|---|---------------|----------------------------|----------------------|----------------------|--|
| VEHICLE                    | GENERAL<br>PURPOSE<br>LANES |                                    | Proposed Toll Rate Ranges (2021 \$/mile) <sup>3</sup> |               |                            | HOV 3+               |                      |  |
| CLASSIFICATIONS            |                             | Payment Type                       | Minimum<br>Toll Rate Range²                           | Soft Rate Cap | Maximum<br>Toll Rate Range | Vanpools<br>Carpools | Buses<br>Motorcycles |  |
| Passenger Vehicle (2-axle) |                             |                                    | \$ 0.20   | \$ 1.50       | \$ 3.76                    |                      |                      |  |
| Motorcycle                 |                             |                                    | \$ 0.10   | \$ 0.75       | \$ 1.88                    |                      |                      |  |
| 3-axle Light               |                             |                                    | \$ 0.30   | \$ 2.25       | \$ 5.64                    |                      |                      |  |
| 3-axle Heavy               | e                           | Electronic Toll                    | \$ 0.40   | \$ 3.00       | \$ 7.53                    | 1-093                | essa                 |  |
| 4-axle Light               | Free                        | Collection (ETC)                   | \$ 0.51   | \$ 3.75       | \$ 9.41                    | Free                 | Free                 |  |
| 4-axle Heavy               |                             | E Whose                            | \$ 0.61   | \$ 4.50       | \$11.29                    |                      |                      |  |
| 5-axle                     |                             | EZPass                             | \$ 1.21   | \$ 9.00       | \$ 22.58                   |                      |                      |  |
| 6+-axle                    |                             |                                    | \$ 1.52   | \$ 11.25      | \$ 28.22                   |                      |                      |  |
| 9)                         |                             |                                    |   |               |                            |                      |                      |  |
| Passenger Vehicle (2-axle) |                             | \$ 0.25<br>\$ 0.13<br>\$ 0.38      | \$ 0.25   | \$ 1.88       | \$ 4.70                    | Free                 | Free                 |  |
| Motorcycle                 |                             |                                    | \$ 0.13   | \$ 0.94       | \$ 2.35                    |                      |                      |  |
| 3-axle Light               |                             |                                    | \$ 0.38   | \$ 2.81       | \$ 7.05                    |                      |                      |  |
| 3-axle Heavy               | Free                        | Pay-By-Plate<br>(Registered Video) | \$ 0.50   | \$ 3.75       | \$ 9.41                    |                      |                      |  |
| 4-axle Light               | riee                        |                                    | \$ 0.64   | \$ 4.69       | \$11.76                    |                      |                      |  |
| 4-axle Heavy               |                             |                                    | (1.25xETC)  | \$ 0.76       | \$ 5.63                    | \$ 14.11             |                      |  |
| 5-axle                     |                             |                                    | \$ 1.51   | \$ 11.25      | \$ 28.23                   |                      |                      |  |
| 6+-axle                    |                             |                                    | \$ 1.90   | \$ 14.06      | \$ 35.28                   |                      | 1                    |  |
|                            |                             |                                    |   |               |                            |                      |                      |  |
| Passenger Vehicle (2-axle) |                             |                                    | \$ 0.30   | \$ 2.25       | \$ 5.64                    |                      | Ĭ                    |  |
| Motorcycle                 |                             |                                    | \$ 0.15   | \$ 1.13       | \$ 2.82                    |                      |                      |  |
| 3-axle Light               |                             | Video Tolling <sup>1,4</sup>       | \$ 0.46   | \$ 3.38       | \$ 8.47                    |                      |                      |  |
| 3-axle Heavy               | Form                        | (Unregistered Video)               | \$ 0.61   | \$ 4.50       | \$11.29                    | Ema                  | Free                 |  |
| 4-axle Light               | Free                        | (1.5x ETC)                         | \$ 0.76   | \$ 5.63       | \$ 14.11                   | Free                 | rree                 |  |
| 4-axle Heavy               |                             | (I.SXEIC)                          | \$ 0.91   | \$ 6.75       | \$ 16.93                   |                      |                      |  |
| 5-axle                     |                             |                                    | \$ 1.82   | \$13.50       | \$ 33.86                   |                      |                      |  |
| 6+-axle                    |                             |                                    | \$ 2.28   | \$ 16.88      | \$ 42.33                   |                      |                      |  |

Total unregistered video sucharge (difference behaven ETC toll and unregistered video toll amount, cannot exceed \$15 per tip. The sucharge is subject to escalation as defined below.
The minimum tip toll (not per mile) by payment type for all vehicle types would be \$0.50 for customers using EZPase\*, \$0.63 for customers using Pay-Py-Pate (Registered Video), and \$0.75 for customers using Video Tolling (Unegistered Video). Escalation formulas can be found at <u>mate manyland gou/ALB270ToIS etting</u>. "Customers can receive an early payment discount of 19% of their toll up to \$5 for unregistered video trips if paid before notice is mated.

- The minimum toll rate is the lowest per-mile toll rate a vehicle may be charged within any tolling segment for the HOT lanes or the lowest total toll that may be charged regardless of how far a vehicle has traveled on the HOT lanes (not per mile). The minimum toll rate ensures short trips on the HOT lanes facility are charged a flat minimum toll to cover the toll capture, processing, and collection costs.
- The soft rate cap is the per-mile toll rate that can only be exceeded when at least one of the following thresholds are met within a given tolling segment along the HOT lanes during the preceding 5-minute period: traffic volume exceeds 1,600 passenger car equivalent vehicles per hour per lane (PCEphpl) or the average speed in a tolling segment is below 50 mph. The soft rate cap will always be lower than the maximum toll rate and can be exceeded only temporanly to provide customers who choose to pay a toll, a faster and more reliable trip. Exceeding the soft rate cap would apply to a specific toll segment under certain defined conditions, not a whole trip. The soft rate cap will only be exceeded until the throughput a toped performance targets are achieved, and then the foll rate will gradually return to the soft cap or below. Although not standard practice in the tolling industry, the MDTA is choosing to be one of only two states in the United States to set a soft rate cap to constrain the toll rate as a protective measure for customers
- The maximum toll rate is the highest per-mile toll rate that may be charged within any toling segment for the HOT lanes. Under no circumstance will the maximum toll rate be exceeded. In extremely rare circumstances when traffic demand is very high within a given tolling segment (e.g., severe crashes or externe weather everts), the toll rate may reach the maximum toll rate. The toll rate is determined on a segment-by-segment basis. The probability is highest on the northbound portion of Phase 1 South, just north of the American Legion Bridge.
- Escalation The approved toil rate ranges are intended for the duration of the Phase 1 South American Legion Bridge I-270 to I-370 agreement (anticipated to be 50 years). For the toil rates to effectively manage demand and ensure reliability for users of the HOT lanes into the future, the maximum per mile rates, soft rate caps, and unregistered video surcharge rates will escalate over time to account for inflation, population employment, and income growth. The minimum per mile toll rate ranges and the minimum trip tolls are both subject to escalation for inflation only.



Transportation

If you are unable to access the hearing materials online, or if you require special accommodations under the Americans with Disabilities Act or require language translation rvices (free of charge), please contact the MDTA's Title VI Officer at moltaeeo@moltamanyland.gov or at 410-537-6720 at least ten days prior to the first hearing



## Appendix F – Comment Excerpts by Topic

There were a number of cases where the commentor provided specific recommendations either about the toll proposal or the overall project in general. Since the comments are instructive in the decision-making process, we extracted them into this appendix to make it easier for the Board Members to review. Below, they are broken down by topic area.

### • Transurban / P3

- "Transurban wants to make the tolls even higher according to a letter they sent to MDTA on November 18, last year."
- "Transurban is on record saying its goal in our region is to "maximize the tolls" and admitted that: "An increase in the number or improvement in quality of alternative roads, public transportation or mass transit options, ... and their relative convenience, affordability and efficiency, could reduce traffic volumes on our toll roads and therefore reduce our earnings." Thus, improvements that would be good for and desired by Marylanders and sensible in the midst of a climate crisis are undesirable for Transurban and shareholders. This toll lane proposal sets up a perverse incentive for a private company and our own government to lock in cardependency and act against the public interest for generations."
- "The October 20, 2020 preliminary due diligence document, states on page 3.
  "The rate can be set to maximize throughput or reckoned and in order to achieve the P3 program goal, the rate must be set to maximize revenues." What are the actual P3 program goals? And how does maximizing revenue serve the public interest?"
- "All free lanes will not remain free. I say this to highlight that the plan for the toll road is to create congestion in the free lanes to force desperate people onto the toll lanes. Transurban, the Australian company MDOT selected for this project, needs congestion to make money."
- o "Although public payments are made through MDTA, which is a subsidiary of MDOT, pre-agreement contract guarantees a profit margin for the private partner. This has the effect of the State of Maryland enforcing a conditional burden on Maryland residents to the benefit of a non-elected partner in the governing body."
- o "These exceedingly high toll rates and escalations now under discussion will not satisfy Transurban. (A November 18, 2020 letter from Transurban-led Accelerate Maryland Partners to MDTA's Deb Sharpless requests various revenue-increasing alterations to the numbers and escalations for the toll lanes.)"
- o "Consideration should be in place to have a different company manage the toll process after the contract is up."
- o "The Accelerate Maryland Partners memo (11/18/2020) raises questions about the whole tolling scheme. Further, the Office of the State Treasurer produced a July 9, 2021 report that raised serious questions about the whole P3 financing scheme.



Since the toll model (including escalation) is an integral part of the financial scheme, I prefer that the issues the Treasurer raised get examined before discussing annual toll escalations."

### • Excess Toll Revenue

o "FAQ item 32 about excess toll revenues. It mentions the equity internal rate of return and profit margins. But these figures are not available to the public nor is sharing of excess revenues if any described. Does Maryland receive any of the excess revenue?"

### • Notification / Education of Dynamic Tolls

- o "Clearly establish in advance how the price for a trip would be set so there can be a good idea of the cost before they enter the toll lanes, how toll rates will change over the course of a day, and how users will be informed."
- o "Toll rate signs need to be positioned as to allow legibility and safe maneuvering to or from tolled lanes."
- o "MDTA and operator should provide very clear customer communications and offer virtual and live tutorials on use of the facilities."
- o "Consider a grace period and expanded communications for the early days of the program for first-time customers."

### Toll Calculations

- o "FAQ Item 25, when a commuter could expect to pay, it says, "The toll rate could be as low as \$2.40 for the 12 miles." But where is the expected total toll for an end-to-end trip during a typical rush hour?"
- "In the Virtual Information Room packet on page 30, there is small print that says "Toll rates are for illustrative purposes only." And "Actual toll rates will be set in the future by the Phase 1 South Section developer." How does this support an informed decision?"

### Minimum and Maximum Tolls

- o "Proposed minimum tolls should be adequate to support the required local transit payments to the Counties in which the toll facilities are located."
- o "The minimum toll rates appear to be excessively high in comparison to current tolls on other regional facilities. The minimum toll for the I-495/I-270 Managed Lanes of \$0.20/mile is nearly identical to the current *peak* toll on MD 200 (\$0.22/mile). Similarly, the I-95 Express Toll Lanes north of Baltimore have *maximum* tolls of roughly \$0.20/mile. The Dulles Toll Road, where tolls have been set to fund the Metro Silver Line, has a toll of \$0.23/mile. The *maximum* rates on these other regional facilities are comparable to the *minimums* proposed for I-495/I-270. Based on this comparison, it appears that the minimum proposed toll should be sufficient to cover the cost of the project and might be more appropriate as the average toll rate."



- o "Setting max and min rates might limit officials' ability to effectively respond to changes in traffic patterns--especially if those changes are unpredicted. If max/min must be announced, make sure they define a very wide range (3-4? Std. Dev.?)"
- o "The max toll should be no more than \$5 for a full length trip."

### Rate Caps

- "Maryland is one of only a couple of states with rate caps on their variable price tolling systems. These statutory exceptions are essential protections for consumers."
- o "At the level of the soft rate cap, the charge to use the Phase 1 South facilities could be very substantial ranging between \$18 and \$27 per one-way trip. This is likely to be prohibitively expensive for most regular travelers."
- o "The minimum rate caps appear to be justified and within national practiced rates."
- "The soft rate cap of almost 8 times the minimum needs to be re-examined. What is the justification for this rate other than this is what other jurisdictions charge."
- o "If there were to be tolls, why is there not an option to support a hard rate cap?"
- o "I would suggest a hard cap of \$10."
- o "Although not standard practice in the tolling industry..." That is already a bad sign. If we implement this cap based on the two conditions listed, 1,600 PCEphpl or < 50 MPH, will it in any way negatively impact the utilization of this lane? Our objective is to get cars moving, so let's evaluate soft rate cap in that context."</p>
- o "There should be more information presented regarding specifics of the rate caps as well as what ranges are being discussed. There are so many models (VMT, zonal, etc.) and so much haze regarding this plan."
- o "The demand factors penalize drivers when traffic recovers. Assume that a bad accident closes the HOT lines for some time, and then the accident is completely cleared. Assume the case of passenger vehicle with soft rate cap of \$1.50 and maximum rate of \$3.76. Assume the demand factors of 1.25 and 0.9 are triggered by the increased congestion and then the later free flow of traffic. Time of increase: At maximum demand factor increase of 1.25, the rate cap would exceed the maximum rate in the fifth five-minute interval (\$3.66 after 20 minutes, \$4.58 capped at \$3.76 during the next five-minute period). Time of decrease: At the recovery factor of 0.90, the rate cap declines to the minimum rate in the ninth five-minute interval (\$1.62 after 40 minutes, \$1.46 capped at \$1.50 in the next five-minute period). It takes approximately twice as long for the cap to decline as it does to rise."

### Escalation



- "Annual escalations account for increased operator costs and other factors unrelated to inflation. In the materials, it is unclear what the structure of this process would be, nor is it clear why the listed factors, such as regional population, would justify escalation in toll rates."
- "Perhaps the tolls should be limited to escalation steps from the minimum based on specific operating conditions that are clear and transparent to the MDTA facility and customers, especially given the very high proposed minimum tolls and the very wide allowable toll range."
- o "The MDTA should play a key role in balancing the rate setting with the protection of the cost to the user of the toll lanes during the 50-year duration of the contract. MDTA should have final authority on the rate each year based on the input from the developer."
- o "As for growth in demand, it seems that these factors are based on population/income in general but not actually tied to more demand for the HOT lanes. I think that the private partner should have to present actual evidence that demand has increased for the HOT lanes or that its costs have gone up."
- o "Should be tied to rate of inflation. However most people don't get inflation adjusted income so increases should always be less than inflation rate."
- o "The user's escalation factor is unclear and no escalation cap established; a maximum cap is recommended to be set at 2% per year."

### Discounts

- o "It is my understanding that MDTA Bond Agreement does not allow discounts for occupancy. How are you offering free passage for HOV3+?"
- o "MDTA should set a zero-toll or minimum-only toll for official State and Local Government Vehicles (highway maintenance, public service, public safety, etc.)"
- o "Discounts should also apply for zero emission vehicles."
- "Commute rate needs to be considered, as done for bay bridge and tunnel commuters."
- o "MDTA should consider a program for means-based toll discounts to improve the equity of this tolling program. Similar programs are under study for transit fares around the Washington Metro area."
- o "Most people do not have three people in a car when they travel. At least change it to two to help people travel."

### • Tolls – General

- "Clearer boundaries defining the setting of tolls by the operator within the allowed ranges should be established and published."
- o "To increase access and improve utilization of the proposed facilities and to reduce the inequity of this approach, perhaps the toll rate could be indexed to



achieve a minimum speed differential rather than a fixed minimum speed. Perhaps a table of priced managed lane speeds corresponding to general purpose lane speeds could be established (e.g. 55/55, 55/45, 50/40, 45/35, 40/30, 35/<30) with tolls set to maintain the speed differential."

- o "The user rates should be set for the year that the facility opens."
- o "MDTA could have provided more honest toll numbers by adding in the automatic annual increase of 2.1%, plus an adjustment for inflation. I used the Federal Reserve's inflation forecast. If you add these to the 2021 maximum toll of \$3.76, you will discover that the maximum toll when the lanes open up in 2026 would be closer to \$4.61. Instead of a soft cap of \$1.50, the cap -- the soft cap would be \$1.84. In 2026, the maximum toll for the drive from George Washington Parkway to I-370 would be \$50.00 in the 2021 dollars, but would be over \$61.00 in 2026. Transurban...is pushing for a soft cap that is 33% higher."
- "The 1600 passenger car equivalent miles is ridiculously low. By modern engineering standards (HCM) the CLV on a high speed straight one way limited access highway is over 2200pcu."
- o "Trucks should all be assessed the same minimum rate during non-peak times especially at night. They also should be extremely discouraged from running during peak times as heavy trucks by their operational limitations can quickly congest traffic."
- o "Motorcycles and trucks should not be eligible to use these lanes."
- "Motorcycle drivers should also pay equitable tolls to use tolled roads as other motorists."
- o "How will your toll system verify occupancy? How does your toll system differentiate between a 3 axle bus and 3 axle truck?"
- o "Provisions should be made that a final construction cost is less than whatever estimates was used, and all three initial 3 rates should be adjusted."

### • Additional Studies and Information

- o "A value for money analysis was promised in 2019 but never performed. The analysis was supposed to compare the project costs of public versus private financing."
- o "The March 12, 2021 preliminary due diligence report on pages 9, 10, and 11 mentions in small print the Capital Beltway Accord, but no version of this document has ever been made available to the public."

### Other

"The Value of Time Study is flawed. The details of the sample used for the VOT study are found in the August 9, 2019 survey and the November 4, 2019 study.
 "At the sample mean income, the mean VOT was \$23.62 for work trips and



- \$20.55 for nonwork trips, and the median VOT was \$19.68 for work trips and \$16.75 for nonwork trips."
- o "Raise the speed limit! Most mid-western states long ago realized that by progressively raising the speed limit as you leave congested areas you prevent the traffic jams. Try higher speed limits, or speed limits by lane. Leverage new car technologies that auto-pace, and auto break in high speed lanes."

### Payment Types

- "The MDTA should consider applying a fixed charge (per trip/per mile/per segment) for processing non-E-ZPass transactions rather than a multiplier on the toll."
- o "The surcharges for paying by plate and by unregistered video tolling is 25% and 50% respectively. This appears to be extraordinarily high for an automated process. The charges need to be limited to the electronic toll rate plus the additional administrative costs. Being debited automatically on a registered credit card at most has as a 3% additional credit card usage fee plus the additional in house costs most of which is already covered within the prerequisite video charges encompassed within the base electronic toll rate. At most the additional charges for paying by plate should probably be no more than 5%. Documentation needs to be provided for justifying a 25% penalty cost. Likewise a 50% penalty cost for unregistered video tolling also seems excessive as this is also an automated process with marginal administrative costs perhaps the largest being the mailing costs."

### • Managed Lanes Study – Recommended Preferred Alternative & Tolls

- "The proposal removes a lane that is currently free 21 hours a day on weekdays and free weekends and holidays, and turns it into a hot lane which is a minimum of three people and tolled 24/7; three people, 24/7, weekends and holidays this congestion relief plan brought to you by the former Secretary of Transportation as a panacea for an agency long deficient in forward-thinking solutions ignores the real bottleneck on I-270, which is where the current six lanes go to two going north, and increases from two lanes to six going south."
- o "The design of the toll lanes make it difficult to leave the toll lanes and transition directly to the general lanes. Under MDOT's design, if you're on a toll lane when you cross the American Legion Bridge and plan to drive all the way to I-370, you can transition directly to the general lanes only, only at Clara Barton Parkway. For the rest of the trip up to I-370, the only way to exit the toll lanes is to exit the highway altogether, drive on local roads until you get to the next entrance ramp for the general lanes."
- o "Restrictions should be considered on how large of a toll change there can be over a defined interval. Large sudden changes in the rates might cause erratic user



- behavior between signs showing toll rates and entry/exit points and may result in undesirable switching from toll to free lanes via local roads and interchanges."
- "With congestion building at the split, it is very possible that the no-build peak travel times for roundtrips involving 270, such as between I-370 and River Road, or the Clara Barton exit, or Virginia, could be faster than the non-toll lanes of the toll road where 85 to 90% of the drivers travel, and even for the toll lanes themselves."
- "This plan removes the two inside lanes, which are general lanes for all but 15 hours a week. They are free lanes 91% of the time. But they won't be free at all of this toll road is built. They will be tolled or HOV 3 24 hours a day, every day of the year."
- o "All free lanes will not remain free."
- o "What is needed is HOV 24/7 in left lanes."
- o "How about having one of those lanes dedicated to 3/4/5 and 6 axel vehicles? The tractor/trailers REALLY slow things down, especially (northbound) big curve approaching the River Road exit."

### • Toll Late Fees

- "The toll lanes themselves are not the only cost to motorists. On a road like the ICC, it's very easy to rack up thousands of dollars in toll debt in a very short amount of time. The toll debt is comprised mostly of the late fees, not the underlying tolls. If you have a Maryland E-ZPass, you can still be subjected to the video tolls at the higher rate, and hundreds or thousands of dollars in late fees if a hiccup happens with the associated credit card or bank account, and the video tolling system relies on the US Mail, which has become slower and more problematic since the program's inception."
- o "The MDTA did reduce the late fee from 50 to \$25.00; however, a \$25.00 late fee on \$1.50 or \$3.00 toll is still too high, and we still have an unfortunate policy of suspending vehicle registrations for toll debt."
- "Another pro-consumer policy that Maryland could and should adopt in Massachusetts is to allow three years to dispute a toll transaction instead of 120 days."

## **TAB 13**



**Larry Hogan, Governor**Boyd K. Rutherford, Lt. Governor
Gregory Slater, Chairman

**Board Members:** 

Dontae Carroll William H. Cox, Jr. William C. Ensor, III W. Lee Gaines, Jr. Mario J. Gangemi, P.E. Cynthia D. Penny-Ardinger Jeffrey S. Rosen John F. von Paris

James F. Ports, Jr., Executive Director

### **MEMORANDUM**

**TO:** MDTA Board

PRESENTED BY: Mr. Will Pines, PE, PMP, CCM, Chief Operating Officer

**SUBJECT:** Third Generation Electronic Toll Collection (3G ETC) System Current

Operations Update

**DATE:** August 26, 2021

### **PURPOSE**

To brief the Maryland Transportation Authority (MDTA) Board on the 3G ETC ongoing operations.

### **SUMMARY**

TransCore and Kapsch's systems went live on April 29, 2021. Post-transition and software development activities and risk management continue. Implementation of the plan to address the backlog of unprocessed transactions is ongoing.

### **ATTACHMENT**

3G ETC System Update Presentation

# Electronic Tolling Current Operations Update

MDTA Board Meeting
August 26, 2021

## Backlog Processing Status

## Current Status – 8/19/21

- Continue to anticipate processing all backlog within FY22 (Summer 2022)
- MDTA financial updates will be included with the regular Financial Forecast updates
- Transaction processing
  - Approximately current transactions plus one week of backlog, per week
  - Some clean up activities related to IAG processing
- Video Toll Transactions
  - ITOLs separated and issued with AVI
  - Metering plan implementation ongoing to limit customer impacts
  - Monitoring the plan and call center impacts

## Schedule Update

- Original Go-Live plan to get to System Acceptance was focused on delivering 30 day, 60 day and Post-SAT releases with contingencies for new issues
  - Focus of plan was to address system defects & complete deferred functionality
- Many newly identified issues have been higher priority to address customer and MDTA operational concerns, such that System Acceptance is delayed
- Received Contractor's updated SAT schedule
  - Schedule based on a fully agile release approach with new tickets addressed every 3 weeks
- Negotiating with Contractor to establish clear SAT deadlines and ensuring Post-SAT is limited to punch list items
  - Preparing Modifications and State DOIT and BPW updates,
  - The schedule portion of the modifications is anticipated to be a non-compensable time extension,
  - Revising liquidated damages provisions for the CSC contract to provide accountability to the schedule,
  - Will also include updates for COVID backlog and AET revisions

## Key Focus Areas

## **Software Reports & Documentation**

Continue finalizing outstanding reports and documentation

## <u>Post-Transition & Backlog Tasks</u>

- Tightly monitor schedule & coordination between MDTA and vendors
- Queue transactions for processing and resolve issues
- Continue to triage and resolve software bugs
- Coordinate with the IAG

## **QA/QC & Lane Maintenance Improvements**

- Coordinating and addressing ongoing AET conversions for JFK, FMT and HWN
- Accountability for timeliness of resolution for identified issues
- Enforcement of contractual requirements
- Consistent pro-active approach to the maintenance tasks
- Closing out Vendor has identified a solution for improving image quality without additional lighting

## System Acceptance & Key Performance Indicators (KPI)

- Finalize System Acceptance Testing and Plans
  - Reviewing and approving reports for system monitoring
- Plan and test KPI

## **Contract Administration & Operational Functions**

- Coordinating responsibilities & communication across IT, Operations and Finance
- Standing up contract administration tools & processes
- Forming cross-functional workgroups
- Partnering meeting completed with Lane Vendor and planned with CSC Vendor

## Post Go-Live Risk Tracking

## **Call Center**

- Call volumes and wait times are high with average waits near an hour
  - Increased volumes with escalations resuming and backlog processing
  - Staffing losses have been an issue, but hiring is ongoing
  - Bringing on an overflow center to support volumes
- Actively managing customer outreach to reduce call volumes and avoid communications that may drive call volumes

## **Transaction & Backlog Processing**

- Transactions released manually based on a pre-defined schedule
  - Tight coordination with MDTA and vendors to maintain processing
  - Actively metering NOTDs at 30,000 envelopes per day with an average of just under 5 transactions per envelope
- Escalations
  - Approximately 11 million video transactions posted to customer accounts
    - Several notices sent to alert customers to proactively pay electronically to receive early payment discounts
    - \$1.7 million PNOTDs paid online to date
    - Sending a proactive mailer to customers with more than 25 transactions
  - NOTD mailing has fully resumed
  - Image certifications and citations fully resumed
    - Awaiting new NOTDs to age for more citation mailings
  - MVA and CCU escalations anticipated to resume end of this month

## QA/QC

- Actively onboarding KPI reporting and tracking to ensure meeting Contract
- Striving for continuous improvement to address any anomalies found, even if meeting the KPI

## **TAB 14**

## **VERBAL**

## **TAB 15**

## **VERBAL**