

December 28, 2021

The Honorable Dereck E. Davis  
Maryland State Treasurer  
Goldstein Treasury Building  
80 Calvert Street  
Annapolis MD 21041

Dear Treasurer Davis:

Congratulations on your election as Maryland's State Treasurer. I am writing to you to reaffirm the Maryland Department of Transportation's (MDOT) commitment to adhere to agreements reached between MDOT and the State Treasurer's Office in 2016 regarding the financing of the public-private partnership (P3) for the Purple Line Transit Project (Purple Line). These commitments are intended to ensure that the financing plan for the Purple Line, as revised to incorporate the selection of a replacement design-build contractor, continues to meet the conclusions reached by the State Treasurer's Office in 2016 that payments for the P3 are not supported by State tax revenues and therefore are not considered State tax-supported debt that would impact the State's capital debt affordability limits. On December 10, 2021, MDOT had an initial meeting with the State Treasurer's Office to begin discussions regarding the revised financing plan for the Purple Line. We are also scheduled to meet with you on January 7, 2022, to provide additional information about the project. I look forward to working with you to complete this important project.

In 2016, the Board of Public Works (BPW) approved a P3 Agreement with Purple Line Transit Partners (PLTP) for the design, construction, financing, operation, and maintenance of the Purple Line over a 6-year construction period and 30-year operations period. The Purple Line is a new 16.2-mile, 21-station, East-West light rail transit way connecting the Bethesda Metro Station in Montgomery County to the New Carrollton Metro Station in Prince George's County. The original construction in 2016 was funded with a combination of progress payments and milestone payments made by MDOT, private debt, and private equity. Over the course of the 30-year operation and maintenance period, and only once the system is complete and starts revenue service, the State will make Availability Payments to the concessionaire to repay the debt and equity used to fund construction of the project and to pay the cost of operating and maintaining the system. Availability Payments are subject to deductions if performance does not meet certain specifications. No Availability Payments will be made until the system is complete and approved for revenue service.

After extensive conversations between MDOT and the State Treasurer's Office prior to financial close in 2016, the State Treasurer's Office determined that the PAYGO-funded progress payments were similar to payments on other design-build contracts and thus not considered debt, and that milestone payments and Availability Payments would not be considered State tax-supported debt to the extent that payments are made solely from transit fares, federal funds, and local funds. The Maryland Transportation Trust Fund (TTF) is one consolidated fund that receives and commingles all transportation revenues into one fund and pays all of MDOT's expenses, thus making a clear distinction between the use of tax-supported revenues and non-tax revenues difficult.

To avoid concerns about the commingling of funds and ensure a clear separation of tax-supported revenues from non-tax revenues, as part of the original financing plan for the Purple Line in 2016, MDOT agreed to establish a trust account at least one year prior to the start of milestone payments. The MDOT agreed to work with the State Treasurer's Office to procure the services of the trustee in accordance with the State Treasurer's Office delegated authority for financial services. Only non-tax revenues (specifically transit fares, federal funds, and local funds) will be deposited into the trust account and all milestone payments, and the general (debt repayment) portion of Availability Payments will be paid from the trust account. These actions will ensure a clear distinction between tax-supported revenues in the TTF and the non-tax revenues that fund these payments.

In the time since these commitments by MDOT and determination by the State Treasurer's Office was made, the Purple Line has faced certain challenges. Following a highly unusual vacatur of the project's federally required record of decision by a federal judge that delayed the start of the project, and several other factors that further compounded project delays, several claims for additional time and money were filed by the design-build contractor. With a shared vision for successful completion of the project, MDOT and PLTP reached a settlement agreement that, among other things, resolved outstanding claims and litigation, required replacement of the design-build contractor, and provided for a new financing to account for changes in project cost. The settlement agreement was approved by BPW in December 2020. In November 2021, MDOT and PLTP announced the selection of a new design-build contractor. The MDOT expects to return to the BPW in January 2022 to request approval of the revisions to the P3 Agreement necessary to reflect the replacement design-build contract and the updated project cost and schedule.

In advance of this requested BPW approval, MDOT is reaffirming its commitment to the structure of the original financing plan. Although the amounts of the financing will change due to lawsuit-driven project delays and substantial changes to market conditions in the wake of the COVID-19 pandemic, the project will continue to be funded through a combination of progress payments, milestone payments, private debt, and private equity. To update each funding source:

- The MDOT has fully satisfied its commitment to fund progress payments on work already completed on the project; thus, no additional progress payments will be made.
- A milestone payment in the amount of \$100 million is still planned upon the start of revenue service to passengers.
- A milestone payment paid upon final completion will no longer be utilized.
- The PLTP will continue to utilize a loan from the low-cost federal Transportation Infrastructure Finance and Innovation Act (TIFIA) program to partially fund construction.
- The PLTP will continue to utilize tax-exempt private activity bonds (PABs) to partially fund construction. Both the TIFIA loan and PABs will be non-recourse to the State and MDOT.
- The PLTP will continue to invest its own equity in the project to partially fund construction.
- The PLTP's debt and equity will continue to be repaid through money received from MDOT for Availability Payments.
- The MDOT will also utilize Availability Payments to pay operations and maintenance costs, with deductions allowed if performance criteria are not met.

The Honorable Dereck E. Davis  
Page Three

In the revised financing plan for the Purple Line, MDOT further reaffirms its original commitment made in 2016 to establish a trust account at least one year prior to the required milestone payment. The trust services will be procured through the State Treasurer's Office delegated authority for financial services. This trust account will receive all transit fare revenues and, to the extent necessary, federal and local funds for the project. All milestone payments and the general (debt repayment) portion of the Availability Payments will be paid from this trust account. This will continue to ensure a clear separation of tax-supported revenues in the TTF from the non-tax revenues in the trust account. With these re-affirmed commitments, MDOT believes that the payments made under the revised Purple Line P3 Agreement will continue to be made from non-tax revenues and thus will not be considered as State tax-supported debt and will not impact the State's capital debt affordability limit.

Thank you again for your consideration of this matter. If you have any additional questions, you may contact Ms. Jaclyn Hartman, MDOT Chief Financial Officer, at 410-865-1035 or [jhartman1@mdot.maryland.gov](mailto:jhartman1@mdot.maryland.gov). Ms. Hartman will be happy to assist you. Of course, you may always contact me directly.

Sincerely,



Gregory Slater  
Secretary

cc: Ms. Holly Arnold, Administrator, MDOT MTA  
Ms. Bernadette Benik, Chief Deputy Treasurer, Maryland State Treasurer's Office  
Ms. Jaclyn D. Hartman, Chief Financial Officer, Office of Finance, MDOT  
Mr. Matt Pollack, Executive Director Transit Development and Delivery, MDOT MTA

**First Report on Selected Replacement Design-Build Contractor  
for the Purple Line**

**(2021 JCR, p. 65)**

**A Report to the Maryland General Assembly**

**Senate Budget and Taxation Committee**

**and**

**House Appropriations Committee**

**January 2022**

**Maryland Department of Transportation**

**Maryland Transit Administration**

The Maryland Department of Transportation (MDOT) submits this report as the first of two reports in response to budget bill language contained in the 2021 Joint Chairmen's Report for the Operating Budget, April 2021 (JCR). In accordance with the JCR, this report is submitted 14 days in advance of seeking approval from the Board of Public Works (BPW) of an amendment to the Public-Private Partnership Agreement (P3 Agreement) for the Purple Line Transit Project (Purple Line or Project) and includes the following information:

*[T]wo reports to the budget committees on the results of the solicitation for a replacement design-build contractor for the Purple Line Light Rail project. The first report shall include information on:*

- (1) the number of firms shortlisted through the request for qualifications process;*
- (2) the number of proposals received in response to the request for proposals;*
- (3) the details of the selected company or design-build team;*
- (4) a description of and timeline for the transition of project management responsibilities from MTA to the new design-build contractor; and*
- (5) a summary of revisions being proposed to the public-private partnership (P3) agreement including:*
  - (a) the revised project cost estimate;*
  - (b) the revised project schedule showing remaining milestones and estimated start date of revenue service;*
  - (c) details of the financing revisions and changes to the availability payments;*
  - (d) an accounting of the revised cost sharing among the federal, State, local and Concessionaire showing the revised amount each source is providing and the amount from each source expended to date; and*
  - (e) a summary of significant changes to the P3 agreement not included in any item above.*

*The second report shall provide an update of the information required under items (4) and (5). The first report shall be submitted at least 14 days prior to seeking approval of modifications to the P3 agreement and the second report shall be provided on February 15, 2022. Half of the restricted funds shall be released when review of the first report is complete or 45 days have elapsed from the date that the report was received, and the remainder shall be released when review of the second report is complete or 45 days have elapsed from the date that the report was received. Funds restricted pending the receipt of a report may not be transferred by budget amendment or otherwise to any other purpose and shall be canceled if the report is not submitted to the budget committees.*

## **INTRODUCTION**

On January 26, 2022, the MDOT Maryland Transit Administration (MDOT MTA) will request BPW approval for Modification No. 6 to the P3 Agreement between MDOT, MDOT MTA, and Purple Line Transit Partners LLC (PLTP). Modification No. 6 reflects the changes to the P3 Agreement that are necessary to ensure a successful path forward for the long-term success of the Project.

The Purple Line P3 Agreement was unanimously approved by the BPW in April 2016 but quickly faced delays as the result of a lawsuit. The lawsuit was eventually ruled in the State's favor, but only after several appeals and more than a year was lost. This delay, as well as others, created an ongoing disagreement between MDOT MTA and the design-build contractor regarding the extent of delays, appropriate remedy, and responsible party for those delays. In December 2020, the Board of Public Works approved a Settlement Agreement between the parties that established a plan for a successful path forward for the Project. An integral part of the plan was to replace the design-build contractor. Over the last year, that replacement process has been underway. Unfortunately, it has been underway during a global pandemic that has impacted the nation's workforce, the cost of materials, the efficiency of the supply chain, and the insurance market. These pressures have all impacted the project cost.



The Purple Line continues to be a critical investment in Maryland's transportation system that will provide reliable east-west travel in Montgomery and Prince George's counties, help to reduce congestion, improve our environment, increase transit connectivity, create jobs, and drive economic growth. The Purple Line will transform the region by:

- Advancing the shared mission to improve the quality of life and economic vitality in our communities by creating and sustaining an integrated, convenient and reliable transportation network;
- Creating several new multimodal connections across the region, linking to five Washington Metropolitan Area Transit Authority (WMATA) Metro lines, three Maryland Area Regional Commuter (MARC) commuter rail lines, Amtrak, and a host of bus services;
- Greatly expanding transit opportunities in Maryland's two most populous and fastest-growing counties in the State;
- Creating convenient, dependable east-west access to jobs, educational centers, shopping, recreation and attractions;
- Project construction supports more than 6,000 jobs, with 26% for design services going to small and minority-owned businesses and 22% for construction going to small and minority-owned businesses;
- Relieving automobile congestion on major arteries and local roads in one of the most congested areas in the nation;
- Providing significant environmental benefits through the operation of clean electric energy light rail vehicles and taking 17,000 cars off the road daily, thereby reducing vehicle emissions caused by single occupancy vehicle drivers;
- Spurring economic growth along the Purple Line alignment in and between Prince George's and Montgomery Counties and having a positive impact on property values by improving access and mobility; and
- Revitalizing communities and providing much-needed opportunities for transit-oriented developments, many of which are already under development in anticipation of completion of the Purple Line.

## **BACKGROUND**

On April 6, 2016, the BPW voted unanimously to approve a 36-year, performance-based P3 Agreement with PLTP to design, build, finance, operate, and maintain the Purple Line. To fulfill its obligations under the P3 Agreement, PLTP procured a design-build contractor, Purple Line Transit Constructors, comprised of Fluor Enterprises, Inc. (Fluor), Traylor Brothers and Lane Construction; a light rail vehicle (LRV) supplier, CAF USA (CAF); and an operations and maintenance provider, Purple Line Transit Operators (PLTO), comprised of Fluor, Alternate Concepts, Inc., and CAF.

On August 3, 2016, the Project's Record of Decision was vacated as a result of a lawsuit filed by the Friends of the Capital Crescent Trail against the Federal Transit Administration. After several appeals, the lawsuit was eventually ruled in the State's favor and the Record of Decision was reinstated, but more than 16 months had already been lost. PLTP filed several claims for additional time and money related to this and other project delays. While there was no disagreement that project delays had occurred, MDOT and PLTP were unable to agree on the appropriate remedy and responsible party for those delays. After months of unsuccessful negotiations, PLTP sought to terminate the P3 Agreement. As PLTP began to demobilize the site, MDOT MTA assumed over 150 key contracts, subcontracts, and other agreements to enable the State to continue work on the Project.

Despite these actions, MDOT and PLTP remained firmly committed to successful completion of the Project and continued their negotiations. On November 24, 2020, MDOT MTA and PLTP announced that they had reached an agreement to settle all Purple Line claims and terminate litigation related to the Purple Line. The BPW approved the settlement agreement on December 16, 2020 (Settlement Agreement). Pursuant to the Settlement Agreement, PLTP will continue as the Project concessionaire, procure a replacement design-build contractor, and obtain new financing to cover the remaining cost to complete the Project.

### **REQUESTED INFORMATION**

#### **1) The number of firms shortlisted through the request for qualifications process**

PLTP issued a request for qualifications (RFQ) soliciting statements of qualifications (SOQs) on January 8, 2021. On February 18, 2021, three responsive SOQs were submitted. All three responsive proposers were deemed capable of completing the work and were short-listed. The shortlisted candidates were: 1) Halmar International; 2) Maryland Transit Solutions (MTS), a joint venture of Dragados USA, Inc. (Dragados) and OHLA USA, Inc. (OHLA); and 3) a joint venture of Tutor Perini and Lunda Construction Co.

#### **2) The number of proposals received in response to the request for proposals**

On March 8, 2021, PLTP issued a request for proposals (RFP) to the qualified bidders. Two compliant proposals were received on October 15, 2021. After an intensive and thorough evaluation process, PLTP, with concurrence from MDOT MTA, selected MTS as having the strongest technical proposal and the lowest price, thus providing the best value for the Project. MTS brings years of strong leadership experience and a track record of completing major and complex infrastructure transit projects. On November 5, 2021, PLTP announced MTS as the selected bidder.

#### **3) Details of the selected company or design-build team**

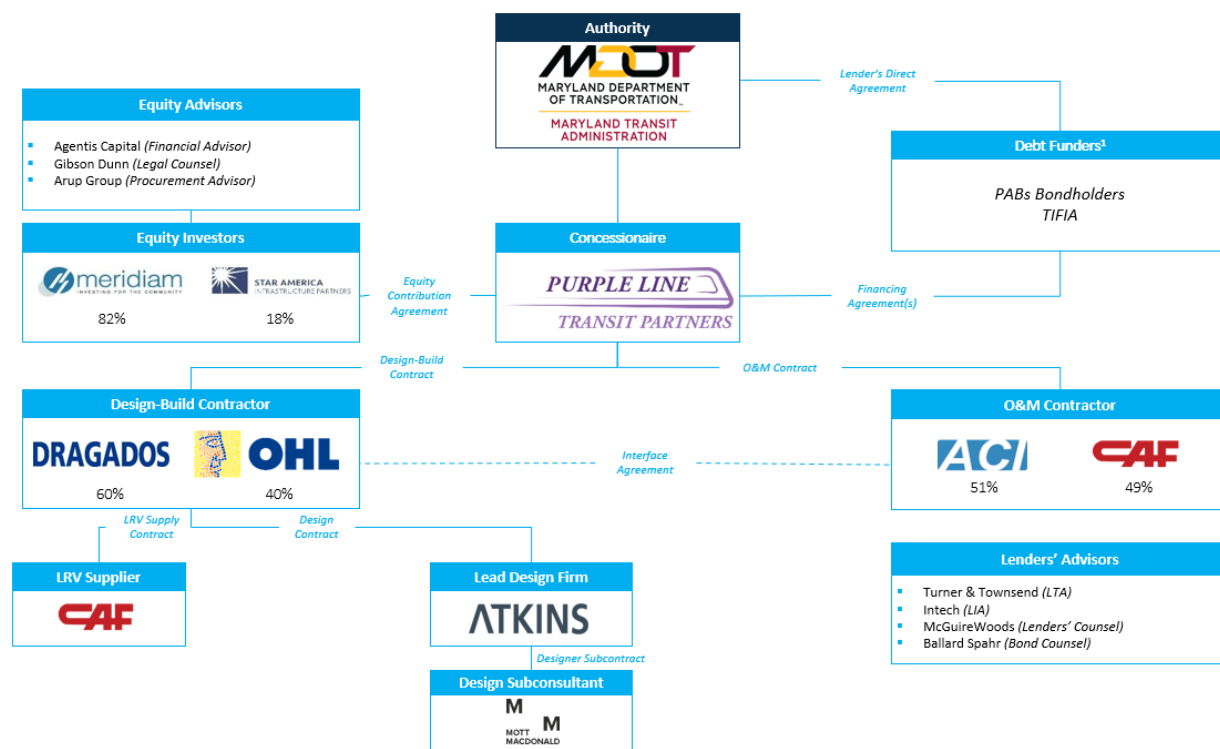
MTS is a joint venture between Dragados and OHLA. Dragados is the managing partner of the team, with 60% ownership. OHLA holds the remaining 40%.

Dragados, a wholly owned subsidiary of Dragados S.A., is a leading construction firm with unmatched capabilities in large scale civil infrastructure and engineering projects. As of 2020, Dragados is ranked No. 6 on both the Engineering News Record's (ENR) Top 20 Transportation Firms and Top 50 Domestic Heavy Contractors lists. Over the past eight decades, Dragados has built a reputation as a recognized leader in alternative project delivery, having constructed over 200 design-build and more than 100 P3 projects worldwide. Dragados excels in the transportation sector having built over 1,600 miles of rail and transit projects. Among their notable projects are the \$2.4 billion Los Angeles International Airport Automated People Mover and three light rail projects in Canada with a combined value of \$5.5 billion.

OHLA is the North American division of international construction company Obrascon Huarte Lain, S.A. (OHL Group). The OHL Group has a 100-year history of successful project deliveries. The firm's U.S. operations provide general contracting, at-risk construction management, design-build, and P3 services for public and private sector clients. The OHL Group ranks No. 3 on ENR's list of Top 10 Transportation Contractors in New York and New Jersey, and No. 15 on the Top 50 Domestic Heavy Contractors list. The OHL Group has owned multiple concessions globally and is well-versed in design-build and P3 project administration, financing, and delivery.

With the replacement design-build contractor, the overall organizational structure of the Project team is very similar to the original structure. The Amended P3 Agreement provides the core of the agreement between MDOT, MDOT MTA and PLTP. PLTP remains MDOT MTA's single point of contact for the Project. The 15% equity position previously held on PLTP by Fluor is replaced by increased equity positions for Meridiam (82%) and Star America (18%). PLTP maintains the contractual relationships with the design-build contractor and the operations and maintenance provider. MTS replaces Purple Line Transit Constructors as the design-build contractor. For operations and maintenance, Fluor's ownership was replaced by increased ownership from Alternate Concepts, Inc. (51%) and CAF (49%). All parties remain strongly committed to successful completion of this important project.

The graphic below illustrates the organizational structure of the Purple Line Project team:





#### 4) Description of and timeline for the transition of project management responsibilities from MTA to the new design-build contractor

During the last year, MDOT MTA has managed design, construction and vehicle fabrication through over 150 contracts and completed 10% of the overall Project, advancing critical work and substantially reducing risk to the Project. This work includes:

- Advancing design of the entire system to approximately 95% complete;
- Advancing underground and overhead utility relocations across the entire alignment;
- Overseeing the continued fabrication of light rail vehicles; to date, 130 car shells have been completed and are being outfitted and painted;
- Securing final approval for all required permits from the Maryland Department of Environment;
- Progressing construction of the Glenridge Operations and Maintenance facility, which is a pre-requisite to accepting delivery and testing light rail cars;
- Completing the Polk Street maintenance facility and turning it over to National Capital Parks and Planning Commission; and
- Completing the Paint Branch Stream Enhancement and Ken Gar Wetland Enhancement, two critical environmental projects for the State.

Despite this progress, significant work on the Project remains. Pending BPW approval of Modification No. 6 to the P3 Agreement, MDOT MTA will work with PLTP to achieve commercial close (execution of the P3 Amendment and replacement design-build contract) and financial close (issuance of the new private debt and equity) in early 2022. Once commercial and financial close are achieved, MTS will kick off its activities on the Project. MDOT MTA will immediately re-assign contracts currently held by MDOT MTA to MTS and turn over care and control of the Project sites to PLTP. MTS will commence project management responsibilities. MTS will resume full-scale construction in spring 2022 and will deliver a completed Project in the shortest time possible while maintaining a safe working environment and complying with applicable labor laws.



MC Dean and Pepco crewmembers adjusting cable inside the Glenridge Operations and Maintenance Facility in preparation for the move to full-power. The facility will serve as the hub of the Purple Line.



Construction of a barrier wall on Campus Drive at the University of Maryland, College Park to provide separation and protection for pedestrians using the sidewalk along the south side of the Campus Drive underpass.

Until commercial and financial close, and for approximately one year thereafter, MDOT MTA will complete certain construction activities that are currently underway. This work is being completed by six contractors that will be re-assigned to MTS upon execution of the amendments to the P3 Agreement. Thus, MDOT MTA will enter into a new contract with each of those contractors to complete current work. Those construction activities are identified in the P3 Agreement, with a contractually agreed completion date.

## 5) Summary of revisions being proposed to the public-private partnership (P3) agreement

### a) Revised project cost estimate

While many of the Project's cost categories remain the same as in the original P3 Agreement, several factors are increasing the overall cost of the Project. Many of these cost increases are ones that MDOT – and the transportation industry as a whole – are routinely facing in the post-pandemic world. These include:

- Delay impact of federal court action that was later overturned;
- Impacts of global COVID-19 pandemic;
  - Rising materials costs rising and supply chain issues across the construction industry;
  - Labor shortages and workforce challenges;
- Mandatory wage increases for living wage laws in Maryland and Montgomery County;
- Changes in the insurance market, making insurance harder and more costly to obtain;
- Inflation experienced over the last five years; and
- Bringing on a new design-build contractor to the Project mid-construction.

The Purple Line is a highly complex light rail system, which includes 21 stations, including 2 stations with significant connections to WMATA at Bethesda Station and Silver Spring; 2 storage and maintenance facilities; 28 light rail vehicles; and 16 miles of track with segments on elevated structures and in tunnels. The design-build construction cost totals \$3.4 billion, which includes design and construction costs for work already completed by the previous design-build contractor, as well as future work that will be completed under the replacement design-build contractor. Approximately \$1.1 billion of construction work has been completed on the project and has already been paid for. The financing of the remaining construction cost is discussed below in response to 5c.

During the 30-year operating period, MDOT will made availability payments to PLTP to pay for the ongoing cost of operations, maintenance, project management and oversight, insurance, capital renewal, and repayment of debt and equity used to fund construction of the Project. Availability payments related to operations and maintenance are subject to reduction if certain performance criteria are not met and may vary from projections based on actual inflation rates experienced. The structure of the availability payments will remain the same as in 2016, although the amounts will change as out lined below.

The availability payments include several components.

- The largest component of the availability payments is for repayment of the debt and equity issued to fund construction of the Project. The debt portion of the availability payments is estimated based on a TIFIA interest rate of 2.25% and a PABs interest rate of 3.25%. MDOT MTA retains the risk of any change in interest rates prior to financial close. The debt portion of the availability payments will be updated at financial close to reflect actual interest rates achieved at financial close. Over the 30-year term of the operations and maintenance portion of the P3 Agreement, financing costs related to the project total \$2.8 billion.

- The second largest component of the availability payment is the operations and maintenance portion, which pays for the cost to operate and maintain the Purple Line system and vehicles. This portion of the availability payments is increasing related to contractual escalation incurred as a result of the delay in the Project schedule and modifications related to change orders to account for cybersecurity, emergency responders, the addition of two LRVs to the base fleet, mandatory wage increases for living wage laws in Maryland and Montgomery County, and insurance. This portion of the availability payments remains subject to reduction if required performance specifications are not met. Total costs for operations and maintenance portion over the entire term of the P3 Agreement are \$2.0 billion.
- Other components of availability payments include payments for insurance, which is an operating cost, and for lifecycle renewal, which is a capital expense. These payments total \$637 million over the 30-year term of the operations and maintenance portion of the P3 Agreement

Availability payments are fixed but are subject to potential changes based on in federally published inflation indices, changes in interest rates prior to financial close, and relief events. Payments for operations and maintenance, lifecycle, and insurance costs are pegged to a basket of inflation indices (e.g., the consumer price index, the labor cost index, and the producer price index), while payments intended to cover other costs (e.g., debt service and equity investment repayment) are fixed on a nominal (year of expenditure) basis and are not linked to inflation indices. The financial figures assume that future inflation indices increase at 2% per year, meaning that the Availability Payments would be less (or more) than anticipated if actual inflation is less (or more) than 2.0% per year. The estimated average annual availability payment (including future inflation) will be approximately \$240 million. This actual amount will vary based on interest rates at the time of financial close and actual inflation experienced.

In addition to these Project costs, other costs paid to date include settlement payments totaling \$250 million to the previous design-build contractor (as previously approved by the Board of Public Works) and \$219 million in design and construction activities completed by MDOT MTA since September 2020 as part of the Settlement Agreement.

*Note: Dollar amounts in the narrative above are rounded. Actual numbers are below in the P3 Agreement Cost Overview chart.*

In summary, the P3 Agreement cost in 2016 was \$5,590,000,000, with a BPW approved modification of \$250,000,000 in December 2020. Pending BPW approval in the coming weeks of a P3 Agreement modification of \$3,444,000,000, the revised total projected P3 Agreement cost is \$9,284,000,000.

## P3 Agreement Cost Overview

\$ in Millions

	2016 Funding (2016-2052)	2022 Funding (2016-2056)
Design-build Contract	1,971,885	3,435,839
Settlement Payment	-	250,000
Work completed by MDOT MTA since Sept. 2020	-	218,673
Operations and Maintenance	1,744,297	1,977,179
Insurance	272,638	340,642
Capital Renewal	289,144	295,908
Financing	1,312,036	2,765,759
<b>Total P3 Agreement</b>	<b>5,590,000</b>	<b>9,284,000</b>

### b) Revised project schedule showing remaining milestones and estimated start date of revenue service

While significant work has already been done on the project, much work remains. Following commercial and financial close in early 2022, MTS will resume full-scale construction in spring 2022. Following several important milestones over the next few years, the Project will be open to passengers in fall 2026. The entire 16.2-mile length of the Purple Line will open at one time, rather than the phased opening that was previously planned. This will maximize the utility of the line in connecting passengers to jobs, school, shopping and recreation from opening day.

The production of light rail vehicles continues. Assembly of 130 car shell segments has been completed at the facility in Spain. The Light Rail vehicles are continuing in production in Elmira, New York. Of the 28 Light Rail vehicles, eight are complete and available for shipment now, an additional eight are complete and are undergoing static testing, another eight are being assembled now. MDOT MTA exercised a contract option to purchase two additional vehicles to further support operations and ensure reliability. Light rail vehicles will start arriving at the new Glenridge Operations and Maintenance facility in the fall of 2023. The test track area between New Carrollton and Beacon Heights will be completed in the summer of 2024, kicking off an eighteen-month period of intensive local testing, integrated testing and operator training. In the fall of 2025, PLTP will commence system-wide testing, trial running and commissioning activities, as well as operator training and certification. Entry into revenue service for the entire Purple Line system will commence in fall 2026.



The below table highlights significant remaining milestones for the Project, including the estimated start date of revenue service:

Milestone	Date
Mobilization & Start-Up	Spring 2022
Commencement of Construction Work	Spring 2022
Delivery of First Light Rail Vehicle	Fall 2023
Test Track Construction Complete & Power Live	Summer 2024
On-Site Dynamic Testing of LRVs Complete	Spring 2025
Commencement of Full System Integration and Testing End to End	Fall 2025
Operator/Supervisor Training - Full Alignment Complete	Summer 2026
System-Wide Testing Complete	Fall 2026
Revenue Service Availability Date	Fall 2026



### **c) Details of the financing revisions and changes to the availability payment**

The financing plan for the Project will remain very similar to the original financing plan for the Project. PLTP will finance the remaining Project costs through a combination of debt and equity. The upfront construction progress payments funded by MDOT MTA have already been fully paid and no additional progress payments will be made. As originally planned, MDOT MTA will still make a milestone payment of \$100 million when the Project achieves revenue service (when passengers are able to access and ride the transit system). In accordance with the Project schedule, this payment is scheduled to occur in FY 2027 and is budgeted in MDOT's FY 2022-2027 Final Consolidated Transportation Program.

PLTP's existing TIFIA loan, from which no funds have yet been drawn, will either be terminated and a new TIFIA loan will be issued, or the existing loan will be re-financed/re-structured. The new or restructured TIFIA loan continues to offer low cost, long-term loan proceeds with flexible repayment options. PLTP will still serve as the borrower and be solely responsible to repay the TIFIA Loan. The TIFIA loan will be repaid over the 30-year term of the operations and maintenance portion of the P3 Agreement. Today's TIFIA rates (2.11% at the time of this report) are lower than the interest rates on the existing loan (2.41%).

In 2016, PLTP issued \$313 million of private activity bonds (PABs) to fund construction of the Project. In 2021, MDOT MTA received approval from the Board of Public Works, through amendments to the Settlement Agreement and P3 Agreement, to advance-fund future payments to PLTP to pay off that obligation. This payment is included in the total P3 Agreement cost. The early payoff of the bonds allowed MDOT MTA to move forward on the Project without requiring approval of the 2016 PABs bondholders at each step. PLTP will issue additional PABs in early 2022, at historically low interest rates seen in the current market, to pay a portion of remaining construction costs. These bonds will be payable over a thirty-year period and PLTP will be solely responsible to repay these bonds.

On December 10, 2021, and January 7, 2022, MDOT met with the State Treasurer's Office to discuss the structure of the updated financing plan for the Purple Line. MDOT committed, both at the meeting and in a subsequent letter to the Treasurer's Office (see Attachment A), to ensure that the original commitments regarding the financing are adhered to in the new financing so that the payments made under the Amended P3 Agreement do not count as State tax-supported debt and therefore there is no impact to the State's capital debt affordability limits. These commitments include making the revenue service milestone payment, the portion of availability payments that repay debt and equity, and the portion of availability payments for lifecycle renewal only from non-tax supported funds. Specifically, this includes primarily transit fare revenues, but may also include federal and local funds for the project.

To avoid any potential confusion that may occur by making payments from the Transportation Trust Fund, which includes both tax-supported and non-tax-supported revenues, MDOT will create a separate trust account one year prior to the start of revenue service and utilize that trust account to make those payments. Only transit fare revenues, federal funds, and local contributions to the Project will be deposited in that trust account, ensuring that only non-tax revenues are used for payment. Based on the original analysis completed by the State Treasurer's Office in 2016, the representations that MDOT made both then and now, and the assurance that sufficient transit fare revenues are available to make these payments, the payments made under the Amended P3 Agreement will not count as State tax-supported debt.



**d) An accounting of the revised cost sharing among the federal, State, local and Concessionaire showing the revised amount each source is providing and the amount from each source expended to date**

The Project continues to be funded with a variety of funding sources.

*Federal:* The federal New Starts grant for \$900 million remains in place and continues to be a funding source for the Projects, as well as \$36 million from the Federal Transit Administration's (FTA) Urbanized Area Formula Grant. Additional federal funds for the Project are available from the passage of the American Rescue Plan Act in 2021 (ARPA), which provided an additional \$106.2 million in federal funds specifically for the Project. The federal share for funds provided under ARPA is 100% (with no local match funds required) and the funds are separate and apart from funds under the FTA New Starts grant.

*TIFIA Loan:* The low interest rates and flexible repayment options available through the federal TIFIA loan program continue to be an important financing source for the Project. TIFIA loans typically provide a loan of up to 33% of eligible project costs. MDOT is working closely with the federal Build America Bureau and the Federal Transit Administration to maximize the eligibility of Project costs so that the largest TIFIA loan possible is utilized. At a current interest of only 2.11%, the TIFIA loan offers the lowest cost of debt financing. The amount of the TIFIA loan is estimated at \$1.7 billion. As noted previously, this TIFIA loan will replace the previous loan, which no funds had been drawn from.

*PABs:* As noted previously, the PABs previously issued in 2016 were fully repaid and are no longer outstanding. Under the financial close expected in early 2022, a new issuance of approximately \$700 million will take place. These bond proceeds will help fund construction costs. The PABs will be issued by PLTP and will be non-recourse to the State.

*Private Equity:* PLTP will increase its equity investment in the Project to \$280 million. As part of the Settlement Agreement, PLTP agreed to take a reduction in the rate of return it received on its equity and to invest additional equity at that lower rate to ensure the success of the Project.

*County Contributions:* Prince George's and Montgomery counties remain important partners in this Project. As originally agreed, Prince George's County committed \$120 million cash and \$3 million in-kind contributions toward the Project and Montgomery County committed \$40 million cash plus \$170 million in-kind contributions. The in-kind contributions include payments for certain projects not included in the federal Project, such as the Bethesda Metro Red Line Station South Entrance, the Capital Crescent Trail, and the Silver Spring Green Trail. The University of Maryland is also providing approximately \$0.5 million for the cost of a new bike path adjacent to the Purple Line that PLTP will construct.

**e) Summary of significant changes to the P3 agreement not included in any item above**

Changes are being made to the terms of the P3 Agreement in five main areas: risk allocation; removal of the unconditional right to terminate for extended delay and narrowing of the conditional right to terminate for same; provision of an owner-controlled insurance program for the remaining design-build period; removal of LRV options; and streamlining claims and dispute resolution procedures. Revisions are also being made to bring the P3 Agreement up to date, including to reflect certain obligations of the parties that have now been completed and to incorporate the replacement design-build contractor's proposal.

With regard to risk allocation, a number of the revisions to the P3 Agreement reflect a reallocation of certain Project risks in light of changed circumstances from the original P3 Agreement. The risk profile of this Project is very different from the Project that was originally bid in 2016. Not only have the circumstances of the Project changed, primarily in terms of a replacement design-build contractor being selected to complete another design-build contractor's work, but there have been some fundamental shifts in the market as well. In 2019, three large, publicly-held contractors – SNC-Lavalin Group Inc., Fluor Corp. and Granite Construction Inc. – exited the fixed-price contracting market as a result of risk imbalance on megaprojects like the Purple Line. Most recently, the global impact of the COVID-19 pandemic has resulted in fundamental changes to the insurance market and created new challenges for supply chains and workforce availability.

As with any P3 Agreement, it is important that the risks on this Project are allocated to the party best able to mitigate these risks. The risk allocation under the amended P3 Agreement includes both new and revised risks. In the amended P3 Agreement, the State assumes the risk for: any unknown defects in the construction work completed to date or in owner-performed construction work, in each case if discovered before expiry of the replacement design-build contractor's base warranty period; material changes or delays in progressing a limited scope of owner-performed design work by the amendment effective date; utility adjustments to be completed by the State or unanticipated utility adjustments; MDOT MTA-provided governmental approvals, all of which have been obtained; expanded pandemic-related relief; delays and other requirements concerning materials procured by the State; and limited relief for LRV mechanical performance failures outside of the control of the replacement design-build contractor. PLTP retains responsibility for defects in design work, including design work performed under the original design-build contract, and for systems integration.

The right to unconditionally terminate the P3 Agreement for extended delay (utilized by the previous design-build contractor as a basis to leave the Project) is removed in the P3 Agreement, and the right to conditionally terminate for extended delay has also been narrowed.

With the departure of PLTC, it became necessary for MDOT MTA to procure and maintain an owner-controlled insurance program and certain additional insurance policies to support the Project, and to support the effort to maintain and extend project-specific professional liability insurance, which covers the Project's design work. Under the amended P3 Agreement, PLTP is required to provide certain design-build period insurance policies and the State will continue to do so for the remaining design-build period, except PLTP will be responsible for maintaining the project-specific professional liability following the amendment effective date so long as it is available in the insurance market on commercially reasonable terms. PLTP remains responsible for providing all operations and maintenance period insurance policies.

In the past year, the State exercised its option to purchase additional LRVs under the P3 Agreement by placing an order for two additional LRVs before the expiration of this option. The addition of these two LRVs may effectively enhance the system's performance and reduce performance risks. With the exercise of this option and the remainder of the LRV options expiring early in the remaining design-build period per their original terms, the LRV options are being deleted in their entirety in the amended P3 Agreement.

Finally, the claims and dispute resolution procedures is modified to shorten, clarify and streamline the processes for addressing disputes between the parties, with a greater emphasis on utilization of an established dispute resolution board.