

CROSSING AGREEMENT

Initial Execution Date: June 15, 2012

Parties:

Her Majesty the Queen in Right of Canada, as represented by the Minister of Transport (“Canada”).

-and-

Crossing Authority (“Crossing Authority”), an entity to be established by Canada pursuant to and subject to the Laws of Canada after the Initial Execution Date.

-and-

State of Michigan (“Michigan”), in its own right, as represented by its Governor, and by and through, the Michigan Department of Transportation (“MDOT”), a department of Michigan and the Michigan Strategic Fund (“MSF”), a public body corporate and politic and public agency of Michigan (individually referred to as a “Michigan Party” and collectively referred to as the “Michigan Parties”).

Synopsis:

The Crossing Agreement provides a framework for a Crossing Authority established by Canada to design, construct, finance, operate and maintain a new International Crossing between Canada and Michigan, under the oversight of a jointly established International Authority with three members appointed by Canada and the Crossing Authority and three members appointed by the Michigan Parties, and with funding approved by Canada, but with no funding by the Michigan Parties. The Michigan Parties are not obligated to pay any of the costs of the new International Crossing.

CROSSING AGREEMENT

Her Majesty the Queen in Right of Canada, as represented by the Minister of Transport; Crossing Authority, an entity to be established by Canada pursuant to and subject to the Laws of Canada after the Initial Execution Date; and the State of Michigan, in its own right, as represented by its Governor, and by and through, the Michigan Department of Transportation, and the Michigan Strategic Fund hereby agree as follows:

I HISTORY

In 2001, Transport Canada, the United States Federal Highway Administration, the Ontario Ministry of Transportation and the Michigan Department of Transportation formed the Canada-United States-Ontario-Michigan Border Transportation Partnership (the “**Partnership**”) to identify and evaluate trans-border infrastructure improvements in the Detroit-Windsor trade corridor, with a focus on the long term studies needed to support this work.

In May 2001, the Partnership launched a Planning, Needs and Feasibility Study (“**P/NF**”) to assess the existing transportation network and long-range transportation plans in southeast Michigan and southwest Ontario. The P/NF study was completed in 2004 and included a broad range of recommendations including that a new or expanded international crossing be constructed and connected to highway networks on both sides of the border. The P/NF also recommended that formal environmental assessment processes be initiated.

Following the completion of the P/NF, the formal environmental assessment process was launched to develop a new or expanded Detroit-Windsor crossing. A coordinated environmental study process was developed to meet the legislative requirements of each jurisdiction.

Through the environmental assessment process, the location for a new Detroit-Windsor crossing, and associated border inspection facilities and freeway connection was selected in both Canada and the United States of America. The necessary environmental approvals were obtained under the *Canadian Environmental Assessment Act* (Canada), the *Environmental Assessment Act* (Ontario) and the *U.S. National Environmental Policy Act*.

II PURPOSE

This Agreement is to provide a framework for the Crossing Authority established by Canada to, with the assistance as necessary, but not funding by, Michigan:

- (a) design, construct, finance, operate and maintain the International Crossing through the life cycle of the International Crossing and design, construct

and finance the Michigan Interchange prior to the International Crossing Opening Date, under the oversight of the International Authority established by this Agreement with three members appointed by Canada and the Crossing Authority and three members appointed by the Michigan Parties, with funding as approved by Canada, through one or more Public-Private Agreements with one or more private sector Concessionaires procured through one or more competitive procurement processes; and

- (b) design, construct, finance and/or maintain the US Federal Plaza, with the agreement and funding as approved by US Federal Agencies and with any funding as approved by Canada, through one or more US Federal Plaza Public-Private Agreements with one or more private sector Concessionaires procured through one or more competitive procurement processes;

in order to facilitate international trade and the efficient movement of legitimate goods and travelers between Canada and the United States of America; support the economies of Ontario and Canada and Michigan and the United States of America; and benefit the communities in and around Detroit and in and around Windsor.

III PARTIES

Section 1. Her Majesty the Queen in Right of Canada, as represented by the Minister of Transport (herein referred to as “**Canada**”), has the sovereign power and authority to enter into and carry out its obligations as a Party to this Agreement, subject to the terms and conditions of this Agreement.

Section 2. An entity (herein referred to as the “**Crossing Authority**”) shall be established by Canada pursuant and subject to the Laws of Canada after the Initial Execution Date for the purpose of entering into and carrying out its obligations as a Party to this Agreement and shall have the power and authority to enter into and carry out its obligations as a Party to this Agreement, subject to the terms and conditions of this Agreement.

Section 3. The State of Michigan (herein referred to as “**Michigan**”) has the power and constitutional authority under Section 5 of Article 3 of the *Michigan Constitution of 1963* and authority under other Michigan Law, subject to the requirements of Section 10 of Article 1 of the *US Constitution*, to enter into and carry out its obligations as a Party to this Agreement, in its own right and by and through either or both MDOT and MSF, subject to the terms and conditions of this Agreement.

Section 4. The Michigan Department of Transportation (herein referred to as “**MDOT**”), a department of Michigan, has the power and authority to enter into and carry out its obligations as a Party to this Agreement, subject to the terms and conditions of this Agreement.

Section 5. The Michigan Strategic Fund (herein referred to as “MSF”), a public body corporate and politic and a public agency of Michigan, has the power and authority to enter into and carry out its obligations as a Party to this Agreement, subject to the terms and conditions of this Agreement.

Section 6. Michigan, MDOT and MSF (herein individually referred to as a “Michigan Party” and collectively referred to as the “Michigan Parties”) shall, collectively or by or through one or more of the Michigan Parties, as determined by the Michigan Parties, be responsible for the obligations of the Michigan Parties pursuant to this Agreement.

IV INTERPRETATION

Section 1. When used in this Agreement the following words and terms have the following meanings:

- (a) “**Agreement**” or “**Crossing Agreement**” means this Crossing Agreement including any recitals and schedules, as amended, supplemented or restated from time to time.
- (b) “**Applicable Law**” means, in respect of any Person, property, transaction, event or other matter, as applicable, all present or future (except as otherwise specifically provided in this Agreement) Law relating or applicable to that Person, property, transaction, event or other matter.
- (c) “**Auditor**” means a qualified professional accountant who deals at arms-length with all of the Parties, licensed to practice public accountancy, and who is authorized by Applicable Law and practice to express audit opinions.
- (d) “**Business Day**” means any day other than a Saturday, a Sunday or a statutory holiday in the State of Michigan or the Province of Ontario.
- (e) “**Canadian Contributions**” means, at any particular time, all monies (in Canadian currency or converted into Canadian currency at conversion rates prevailing as at the date paid or provided) and all real or personal property or services provided (at the fair value as at the date provided in Canadian currency or converted into Canadian currency at conversion rates prevailing as at the date provided), which monies or monies for such property or services, have been appropriated by the Parliament of Canada and have been paid by Canada or provided by Canada to the Crossing Authority and paid by the Crossing Authority, before or after the Initial Execution Date and prior to such particular time, for International Crossing Costs, Michigan Interchange Costs, US Federal Plaza Costs, Crossing Authority Costs and International Authority Costs.

- (f) **“Canadian Contributions Recoupment Date”** means any calendar year end at which the Unrecouped Canadian Contributions are zero.
- (g) **“Canadian Crossing”** means the bridge, plaza and approach in Canada included in the International Crossing Alignment, but not including the Windsor-Essex Parkway.
- (h) **“Canadian Crossing Facilities”** means all structures, facilities and improvements related to the Canadian Crossing owned or to be owned by Canada.
- (i) **“Canadian Crossing Lands”** means all land, rights-of-way, property, rights, easements and interests for the Canadian Crossing owned or to be owned by Canada.
- (j) **“Canadian Crossing Land Activities”** means all activities of Canada or the Crossing Authority associated with the Canadian Crossing Lands.
- (k) **“Canadian Crossing Project Activities”** means all activities of Canada or the Crossing Authority associated with the Canadian Crossing Facilities, other than the Canadian Crossing Land Activities.
- (l) **“Canadian Crossing Tolls”** means all tolls, fees or other charges for use of the Canadian Crossing.

“CBP” means the US Customs and Border Protection.

“Claims” means any third party claim, action, suit, proceeding, demand or assessment.

“Coast Guard Permit Application Activities” means activities associated with the application to the US Coast Guard for a Bridge Permit for the construction, operation and maintenance of the Michigan Crossing, as contemplated in this Agreement.

- (p) **“Concessionaire”** means a Private Entity that is party to a Public-Private Agreement or US Plaza Public-Private Agreement authorized by this Agreement.
- (q) **“Crossing Authority Costs”** means all costs and expenses paid by the Crossing Authority related to overhead and administration, including costs and expenses related to dispute resolution and litigation, and all costs and expenses paid by the Crossing Authority related to Taxes, and associated with the International Crossing, the Michigan Interchange or the US Federal Plaza, and related obligations under this Agreement, any Public-Private Agreement and any US Federal Plaza Public-Private Agreement.

- (r) **“Crossing Authority Revenue”** means all revenue received by the Crossing Authority (other than monies received from Canada, except pursuant to Section 1 of Article X, and US Federal Agencies Contributions) related to the International Crossing, the Michigan Interchange prior to the International Crossing Opening Date, and the US Federal Plaza, including: the Canadian Crossing Tolls; revenue arising from any Public-Private Agreement or any US Federal Plaza Public-Private Agreement; interest or other money on account of investments by the Crossing Authority; and proceeds of insurance in the event of damage or destruction of any portion of the International Crossing, the Michigan Interchange prior to the International Crossing Opening Date, or the US Federal Plaza.
- (s) **“Effective Date”** means the later of the date upon which this Agreement has been executed by all of Canada, the Crossing Authority and the Michigan Parties and the date upon which this Agreement has been approved by the U.S. Secretary of State.
- (t) **“Fairness Monitor”** means a Person engaged in accordance with this Agreement to perform the usual functions of a fairness monitor in a public private partnership procurement process for a comparable public private partnership transaction, to report on any failure to comply with the fairness requirements of the RFQ and RFP, and to produce the further reports specified in Parts III and IV of Section 5 of Article VI.”
- (u) **“Federal Aid Eligibility Requirements”** means all requirements under US federal Law, as provided in the Stewardship and Oversight Agreement dated November 29, 2011 between FHWA and MDOT, as amended from time to time, necessary for expenditures on a project to be eligible as the non-federal share for federal aid matching purposes under the FHWA’s Federal Aid Highway Program; provided that, (a) in replacement of the “Buy America” provisions otherwise applicable under the FHWA’s Federal Aid Highway Program, it shall be required that all iron and steel used in Federal Aid Highway Project Activities must be produced in only the US and Canada and (b) there shall be no discrimination in favour of the US over Canada or in favour of Canada over the US with respect to any products, materials, supplies, labour or services under any of the Federal Aid Eligibility Requirements.
- (v) **“Federal Aid Highway Project Activities”** means Michigan Crossing Land Activities, Michigan Interchange Land Activities, Michigan Crossing Project Activities and Michigan Interchange Project Activities.
- (w) **“FHWA”** means the US Federal Highway Administration.

- (x) **“GAAP”** means, in respect of Canada or Michigan, as the case may be, those accounting principles which are recognized as being generally accepted and which are in effect from time to time.
- (y) **“Governmental Authority”** means any domestic or foreign government, including any federal, provincial, state, territorial or municipal government, and any government, agency, tribunal, commission or other authority exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, such government.
- (z) **“GSA”** means the US General Services Administration.
- (aa) **“Imputed Cost of Unrecouped Canadian Contributions”** means, at each calendar year end, the aggregate amount accrued on Unrecouped Canadian Contributions in Canadian dollars, during such calendar year, calculated at a rate per annum equal to the Government of Canada benchmark long-term bond yield effective on the last business day of the previous calendar year end, as published by the Bank of Canada (Weekly Financial Statistics, series V39056), plus 100 basis points, and compounded annually.
- (bb) **“Initial Execution Date”** means the date as of which Canada, as represented by the Minister of Transport, and Michigan, as represented by its Governor, have executed this Agreement.
- (cc) **“International Authority”** means a public body corporate and legal entity established by this Agreement.
- (dd) **“International Authority Costs”** means all costs and expenses paid by the International Authority and funded by the Crossing Authority related to overhead and administration, including costs and expenses related to dispute resolution and litigation, and associated with the International Authority Oversight.
- (ee) **“International Authority Oversight”** means the oversight by the International Authority in accordance with the provisions of Section 5 of Article VI of this Agreement.
- (ff) **“International Crossing”** means the Canadian Crossing and the Michigan Crossing.
- (gg) **“International Crossing Alignment”** means the location of the Canadian Crossing in Canada and the location of the Michigan Crossing, the Michigan Interchange and the US Federal Plaza in Michigan substantially consistent with the Detroit River International Crossing Environmental Assessment Study, Environmental Assessment Report W.O. 04-33-002, dated December, 2008, approved by the Ontario Minister of Environment August 11, 2009 and substantially consistent with the Record of Decision

for the Proposed Detroit River International Crossing,
Michigan FHWA-MI-EIS-05-01-R, dated January 14, 20

- (hh) **“International Crossing Costs”** means all costs and Canada or the Crossing Authority associated with Crossing and the International Crossing Lands, including International Crossing Land Activities and costs of Crossing Project Activities, and related obligations under and any Public-Private Agreement including a Concessionaire, other than the Crossing Authority Costs International Authority Costs.
- (ii) **“International Crossing Lands”** means the Canadian Crossing Lands and the Michigan Crossing Lands.
- (jj) **“International Crossing Land Activities”** means the Canadian Crossing Land Activities and the Michigan Crossing Land Activities.
- (kk) **“International Crossing Opening Date”** means the date the International Crossing is open to transportation by the public.
- (ll) **“International Crossing Project Activities”** means Canadian Crossing Project Activities and the Michigan Crossing Project Activities.
- (mm) **“Law”** means all laws (including common law), by-laws, ordinances, rules, statutes, regulations, treaties, orders, rules, judgments and decrees, and all official directives, rules, guidelines, notices, approvals, orders, policies and other requirements of any Governmental Authority, having the force of law, and shall include, with respect to the applicability of state law to the internal operations of the International Authority, the legal doctrine and principles developed in judicial decisions involving entities formed under an agreement entered into pursuant to Section 10 of Article I of the *US Constitution*.
- (nn) **“Michigan Crossing”** means the bridge and approach, including the plaza, in Michigan included in the International Crossing Alignment, but not including the Michigan Interchange and the US Federal Plaza.
- (oo) **“Michigan Crossing Facilities”** means all structures, facilities and improvements related to the Michigan Crossing owned or to be owned by Michigan.
- (pp) **“Michigan Crossing Lands”** means all land, rights-of-way, property, rights, easements and interests for the Michigan Crossing owned or to be owned by Michigan.
- (qq) **“Michigan Crossing Lands Activities”** means all activities of the Michigan Parties upon request of the Crossing Authority and all activities

of Canada or the Crossing Authority, associated with the Michigan Crossing Lands.

- (rr) **“Michigan Crossing Project Activities”** means all activities of the Michigan Parties upon request of the Crossing Authority and all activities of Canada or the Crossing Authority, associated with the Michigan Crossing Facilities, other than the Michigan Crossing Land Activities.
- (ss) **“Michigan Interchange”** means the interchange between Interstate 75 and the Michigan Crossing or the US Federal Plaza, included in the International Crossing Alignment.
- (tt) **“Michigan Interchange Costs”** means all costs and expenses paid by Canada or the Crossing Authority associated with the Michigan Interchange and the Michigan Interchange Lands, including the costs of the Michigan Interchange Land Activities, the costs of the Michigan Interchange Project Activities and related obligations under this Agreement and any Public-Private Agreement, including payments to a Concessionaire, other than the Crossing Authority Costs and other than International Authority Costs.
- (uu) **“Michigan Interchange Facilities”** means all structures, facilities and improvements related to the Michigan Interchange owned or to be owned by Michigan.
- (vv) **“Michigan Interchange Lands”** means all land, rights-of-way, property, rights, easements and interests for the Michigan Interchange owned or to be owned by Michigan.
- (ww) **“Michigan Interchange Land Activities”** means all activities of the Michigan Parties upon request of the Crossing Authority and all activities of Canada or the Crossing Authority prior to the International Crossing Opening Date, associated with the Michigan Interchange Lands.
- (xx) **“Michigan Interchange Project Activities”** means all activities of the Michigan Parties upon request of the Crossing Authority and all activities of Canada or the Crossing Authority associated with the design and construction of the Michigan Interchange Facilities prior to the International Crossing Opening Date, other than the Michigan Interchange Land Activities.
- (yy) **“Ontario”** means Her Majesty the Queen in Right of Ontario.
- (zz) **“Parties”** means Canada and Michigan upon and after the Initial Execution Date and Canada and Michigan and each of the Crossing Authority, MDOT and MSF upon and after execution of this Agreement by the Crossing Authority, MDOT and MSF, respectively.

- (aaa) **“Permitted Encumbrances”** means, with respect to lands or any interests therein of any Person, licences, easements, rights-of-way and rights in the nature of easements (including, without limitation, licences, easements, rights-of-way and rights in the nature of easements for public-ways, sewers, drains, gas, steam, water mains, electric light and power, or telephone conduits, poles, wires and cables) which do not materially impair the use of the affected land for the purpose for which it is used by that Person;
- (bbb) **“Person”** means any natural person, sole proprietorship, partnership, corporation, trust, joint venture, any Governmental Authority or any incorporated or unincorporated entity or association of any nature.
- (ccc) **“Presidential Permit Application Activities”** means activities associated with the application to the US Department of State for a Presidential Permit for the construction, connection, operation and maintenance of the Michigan Crossing, as contemplated in this Agreement.
- (ddd) **“Private Entity”** means any non-governmental business entity.
- (eee) **“Public-Private Agreement”** means any agreement between the Crossing Authority and a Concessionaire (i) prior to the International Crossing Opening Date providing for any one or more of the design, construction, financing, operation and maintenance of the International Crossing; (ii) prior to the International Crossing Opening Date providing for any one or more of the design and construction of the Michigan Interchange; or (iii) after the International Crossing Opening Date providing for any one or more of the improvement, operation and maintenance of the International Crossing.
- (fff) **“Public-Private Agreement Requirements”** means the Public-Private Agreement Requirements in Section 3 of Schedule B to this Agreement.
- (ggg) **“RFP”** means a request by the Crossing Authority to potential Concessionaires (i) prior to the International Crossing Opening Date requesting proposals for any one or more of the design, construction, financing, operation and maintenance of the International Crossing; (ii) prior to the International Crossing Opening Date requesting proposals for any one or more of the design and construction of the Michigan Interchange; or (iii) after the International Crossing Opening Date requesting proposals for any one or more of the improvement, operation and maintenance of the International Crossing; and providing for the process of evaluation and selection of the Concessionaire, in compliance with the RFP Process Requirements.
- (hhh) **“RFP Process Requirements”** means the RFP Process Requirements in Section 2 of Schedule B to this Agreement.

- (iii) **“RFQ”** means a request by the Crossing Authority to potential Concessionaires (i) prior to the International Crossing Opening Date requesting qualifications to undertake any one or more of the design, construction, financing, operation and maintenance of the International Crossing; (ii) prior to the International Crossing Opening Date requesting qualifications to undertake any one or more of the design and construction of the Michigan Interchange; or (iii) after the International Crossing Opening Date requesting qualifications for any one or more of the improvement, operation and maintenance of the International Crossing; and providing for the process of evaluation and selection of a short-list of potential Concessionaires to respond to an RFP, in compliance with the RFQ Process Requirements.
- (jjj) **“RFQ Process Requirements”** means the RFQ Process Requirements in Section 1 of Schedule B to this Agreement.
- (kkk) **“Tax”** or **“Taxes”** means all taxes, charges, fees, levies, imports and other assessments and payments in lieu of tax, including income, sales use, goods and services, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes and any other taxes, customs duties, fees, assessments, royalties, duties, deductions, compulsory loans or similar charges in the nature of tax, including pension plan contributions, employment insurance payments and workers compensation premiums, together with any installments, and any interest, fines and penalties, imposed by any Governmental Authority, whether disputed or not.
- (lll) **“Unrecouped Canadian Contributions”** means, at each calendar year end, the amount, if any, by which the aggregate of the International Crossing Costs, the Michigan Interchange Costs, the US Federal Plaza Costs, the Crossing Authority Costs, the International Authority Costs prior to such time and the aggregate amount of Imputed Cost of Unrecouped Canadian Contributions compounded at any calendar year end at and prior to such time, exceeds the aggregate of the Crossing Authority Revenue and the US Federal Agencies Contributions prior to such time, all amounts in Canadian currency or converted into Canadian currency at conversion rates prevailing as at the date paid or received as the case may be.
- (mmm) **“US”** means the United States of America.
- (nnn) **“US Coast Guard”** means United States Coast Guard.
- (ooo) **“US Federal Agencies”** means CBP, GSA and any other US federal government agency as applicable in the context.

- (ppp) **“US Federal Agencies Contributions”** means all monies (in Canadian currency or converted into Canadian currency at conversion rates prevailing as at the date paid or provided) paid or provided by one or more US Federal Agencies to the Crossing Authority for the US Federal Plaza Costs.
- (qqq) **“US Federal Plaza”** means the plaza in Michigan for use by one or more US Federal Agencies included in the International Crossing Alignment.
- (rrr) **“US Federal Plaza Costs”** means all costs and expenses paid by Canada or the Crossing Authority associated with the US Federal Plaza and the US Federal Plaza Lands, including the costs of the US Federal Plaza Land Activities, the costs of the US Federal Plaza Project Activities and related obligations under this Agreement and any US Federal Plaza Public-Private Agreement, including payments to a Concessionaire, other than the Crossing Authority Costs and other than International Authority Costs.
- (sss) **“US Federal Plaza Facilities”** means all structures, facilities and improvements related to the US Federal Plaza owned or to be owned by one or more of the Michigan Parties or one or more of the US Federal Agencies as determined by the Crossing Authority, in consultation with the appropriate Michigan Parties, and the appropriate US Federal Agencies.
- (ttt) **“US Federal Plaza Lands”** means all land, rights-of-way, property, rights, easements and interests, if any, determined by the Crossing Authority (in consultation with Michigan) and the appropriate US Federal Agencies, to be necessary for the US Federal Plaza, and owned or to be owned by one or more of the Michigan Parties or one or more of the US Federal Agencies as determined by the Crossing Authority (in consultation with the appropriate Michigan Parties) and the appropriate US Federal Agencies.
- (uuu) **“US Federal Plaza Lands Activities”** means all activities of the Michigan Parties upon request of the Crossing Authority and all activities of Canada or the Crossing Authority, associated with the US Federal Plaza Lands.
- (vvv) **“US Federal Plaza Project Activities”** means all activities of the Michigan Parties upon request of the Crossing Authority and all activities of Canada or the Crossing Authority, associated with the US Federal Plaza Facilities, other than the US Federal Plaza Land Activities.
- (www) **“US Federal Plaza Public-Private Agreement”** means any agreement between the Crossing Authority and a Concessionaire (i) prior to the International Crossing Opening Date providing for any one or more of the design, construction, financing and maintenance of the US Federal Plaza; or (ii) after the International Crossing Opening Date replacing a prior US

Federal Plaza Public-Private Agreement and providing for any one or more of the improvement and/or maintenance of the US Federal Plaza.

Section 2. **Headings.** The division of this Agreement into sections and the insertion of headings are for convenience of reference only and are not to affect the construction or interpretation of this Agreement.

Section 3. **Number.** Words importing the singular include the plural and vice versa and words importing gender include all genders.

Section 4. **Including.** The term “including” shall be interpreted to mean “including without limitation”.

Section 5. **Responsible for.** The term “responsible for” shall be interpreted to mean to undertake or cause to be undertaken, the relevant activities and be liable for all costs and expenses in respect thereof; in the case of Canada, subject to all procedures and approvals required by Canada for the payment of funds, including appropriation by the Parliament of Canada, to pay for such costs and expenses; in the case of the Crossing Authority, subject to availability of Crossing Authority Revenue or Canadian Contributions to pay for such costs and expenses and US Federal Agencies Contributions to pay for US Federal Plaza Costs, as applicable; and in the case of the Michigan Parties, subject to availability of the Canadian Contributions to pay for such costs and expenses.

Section 6. **Costs and Expenses.** The term “costs and expenses” shall be interpreted to mean amounts paid by a Party to third parties on a cost recovery basis.

Section 7. **Fund/Funding.** The terms “fund” and “funding” shall be interpreted to mean to provide all monies required to pay for the costs and expenses incurred in respect of the relevant activities without any requirement for reimbursement (except for recoupment of the Canadian Contributions and for US Federal Agencies Contributions, as provided in this Agreement); in the case of Canada, subject, to all procedures and approvals required by Canada for the payment of funds, including appropriation by the Parliament of Canada; and in the case of the Crossing Authority, subject to availability of Crossing Authority Revenue or Canadian Contributions to pay for such costs and expenses and US Federal Agencies Contributions to pay for US Federal Plaza Costs, as applicable. The terms “fund” and “funding” shall also be interpreted to mean “to provide real or personal property or services in lieu of monies in respect of the relevant activities without any requirement for reimbursement (except for recoupment of the Canadian Contributions as provided in this Agreement), subject to all procedures and approvals required by Canada, for the gift, contribution or delivery of real or personal property or services.

Section 8. **Requirements.** The term “Requirements” in the context of RFP Process Requirements, RFQ Process Requirements and Public-Private Agreement Requirements and substantial compliance therewith shall not be interpreted to preclude other provisions, not inconsistent with those “Requirements”.

Section 9. **Calculation of Time Periods.** When a time is expressed herein to begin or end at, on or within a specified day, or to continue to or within a specified day, the time period includes that day. When a time period is expressed herein to begin after or to be from a specified day, the time period does not include that day. Where anything is to be done within a time period expressed hereinafter, from or before a specified day, the time period does not include that day. If the last day of a time period is not a Business Day, the time period shall end on the next Business Day.

Section 10. **References to Law.** Any reference to any Michigan Law, or to any section of or any definition in any Michigan Law, in respect of the power or authority, and all procedures and approvals required by Michigan Law related thereto, of any Michigan Party to enter into and carry out its obligations as a Party to this Agreement, shall be deemed to be reference to such Law or section or definition in effect as at the date the Michigan Party became a Party. Any other reference to any Law, or to any section of or any definition in any Law, shall be deemed to be reference to such Law or section or definition as amended, supplemented, substituted, replaced or re-enacted from time to time.

Section 11. **Schedules.** The following schedules are attached to and form part of this Agreement:

Schedule A	Post Canadian Contributions Recoupment Date
Schedule B	Procurement Requirements for International Crossing

V CROSSING AUTHORITY

Section 1. **Creation and Mandate.** Canada shall establish the Crossing Authority as an entity under and subject to the Laws of Canada.

Section 2. **Capacity and Powers.** The Crossing Authority shall have the capacity, rights, and powers of a natural person, may carry on its activities throughout Canada and shall have the capacity to carry on its activities, conduct its affairs and exercise its powers in Michigan to the extent that the Laws of Michigan and the US permit.

Section 3. **Structure, Organization & Governance.** The members of the Crossing Authority shall consist of Canada and, at the discretion of Canada, Ontario. The directors of the Crossing Authority shall be appointed by Canada and, at the discretion of Canada, Ontario.

Section 4. **Consultation with I**
Crossing Authority shall consult w
and with staff, attorneys, and cons
Governor of Michigan, in develop

thority and Michigan Parties. The
mbers of the International Authority
ichigan Parties as designated by the
, the RFP, the draft of the Public-

Private Agreement to be included in the RFP, and the process for selection of the Fairness Monitor.

Section 5. Selection of Fairness Monitor. The Crossing Authority, jointly with the Michigan Parties as designated by the Governor of Michigan, shall select the Fairness Monitor to perform the monitoring role over the public-private partnership procurement process provided for in Section 5 of Article VI and to be responsible to the Crossing Authority and the International Authority for producing the reports required to be delivered pursuant to Parts III and IV of Section 5 of Article VI. The Crossing Authority, jointly with the Michigan Parties as designated by the Governor of Michigan, shall present the selected Fairness Monitor to the International Authority for approval.

Section 6. Engagement of Fairness Monitor. Upon approval by the International Authority of the Fairness Monitor, the Crossing Authority shall engage the Fairness Monitor to perform its monitoring role over the public-private partnership procurement process provided for in Section 5 of Article VI and to be responsible to the Crossing Authority and the International Authority for producing the reports required to be delivered pursuant to Parts III and IV of Section 5 of Article VI. The terms of engagement shall require the Fairness Monitor to be free of any conflict of interest throughout the period of the engagement.

VI INTERNATIONAL AUTHORITY

Section 1. Creation and Mandate. The International Authority is hereby established as a public body corporate and legal entity pursuant to this Agreement, in accordance with Applicable Law, including Section 10 of Article 1 of the *US Constitution*, Section 5 of Article 3 of the *Michigan Constitution of 1963* and the *Urban Cooperation Act of 1967 Act 7 of 1967 (Ex. Sess)* (Michigan).

Section 2. Capacity and Powers.

The International Authority shall be a legal entity separate and distinct from the Parties. The International Authority shall have the capacity, rights and powers of a natural person, including, in its own name to make and enter into contracts, to employ agents or employees, to acquire, hold or dispose of property, to incur debts, liabilities or obligations, provided that such debts, liabilities or obligations do not constitute debts, liabilities or obligations of any of the Parties, and to cooperate with Canada, the Crossing Authority and the Michigan Parties. The International Authority may sue and be sued in its own name. The International Authority shall not be operated for profit. The International Authority may not condemn property in Michigan. The International Authority shall not impose any Taxes.

The internal governance, activities and operations of the International Authority, including meetings, deliberations and decisions of the International Authority, and all information related thereto, shall be subject to and governed by Applicable Law,

including, but not limited to, Section 10, of Article 1 of the *US Constitution* and judicial interpretations thereof. The International Authority shall adopt such by-laws, rules and regulations with respect to the conduct of its affairs, not inconsistent with this Agreement or Applicable Law, as it may deem necessary or proper, including by-laws, rules and regulations to ensure that information provided by the Crossing Authority or the Michigan Parties to the International Authority shall remain confidential and shall not be disclosed to any third party, except as permitted by the Crossing Authority or the Michigan Parties, respectively.

Section 3. **Structure, Organization & Governance.**

Appointment and Term

The International Authority shall have a board consisting of six (6) members. Within one (1) month after the Effective Date, Canada shall appoint two (2) members and the Crossing Authority shall appoint one (1) member and the Michigan Parties shall appoint three (3) members, in accordance with Applicable Law. Members appointed prior to the International Crossing Opening Date shall be appointed for a term ending on the date one (1) year after the International Crossing Opening Date. Members appointed after the date one (1) year after the International Crossing Opening Date shall be appointed for a term of three (3) years. Members may be re-appointed upon expiration of a term.

Qualifications

It shall be a condition of qualification that members, at the time of appointment and throughout their term:

- (a) shall be at least eighteen (18) years of age and a citizen and resident of Canada or a citizen of the United States and resident of Michigan;
- (b) shall not owe a duty under Applicable Law as an elected or public official to any Governmental Authority, that would conflict with the duty that the member would owe to the best interests of the International Crossing under this Agreement; and
- (c) shall not directly or indirectly engage in providing goods to or services in respect of the International Crossing and shall not directly or indirectly compete in respect of the International Crossing.

Removal and Vacancies

A member may only be removed by the Party or Parties that appointed the member and prior to the date one (1) year after the International Crossing Opening Date only if the member ceases to comply with the qualifications provided for in this Section 3 or as otherwise provided by Applicable Law. A member shall be removed by the Party or Parties that appointed the member if the member ceases to comply with the qualifications provided for in this Section 3 or as otherwise provided by Applicable Law. A vacancy

arising out of resignation, death or removal of a member shall be filled expeditiously by the Party or Parties that appointed the member.

Duties

Members shall act honestly and in good faith with a view to the best interests of the International Crossing, and exercise the care, diligence and skill a reasonably prudent person would exercise in comparable circumstances. Members shall at all times act in good faith and in a diligent and timely manner, and a vote in favour of approval by the International Authority shall not be unreasonably withheld.

Chair

Canada shall designate a member as the chairperson of the International Authority within one (1) month after the Effective Date and from time to time thereafter during the period to the date five (5) years after the International Crossing Opening Date. The Michigan Parties shall designate a member as the chairperson of the International Authority, from time to time, during the five (5) year period commencing on the date five (5) years after the International Crossing Opening Date and the chairperson of the International Authority shall alternate thereafter every five (5) years between a member designated, from time to time, by Canada and a member designated, from time to time, by the Michigan Parties.

Section 4. Decisions of the International Authority.

Meetings

The chairperson shall call a meeting of the International Authority at least once in each calendar year, within three (3) Business Days after receipt of a request by the Crossing Authority for approval pursuant to Section 5 of this Article VI, and within three (3) Business Days after receipt of a request by any member, by delivering written notice of the meeting to each of the members. The notice of the meeting shall specify the date of the meeting, which shall not be earlier than ten (10) Business Days and not later than fifteen (15) Business Days after the date of the notice of meeting, and the time, place and agenda for the meeting.

Notwithstanding the foregoing, the chairperson shall call a meeting of the I Authority within two (2) Business Days after receipt of language from a so pursuant to C (iv) of Part I of Section 5 of this Article VI. The notice of the n specify the date of the meeting, which shall not be earlier than two (2) Busine not later than three (3) Business Days after the date of the notice of the meeting, and the time, place and agenda of the meeting. Notice of a meeting may be waived by all the members.

Meetings shall be held either in Detroit, Michigan or Windsor, Ontario, except as otherwise agreed by all the members. Meetings may be conducted by telephone conference call, video-conferencing or other means of communication which may become available through technological advancement, if and to the extent permitted by

Applicable Law, and members participating in such meetings by such means shall be deemed to be present at such meetings. Meetings shall be open to the public, if and to the extent required by Applicable Law.

Quorum

At least four (4) members must be present in a meeting to constitute a quorum. If there is no quorum, the meeting may be adjourned to the same place at a date and time established by the chairperson of the International Authority not earlier than four (4) Business Days nor later than ten (10) Business Days thereafter. Written notice of the date, time and place of the adjourned meeting, which states that the quorum at the adjourned meeting shall be deemed to consist of the members present at the meeting, shall be delivered to each of the members and to the Parties not later than three (3) Business Days prior to the date of the adjourned meeting. If there is no quorum at the adjourned meeting, the members present shall be deemed to constitute a quorum at the adjourned meeting.

Notwithstanding the foregoing, if there is no quorum at a meeting called to consider language from a sole arbitrator pursuant to C (iv) of Part 1 of Section 5 of this Article VI, the meeting may be adjourned to the same place at a date and time established by the chairperson of the International Authority not earlier than three (3) Business Days nor later than five (5) Business Days thereafter. Written notice of the date, time and place of the adjourned meeting, which states that the quorum at the adjourned meeting shall be deemed to consist of the members present at the meeting, shall be delivered to each of the members and to the Parties not later than two (2) Business Days prior to the date of the adjourned meeting. If there is no quorum at the adjourned meeting, the members present shall be deemed to constitute a quorum at the adjourned meeting.

If there are no current members appointed by Canada and the Crossing Authority, or no current members appointed by the Michigan Parties, in either case for a period of at least thirty (30) days, at least three (3) members present shall be deemed to constitute a quorum at any meeting thereafter until at least one of the vacancies is filled by Canada and the Crossing Authority if there are no current members appointed by Canada and the Crossing Authority, or by the Michigan Parties if there are no current members appointed by the Michigan Parties, as the case may be.

Decisions

Except as otherwise provided in this Section 4, all decisions of the International Authority shall be passed by a vote for approval by a majority of members present including a vote for approval by at least one member appointed by Canada or the Crossing Authority and a vote for approval by at least one member appointed by the Michigan Parties. Any member present and not voting shall for all purposes in this Section 5 be deemed to have voted against approval.

If there is no quorum at the adjourned meeting, and therefore the members present are deemed to constitute a quorum; or if there are no current members appointed by Canada and the Crossing Authority or no current members appointed by the Michigan Parties, for a period of at least thirty (30) days, and therefore three (3) members are deemed to constitute a quorum: then, all decisions of the International Authority shall be passed by a majority of the members present and without the requirement for a vote for approval of at least one member appointed by Canada or the Crossing Authority, if there is no member appointed by Canada or the Crossing Authority present; and a vote for approval of at least one member appointed by the Michigan Parties, if there is no member appointed by the Michigan Parties present.

Except as otherwise provided in this Section 4, a tie vote or a vote for approval by a majority of members present without a vote for approval of at least one of the members appointed by Canada or the Crossing Authority and a vote for approval of at least one of members appointed by the Michigan Parties, shall be deemed to be a deadlock (in this Article VI and in Article XIV, a “**deadlock**”).

Notwithstanding the foregoing, if, at any time prior to one (1) year after the International Crossing Opening Date, all three members appointed by the Michigan Parties have been removed, whether or not replaced, and there is a deadlock (in this Article VI and in Article XIV, a “**post member removal deadlock**”), all decisions of the International Authority shall be passed by a majority of the members present and voting and without the requirement for a vote for approval of at least one member appointed by Canada or the Crossing Authority and a vote for approval of at least one member appointed by the Michigan Parties, and the chairperson shall have a second and decisive vote in the case of a tie vote.

If there is a deadlock (except a post member removal deadlock) the dispute giving rise to the deadlock may be submitted to dispute resolution in accordance with the procedure set out in Article XIV. If there is a deadlock (except a post member removal deadlock), the chairperson shall, within two (2) Business Days after the date of the deadlock, issue a written report to the members and the Parties describing the dispute giving rise to the deadlock and the position of each of the members on the dispute.

Section 5. **International Authority Approvals and Oversight.**

Approvals.

lands Acquisitions

The Crossing Authority shall submit requests to acquire the Michigan Crossing Lands, the Michigan Interchange Lands and the US Federal Plaza Lands to the International Authority for approval, as required by Section 1 of Article VIII. The International Authority shall approve such requests unless the International Authority determines, acting reasonably and in the best interests of the International Crossing, that such acquisition is not necessary for the Michigan Crossing, the Michigan Interchange or the US Federal Plaza, respectively.

Michigan Lands Leases, etc.

The Crossing Authority shall submit requests to lease, licence or otherwise grant a property interest in the Michigan Crossing Lands to the Crossing Authority or the US Federal Plaza Lands to the Crossing Authority or one or more of the US Federal Agencies, for approval, as required by Section 2 of Article VIII. The International Authority shall approve such requests unless the International Authority determines, acting reasonably and in the best interests of the International Crossing, that such lease, licence or other grant of a property interest is not appropriate for and not in the best interests of the International Crossing.

RFQ, RFP & Concession Agreement

With respect to any RFQ, RFP or Public-Private Agreement prior to the International Crossing Opening Date and with respect to any Public-Private Agreement that is likely to extend the Canadian Contribution Recoupment Date or extend beyond the Canadian Contribution Recoupment Date, the Crossing Authority shall present the RFQ, RFP, Public-Private Agreement and the selection of the Fairness Monitor to the International Authority for approval in accordance with the following provisions:

Part I. Each of the RFQ, RFP and the final draft form of the Public-Private Agreement shall be presented to the International Authority for approval. With respect to approval by the International Authority of the RFQ or RFP, such approval shall constitute authority for implementation of the public private partnership procurement process in a manner that is materially consistent with the RFQ and RFP approved by the International Authority. All members of the International Authority shall have discretion in voting for or against any approval under this Part I, subject to compliance with the following:

A. Members shall at all times act in good faith and in a diligent and timely manner, and a vote in favour of approval shall not be unreasonably withheld.

B. Each member voting against approval of a document must indicate which terms (or lack of what terms) in the document proposed for approval has caused that member to vote against approval, provided that a member shall not vote against approval of a document based upon any terms in the document proposed for approval that were

included in a previous draft of the document that was approved by the International Authority, unless other terms in the proposed document have changed from the prior document in a manner that impacts the effect of the terms that have caused the member to vote against approval. Each member voting against approval of a document must provide at or before the time of the vote alternative language (or additional language) which that member would approve. Any such language (or additional language) shall be consistent with each of the following:

i. The framework agreed upon in the Crossing Agreement to implement the International Crossing, the Michigan Interchange and the U.S. Federal Plaza and the previous draft of the RFQ, RFP and Public-Private Agreement approved by the International Authority;

ii. Market requirements, and predominant public private partnership procurement best practices as established in public private partnership transactions of similar size and scope that have closed;

iii. Affordability, financial viability and cost effective implementation of the International Crossing, the Michigan Interchange and the U.S. Federal Plaza; and

iv. The requirements of Schedule B of this Crossing Agreement.

C. Deadlocks are subject to expedited arbitration pursuant to Article XIV. The Dispute to be resolved by binding arbitration shall be whether each member who voted against approval complied with A and B of this Part I of Section 5. If (a) a member voted against approval and provided alternative or additional language in respect of more than one term or lack of more than one term, or (b) more than one member voted against approval and provided alternative language or additional language in respect of one or more terms or lack of one or more terms, then the sole arbitrator shall resolve all of the Disputes in one arbitration.

i. If the sole arbitrator determines that any such member did not comply with A and B of this Part I, such member shall be deemed to have voted for approval and the vote of the International Authority on the matter in Dispute shall be revised accordingly.

ii. If the sole arbitrator determines that any such member has complied with A and B of this Part I of Section 5, the sole arbitrator shall determine whether the language in the document proposed for approval, or the language provided by any such member, or any alternative language submitted by one or both of the Crossing Authority and the Executive Office of the Governor of Michigan to the sole arbitrator during the arbitration is most consistent, in all material respects, with B (i) through (iv) of this Part I of Section 5.

iii. If the language determined by the sole arbitrator to be most consistent, in all material respects, with B (i) through (iv) of this Part I of Section 5 is

the language in the document proposed for approval or the language provided by any such member, such language shall remain or shall be included in such document proposed for approval, as the case may be, and such document shall be deemed to be approved by the International Authority.

iv. If the language determined by the sole arbitrator to be most consistent, in all material respects, with B (i) through (iv) of this Part I of Section 5 is the alternative language submitted by one or both of the representatives of the Parties to the sole arbitrator during the arbitration, the sole arbitrator shall submit such language to the International Authority for approval.

v. If the International Authority fails to approve the alternative language submitted by the sole arbitrator for approval within three (3) Business Days after submission by the sole arbitrator pursuant to C (iv) of this Part I of Section 5, the sole arbitrator shall submit the language in the document proposed for approval or the language provided by any such member as determined by the sole arbitrator to be most consistent, in all material respects, with B (i) through (iv) of this Part I of Section 5, to the International Authority within ten (10) Business Days after submission by the sole arbitrator pursuant to C (iv) of this Part I of Section 5, and such language shall remain or shall be included in such document proposed for approval, as the case may be, and such document shall be deemed to be approved by the International Authority.

Part II. The International Authority shall approve the Fairness Monitor presented for approval, unless the Fairness Monitor is not qualified based on the following standards:

A. Demonstrated, industry-recognized experience over a minimum of ten years in a minimum of five public-private partnership transactions of similar size and scope;

B. References from public-private partnership procurement agencies, participants, proponents and consultants in comparable public-private partnership transactions; and

C. No conflict of interest.

Each member voting against approval of the Fairness Monitor must state in writing at or before the time of the vote the reasons for determining that the Fairness Monitor is not qualified, based solely on the standards expressed in A through C of this Part II of Section 5. Deadlocks are subject to expedited arbitration pursuant to Article XIV. The "Dispute" to be resolved by binding arbitration shall be whether each member who voted against approval complied with A through C of this Part II of Section 5. If the sole arbitrator determines that any such member did not comply with A through C of this Part II of Section 5, such member shall be deemed to have voted for approval and the vote of the International Authority on the matter in Dispute shall be revised accordingly.

Part III. After completion of the RFQ and RFP process, the winning proposal shall be presented to the International Authority for approval. The International Authority shall approve the winning proposal if it has received a report from the Fairness Monitor, previously approved by the International Authority under Part II of this Section 5, confirming compliance with the fairness requirements of the RFQ/RFP process and confirming that the process resulting in the selection of the winning proposal was consistent with the RFQ and RFP previously approved by the International Authority, and with the Crossing Agreement.

Part IV. Following approval of the winning proposal under Part III of this Section 5, a substantially final Public-Private Agreement (the "Substantially Final Agreement") shall be presented to the International Authority for approval. The International Authority shall approve the Substantially Final Agreement if it has received a report from the Fairness Monitor previously approved by the International Authority that the Substantially Final Agreement presented to the International Authority for approval is materially consistent with the draft of the Public-Private Agreement last approved by the International Authority and with the winning proposal approved by the International Authority. Such approval shall constitute authority for execution of the final Public-Private Agreement, substantially in the form as approved, but with such further changes which are not substantially inconsistent with this Crossing Agreement, including Schedule B, or the winning proposal approved by the International Authority.

Oversight. The International Authority shall maintain on-going monitoring of compliance by the Crossing Authority with the Crossing Agreement and the Concessionaire with Public-Private Agreement. The Crossing Authority shall report at least annually as to such compliance, including remediation taken for any failure to comply. The Crossing Authority at all times shall consider any advice given by the International Authority.

Information. Each of the Crossing Authority and the Michigan Parties shall provide the International Authority with information necessary for the International Authority to properly exercise the International Authority Oversight.

VII CANADIAN CROSSING LANDS

Section 1. Canada shall be responsible for the acquisition of the Canadian Crossing Lands and shall be responsible for the lease, licence or other grant of a property interest in the Canadian Crossing Lands to the Crossing Authority for the term of this Agreement for nominal consideration.

Section 2. Canada hereby agrees that, for the term of this Agreement, it shall not (a) sell or otherwise dispose of all or any part of the Canadian Crossing Lands or any interest therein, except for Permitted Encumbrances in respect of Canadian Crossing Project Activities, or (b) mortgage, hypothecate, pledge or otherwise create a security interest in all or any part of the Canadian Crossing Lands, except in accordance with this Agreement or except as otherwise agreed by Canada and the Michigan Parties.

Section 3. The Crossing Authority hereby agrees that, for the term of this Agreement, it shall not (a) sell or otherwise dispose of all or any part of the Canadian Crossing Lands or any interest therein, except in respect of the Canadian Crossing Project Activities, or (b) mortgage, hypothecate, pledge or otherwise create a security interest in all or any part of the Canadian Crossing Lands, except in respect of the Canadian Crossing Project Activities or except as otherwise agreed by the Crossing Authority and the Michigan Parties.

VIII

MICHIGAN CROSSING LANDS, MICHIGAN INTERCHANGE LANDS & US FEDERAL PLAZA LANDS

Section 1. The Michigan Parties, subject to approval by the International Authority and subject to funding by the Crossing Authority, shall be responsible for the acquisition, including by condemnation, if necessary, of the Michigan Crossing Lands and the Michigan Interchange Lands, except as otherwise agreed by the Crossing Authority and the Michigan Parties. The Michigan Parties, subject to approval by the International Authority and subject to funding by one or more US Federal Agencies, or to the extent not funded by US Federal Agencies, to funding by the Crossing Authority, shall be responsible for the acquisition, including by condemnation, if necessary, of the US Federal Plaza Lands, except as otherwise agreed by the Crossing Authority and the Michigan Parties.

Section 2. The Michigan Parties, subject to approval of the International Authority, shall be responsible for the lease, licence or other grant of a property interest in the Michigan Crossing Lands to the Crossing Authority, for the term of this Agreement for nominal consideration, in form and substance satisfactory to the Crossing Authority. The Michigan Parties, subject to approval by the International Authority, shall be responsible for the lease, licence, or other grant of a property interest in the US Federal Plaza Lands owned by a Michigan Party to the Crossing Authority or to a US Federal Agency, as determined by the Crossing Authority (in consultation with the appropriate Michigan Parties) and the appropriate US Federal Agencies, for such term and for such consideration, as the Crossing Authority shall determine in its sole discretion, and in form and substance satisfactory to the Crossing Authority. The Michigan Parties shall sell or otherwise dispose of all or any part of the Michigan Crossing Lands, the Michigan Interchange Lands, the US Federal Plaza Lands or any interest therein for Permitted Encumbrances at the request of the Crossing Authority in respect of Michigan Crossing Project Activities, Michigan Interchange Project Activities and US Federal Plaza Project Activities

Section 3. The Michigan Parties hereby agree that, for the term of this Agreement, they shall not (a) sell or otherwise dispose of all or any part of the Michigan Crossing Lands, the Michigan Interchange Lands, the US Federal Plaza Lands or any interest therein except at the request of the Crossing Authority for Permitted Encumbrances in respect of Michigan Crossing Project Activities, Michigan Interchange Project Activities and US Federal Plaza Project Activities, or (b) mortgage, hypothecate, pledge or otherwise create a security interest in all or any part of the Michigan Crossing Lands, the

Michigan Interchange Lands or the US Federal Plaza Lands, except in accordance with the provisions of this Agreement or except as otherwise agreed by the Crossing Authority and the Michigan Parties.

IX INTERNATIONAL CROSSING, MICHIGAN INTERCHANGE & US FEDERAL PLAZA

Section 1. The Crossing Authority shall be responsible for International Crossing Project Activities and shall be responsible for the design, construction, financing, operation and maintenance of the International Crossing, in compliance with Applicable Law, pursuant to Public-Private Agreement(s) with Concessionaire(s) procured by the Crossing Authority, subject to International Authority Oversight, except as otherwise agreed by the Crossing Authority and the Michigan Parties.

Section 2. The Crossing Authority shall be responsible for the improvement, operation and maintenance of the International Crossing in compliance with Applicable Law after the termination of the Public-Private Agreement(s) during the term of this Agreement, directly or pursuant to Public-Private Agreement(s) with Concessionaire(s) procured by the Crossing Authority, except as otherwise agreed by the Crossing Authority and the Michigan Parties.

Section 3. The Crossing Authority shall be responsible for Michigan Interchange Project Activities and shall be responsible for the design and construction of the Michigan Interchange prior to the International Crossing Opening Date, in compliance with Applicable Law, pursuant to Public-Private Agreement(s) with Concessionaire(s) procured by the Crossing Authority, subject to the International Authority Oversight, except as otherwise agreed by the Crossing Authority and the Michigan Parties.

Section 4. The Crossing Authority shall enter into discussions with the appropriate US Federal Agencies to determine whether and the extent to which US Federal Agencies or the Crossing Authority shall be responsible for one or more of the design, construction, finance and maintenance of the US Federal Plaza. Except to the extent that US Federal Agencies agree to be responsible for the design, construction, finance and maintenance of the US Federal Plaza, the Crossing Authority shall be responsible for the design, construction, finance and maintenance of the US Federal Plaza, subject to agreement with the appropriate US Federal Agencies, in compliance with Applicable Laws, pursuant to US Federal Plaza Public-Private Agreement(s) with Concessionaire(s) procured by the Crossing Authority.

Section 5.

(a) Unless the Governor of Michigan expressly waives this requirement in writing, the Crossing Authority and the Michigan Parties shall be responsible for working together, using their combined efforts in a cooperative manner consistent with the RFQ Process Requirements, RFP Process Requirements and Public-Private Agreement Requirements and the framework established in this Agreement, to ensure that, subject to

subsection (d) of this Section 5, all Canadian Contributions expended on Federal Aid Highway Project Activities prior to the International Crossing Opening Date comply with any and all applicable Federal Aid Eligibility Requirements. This joint responsibility shall be implemented as follows:

(i) The Michigan Parties shall be responsible for complying with all Federal Aid Eligibility Requirements applicable to Federal Aid Highway Project Activities for which the Michigan Parties are responsible under this Agreement.

(ii) Prior to the Crossing Authority undertaking any particular Federal Aid Highway Project Activity for which the Crossing Authority is responsible under this Agreement, the Crossing Authority shall request and MDOT shall be responsible for identifying and providing to the Crossing Authority (with the specificity and detail reasonably requested by the Crossing Authority) the specific Federal Aid Eligibility Requirements applicable to such Federal Aid Highway Project Activity. Subject to subsection (e) below, the Crossing Authority shall be responsible for complying with the Federal Aid Eligibility Requirements identified and provided by MDOT upon such request by the Crossing Authority.

(iii) As part of the consultation with the Michigan Parties pursuant to Article V, Section 4 of this Agreement, MDOT shall, upon request by the Crossing Authority, provide assistance in the development of the specific provisions to be included in the RFQ, RFP and Public-Private Agreement as necessary to comply with Federal Aid Eligibility Requirements or confirm that the specific provisions developed by the Crossing Authority are sufficient to comply with the Federal Aid Eligibility Requirements. Subject to subsection (e) below, the Crossing Authority shall be responsible for enforcing all provisions related to Federal Aid Eligibility Requirements that are included in the final RFQ, RFP and Public-Private Agreement after approval by the International Authority in accordance with Article VI, Section 5.

(iv) MDOT shall perform oversight activities consistent with the Stewardship and Oversight Agreement, dated November 29, 2011, between FHWA and MDOT, as amended from time to time, as necessary to assure FHWA of compliance with Federal Aid Eligibility Requirements, including all environmental, administrative, financial, procurement and contracting process requirements, in accordance with this Agreement. MDOT shall promptly inform the Crossing Authority of any change in US federal Law regarding Federal Aid Eligibility Requirements. MDOT shall provide the Crossing Authority a copy of any proposed amendment to the Stewardship and Oversight Agreement, dated November 29, 2011, between FHWA and MDOT which could affect Federal Aid Eligibility Requirements applicable to Federal Aid Highway Project Activities promptly after receipt of the proposed amendment from FHWA or promptly after such amendment is proposed by MDOT, as applicable. The Crossing Authority shall be responsible to supply or, to the extent applicable, to enforce the obligation of a Concessionaire to supply pursuant to a Public-Private Agreement,

all information reasonably requested by MDOT, whether before or after the International Crossing Opening Date, as necessary to comply with its responsibilities under this Section 5(a)(iv).

(b) There shall be no obligation that the Canadian Crossing Land Activities or Canadian Crossing Project Activities comply with any Federal Aid Eligibility Requirements applicable to Federal Aid Project Highway Activities. Nevertheless, the RFP and the Public-Private Agreement shall require that all iron and steel used in the bridge component of the Canadian Crossing, not including the plaza and approach, shall be produced in only the US and Canada, unless the Governor of Michigan has expressly waived this requirement or the requirements of subsection (a) of this Section 5 in writing. The Crossing Authority shall be responsible for enforcing this requirement in the RFP and the Public-Private Agreements. The Crossing Authority shall be responsible to supply or, to the extent applicable, to enforce the obligation of a Concessionaire to supply pursuant to a Public-Private Agreement, all information reasonably requested by MDOT, whether before or after the International Crossing Opening Date, as necessary to demonstrate compliance with this Section 5(b).

(c) If a Federal Aid Eligibility Requirement is not met due to the failure of the Crossing Authority to perform its obligations under this Section 5, the Crossing Authority shall not be liable for monetary damages or lost federal aid and specific performance of such obligations of the Crossing Authority shall be the exclusive remedy, unless otherwise agreed by the Crossing Authority. If a Federal Aid Eligibility Requirement is not met due to the failure of a Concessionaire to perform its obligations under a Public-Private Agreement, the Concessionaire shall not be liable for monetary damages or lost federal aid and specific performance of such obligations of the Concessionaire shall be the exclusive remedy, unless otherwise agreed by the Crossing Authority.

(d) Notwithstanding any other provision in this Agreement, all obligations under this Section 5 shall be deemed to have been met for all purposes if US \$550 million expended on Federal Aid Highway Project Activities prior to the International Crossing Opening Date are eligible as the non-federal share for federal aid matching purposes under the FHWA's Federal Aid Highway Program, except that the Parties shall remain obligated to perform their respective obligations under this Section 5 to the extent necessary for such US \$550 million to remain eligible as the non-federal share for federal aid matching purposes under the FHWA's Federal Aid Highway Program.

(e) Any Dispute with respect to this Section 5 of Article IX shall be subject to expedited arbitration pursuant to Article XIV, which arbitration shall not be commenced by any Party more than 5 years after the International Crossing Opening Date. If such Dispute is over whether something is a Federal Aid Eligibility Requirement or whether there has been compliance with a Federal Aid Eligibility Requirement, arbitration shall not be commenced unless the FHWA has been requested to make a determination and been provided sufficient opportunity to make such determination. A determination by the FHWA shall be given significant deference by the arbitrator. If the FHWA has determined that something is a Federal Aid Eligibility Requirement or that there has not

been compliance with a Federal Aid Eligibility Requirement, the arbitrator shall not make a decision contrary to the determination by the FHWA unless the arbitrator determines both (i) that something is not a Federal Aid Eligibility Requirement or that there has been compliance with a Federal Aid Eligibility Requirement and (ii) that compliance with the FHWA determination would be inconsistent in all material respects with B(i) through (iv) of Part I of Section 5 of Article VI.

Section 6. The Michigan Parties, subject to Applicable Law, shall be responsible for the Presidential Permit Application Activities. The Michigan Parties, subject to funding by the Crossing Authority and Applicable Law, shall be responsible for the Coast Guard Permit Application Activities and shall comply with all its obligations in respect of a presidential permit arising out of any such Presidential Permit Application Activities and all its obligations in respect of a bridge permit arising out of any such Coast Guard Permit Application Activities. The Crossing Authority shall be responsible for complying, and for causing the Concessionaire to comply, with the terms and conditions of such presidential permit applicable to activities for which the Crossing Authority is responsible under this Agreement. The Michigan Parties shall be responsible for complying with the terms and conditions of such presidential permit applicable to activities for which the Michigan Parties are responsible under this Agreement.

Section 7. The Michigan Interchange shall be part of the Interstate System in Michigan and shall be maintained as required by Applicable Law.

Section 8. The Michigan Parties, upon request of the Crossing Authority and subject to funding by the Crossing Authority and Applicable Law, shall be responsible for anything necessary or appropriate for the Michigan Crossing and the US Federal Plaza during the term of this Agreement and for the Michigan Interchange prior to the International Crossing Opening Date, to the extent the Crossing Authority determines that it is not in the best interests of the International Crossing for the Crossing Authority to be responsible for any such thing or to the extent that the Crossing Authority is not permitted by Applicable Law to be responsible for any such thing.

X

CROSSING AUTHORITY REVENUE, CANADIAN CONTRIBUTIONS & US FEDERAL AGENCIES CONTRIBUTIONS

Section 1. If Canada or any of the Michigan Parties receives any amounts that if received by the Crossing Authority would be Crossing Authority Revenue, Canada or any of the Michigan Parties, as the case may be, shall receive such amounts in trust for the Crossing Authority and shall promptly pay such amounts to the Crossing Authority.

Section 2. The Crossing Authority shall be entitled to set rates for and to collect, or cause to be collected, the Canadian Crossing Tolls for payment of costs referred to in Section 5 of this Article X, subject to Applicable Law.

Section 3. The Crossing Authority shall provide the means whereby users accessing the International Crossing from Michigan and returning to Michigan without leaving the International Crossing may do so without paying any Canadian Crossing Tolls.

Section 4. No Party may establish or collect tolls, fees or other charges for use of the Michigan Crossing or the Michigan Interchange.

Section 5. The Crossing Authority shall apply the Crossing Authority Revenue and the US Federal Agencies Contributions received in any calendar year to the payment of:

- (a) the International Crossing Costs, the Michigan Interchange Costs, the US Federal Plaza Costs, the Crossing Authority Costs and the International Authority Costs; and
- (b) all costs of anything necessary or appropriate for the Michigan Crossing, the Michigan Interchange or the US Federal Plaza, requested by the Crossing Authority, and undertaken by any of the Michigan Parties, in such calendar year.

Section 6. The Crossing Authority shall fund in any calendar year, subject to funding by Canada, the payment of:

- (a) the International Crossing Costs, the Michigan Interchange Costs, the US Federal Plaza Costs, the Crossing Authority Costs and the International Authority Costs; and
- (b) all costs of anything necessary or appropriate for the Michigan Crossing, the Michigan Interchange or the US Federal Plaza requested by the Crossing Authority, and undertaken by any of the Michigan Parties,

in such calendar year, to the extent that such costs are not funded by the Crossing Authority Revenue and US Federal Agencies Contributions, or any other source, in such calendar year.

Section 7. The Crossing Authority shall be permitted to fund the costs described in Section 6 by any means permitted under Applicable Law, including, without limitation, by gifts, grants, grants-in-aid, assistance funds, bequests, or contributions or pursuant to any other method or arrangement.

Section 8. To the extent Michigan, MDOT or MSF receives funding from the Crossing Authority or monies from any other source specifically for or in aid of the Michigan Crossing Lands Activities, the Michigan Interchange Lands Activities, the US Federal Plaza Land Activities, the Michigan Crossing Project Activities, the Michigan Interchange Project Activities or the US Federal Plaza Project Activities, each of Michigan, MDOT and MSF shall deploy such funding or monies strictly as specified,

designated or restricted by the Crossing Authority or any such source, as the case may be, and in compliance with Applicable Law.

Section 9. Without limiting the generality of Section 8, to the extent MDOT receives funding from the Crossing Authority or monies from any other Party specifically for or in aid of the Michigan Crossing Lands Activities, the Michigan Interchange Land Activities, the US Federal Plaza Lands Activities, the Michigan Crossing Project Activities, the Michigan Interchange Project Activities or the US Federal Plaza Project Activities, MDOT hereby commits to contribute such funding or monies, respectively, in furtherance of such activities and irrevocably pledges such funding or monies, respectively, in satisfaction of such commitment for the maximum fixed period of time permitted by Applicable Law.

Section 10. An escrow agent, paying agent, trustee or custodian may be retained for the purpose of receiving, holding, disbursing or paying any funding or monies by or on behalf of the Crossing Authority or any other source, respectively, in accordance with this Agreement.

Section 11. The Michigan Parties shall not be required to fund any International Crossing Costs, Michigan Interchange Costs, US Federal Plaza Costs, Crossing Authority Costs or International Authority Costs.

XI LIABILITIES

Section 1. Canada shall not be liable for acts or omissions of the Crossing Authority (except as otherwise specifically agreed by Canada in its sole discretion) or the Michigan Parties. The Crossing Authority shall not be liable for acts or omissions of Canada or the Michigan Parties. The Michigan Parties shall not be liable for acts or omissions of Canada or the Crossing Authority.

Section 2. All liabilities of the Crossing Authority to third parties arising out of any one or more of the design, construction and financing of the International Crossing, the Michigan Interchange or US Federal Plaza shall be satisfied by the Crossing Authority.

Section 3. All liabilities of the Crossing Authority to third parties arising out of any one or more of the administration, operation, maintenance and improvement of the International Crossing or the US Federal Plaza shall be satisfied by the Crossing Authority.

Section 4. Any Claim by a third party against the Crossing Authority arising out of any one or more of the design, construction and financing of the Canadian Crossing shall be made in Ontario courts having jurisdiction over the Claim.

Section 5. Any Claim by a third party against the Crossing Authority arising out of any one or more of the administration, operation, maintenance and improvement of the Canadian Crossing shall be made in Ontario courts having jurisdiction over the Claim.

Section 6. Any Claim by a third party against the Crossing Authority arising out of any one or more of the design, construction and financing of the Michigan Crossing, the Michigan Interchange or the US Federal Plaza and any Claim by a third party against the Crossing Authority arising out of any one or more of the administration, operation, maintenance and improvement of the Michigan Crossing or the US Federal Plaza shall be made in Michigan courts having jurisdiction over the Claim or in federal courts sitting in Michigan having jurisdiction over the Claim, as the case may be.

XII INSURANCE

The Crossing Authority shall be responsible for insurance coverage necessary to protect against damage to International Crossing. The Crossing Authority shall be responsible for such other insurance coverage as may be necessary for the benefit of itself, Canada, the Michigan Parties and the International Authority and their members and employees to protect against claims or liabilities arising out of the performance of this Agreement. Canada, the Crossing Authority, the Michigan Parties and the International Authority and their successors, members and employees shall be named as insured parties in those insurance policies to protect against claims or liabilities arising out of the performance of this Agreement, to the extent that such insurance is available at a commercially reasonable cost. Any claims or liabilities in excess of available insurance proceeds shall not be a responsibility of Canada (except as otherwise agreed by Canada in its sole discretion) or the Michigan Parties.

XIII RECORDS AND AUDITS

Section 1. The Crossing Authority shall be responsible for the maintenance of proper, complete and accurate books and records, inter alia, for Crossing Authority Revenue, US Federal Agencies Contributions, International Crossing Costs, Michigan Interchange Costs, US Federal Plaza Costs, Crossing Authority Costs, Canadian Contributions and Unrecouped Canadian Contributions.

Section 2. Canada shall be responsible for the appointment of the Auditor for the Crossing Authority.

Section 3. The Crossing Authority shall be responsible for the preparation and delivery to Canada and to the Michigan Parties, within three months after each calendar year end, of financial statements of the Crossing Authority for the applicable calendar year, including, as applicable, a balance sheet, a statement of earnings and retained earnings, and a statement of source and application of funds, as at such calendar year end, prepared in accordance with GAAP and audited by the Auditor appointed by the Crossing Authority. The Crossing Authority shall also be responsible for the preparation and delivery to Canada and to the Michigan Parties, within three months after each calendar year end, of a statement of Canadian Contributions and statement of Unrecouped Canadian Contributions, prepared in accordance with the provisions of this Agreement and audited by the Auditor appointed by the Crossing Authority.

Section 4. The International Authority shall be responsible for the preparation and delivery to Canada and to the Michigan Parties, as soon as reasonably possible after each calendar year end, of financial statements of the International Authority for the applicable calendar year, including, as applicable, a balance sheet, a statement of earnings and retained earnings, and a statement of source and application of funds, prepared in accordance with GAAP and audited by the Auditor appointed by the International Authority.

Section 5. The chairperson of the International Authority shall be responsible for the appointment of the Auditor for the International Authority.

Section 6. The International Authority shall be responsible for the preparation and delivery to Canada and to the Michigan Parties, as soon as reasonably possible after each calendar year end, of financial statements of the International Authority for the applicable calendar year, including, as applicable, a balance sheet, a statement of earnings and retained earnings, and a statement of source and application of funds, prepared in accordance with GAAP and audited by the Auditor appointed by the International Authority.

XIV DISPUTE RESOLUTION

Any dispute, controversy or claim (including a dispute giving rise to a deadlock, other than a post member removal deadlock) arising out of or relating to this Agreement or the breach, termination or invalidity of this Agreement (in Article VI, Article IX (Section 5), and in this Article XIV, a “**Dispute**”), shall be resolved by binding arbitration. Arbitration shall be settled in accordance with the UNCITRAL Arbitration Rules in effect on the Initial Execution Date, except as provided in this Agreement or otherwise agreed by the Crossing Authority and the Executive Office of the Governor of Michigan. The Executive Office of the Governor of Michigan shall represent the Michigan Parties in all respects in any arbitration. All Parties consent to any Disputes being so resolved.

The UNCITRAL Arbitration Rules can currently be found at:

http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2010Arbitration_rules.html

Appointment of Arbitrators

Within thirty (30) days after the Effective Date, the Crossing Authority shall designate two (2) arbitrators and the Executive Office of the Governor of Michigan shall designate two (2) arbitrators (“**Designated Arbitrators**”). The Designated Arbitrators shall agree in writing to accept such appointments and to abide by the provisions of this Article XIV.

Within sixty (60) days after the Effective Date, the four (4) Designated Arbitrators shall designate three (3) neutral arbitrators (“**Neutral Arbitrators**”). Neutral Arbitrators shall agree in writing to accept such appointments and to abide by the provisions of this Article XIV.

The Crossing Authority and the Executive Office of the Governor of Michigan may remove its Designated Arbitrators at any time. Within thirty (30) days after any resignation by or removal of a Designated Arbitrator, the Crossing Authority and the

Executive Office of the Governor of Michigan shall replace its Designated Arbitrator and give notice to the other Parties. The Crossing Authority and the Executive Office of the Governor of Michigan may remove a Neutral Arbitrator by mutual agreement. Within thirty (30) days after any resignation or removal of a Neutral Arbitrator, the four (4) Designated Arbitrators shall replace the Neutral Arbitrator.

Standard Dispute Arbitration Procedures

Except as otherwise agreed by the Crossing Authority and the Executive Office of the Governor of Michigan, and except as otherwise provided below with respect to expedited dispute resolution, the following dispute arbitration procedures shall apply to any Dispute.

An arbitration under the standard dispute resolution procedures shall be commenced by the Crossing Authority or by the Executive Office of the Governor of Michigan giving Notice of a Dispute to the other. The Notice shall state the basis upon which the standard dispute resolution procedures apply pursuant to the provisions of this Article XIV.

The arbitration shall be conducted by a three-arbitrator panel. Within forty-eight (48) hours following the commencement of an arbitration, each of the Crossing Authority and the Executive Office of the Governor of Michigan must send notice to the other of their choice of a Designated Arbitrator to serve on the panel, and the Crossing Authority and the Executive Office of the Governor of Michigan shall by lot choose which of the Neutral Arbitrators shall act as the third arbitrator and chair of the arbitral panel, and if the Neutral Arbitrator so chosen is not available to act as the third arbitrator, which of the remaining two Neutral Arbitrators shall act as the third arbitrator and chair of the arbitral panel. If neither Neutral Arbitrator chosen by lot is available to act as the third arbitrator, the third Neutral Arbitrator shall act as the third arbitrator and chair of the arbitral panel.

Unless otherwise agreed by the Crossing Authority and the Executive Office of the Governor of Michigan, the arbitration shall be held in Windsor, Ontario, if the Executive Office of the Governor of Michigan initiates the arbitration, and in Detroit, Michigan, if the Crossing Authority initiates the arbitration. The arbitral panel shall have the power to establish any procedures that are not inconsistent with this Agreement or the UNCITRAL Arbitration Rules.

The arbitrators shall have the power to proceed with the arbitration and deliver the award notwithstanding the default by any Party in respect of any procedural order made by the arbitrators.

The arbitral panel may grant such remedy or relief that is just and equitable and within the scope of this Agreement and available under Applicable Law, except as otherwise provided in Section 5 of Article IX. The arbitral panel shall not award any remedy or relief other than a declaration, an injunction, or specific performance of a contract, unless a declaration, an injunction, or specific performance of a contract would not provide adequate relief or would be otherwise impractical, in which case the arbitral panel may award any other relief or remedy that is just and equitable and within the scope of this

Agreement and available under Applicable Law, except as otherwise provided in Section 5 of Article IX.

The arbitrators' decision shall be by majority.

The decision of the arbitral panel shall be final and binding and no appeal shall lie therefrom. The Parties waive their right to any form of recourse against any award rendered by the arbitral panel to any court or other competent authority, insofar as such waiver can validly be made under Applicable Law. Subject to Applicable Law, judgment upon the award rendered by the arbitral panel may be entered in any court having jurisdiction.

Expedited Dispute Resolution Procedures

Except as otherwise agreed by the Crossing Authority and the Executive Office of the Governor of Michigan, expedited dispute resolution procedures shall apply to any Dispute with respect to Articles V (Sections 4 through 6), VI, VII, VIII or IX of this Agreement until the International Crossing Opening Date and shall apply to any other Dispute when agreed by the Crossing Authority and the Executive Office of the Governor of Michigan. The Crossing Authority and the Executive Office of the Governor of Michigan expressly agree to waive an Oral Hearing and agree that the expedited dispute resolution procedure shall be conducted solely on the basis of written submissions.

An arbitration under the expedited dispute resolution procedures shall be commenced by the Crossing Authority or by the Executive Office of the Governor of Michigan giving Notice of a Dispute to the other. The Notice shall state the basis upon which the expedited dispute resolution procedures apply pursuant to the provisions of this Article XIV.

The arbitration shall be conducted by a sole arbitrator. Within forty-eight (48) hours following receipt of the commencement of the arbitration, the Crossing Authority and the Executive Office of the Governor of Michigan shall by lot choose which of the Neutral Arbitrators shall act as the sole arbitrator under the expedited dispute resolution procedures, and if the Neutral Arbitrator so chosen is not available to act as the sole arbitrator, which of the two remaining Neutral Arbitrators shall act as sole arbitrator. If neither Neutral Arbitrator chosen by lot is available to act as sole arbitrator, the third Neutral Arbitrator shall act as sole arbitrator.

The sole arbitrator shall have power to establish any procedures that are not inconsistent with this Agreement or the UNCITRAL Arbitration Rules, including limits on the length of any submissions under the expedited dispute resolution procedures.

Except as otherwise agreed by the Crossing Authority and the Executive Office of the Governor of Michigan, the following timetable shall apply sequentially, following the selection of the sole arbitrator:

Notice of claim and remedies sought

Two (2) Business Days

Statement of defence and counterclaims (including any alternative language pursuant to Article VI, Section 5, Part I, C.ii.)	Two (2) Business Days
Response to counterclaims and statement of affirmative defences (including any alternative language pursuant to Article VI, Section 5, Part I, C.ii.)	Two (2) Business Days
Voluntary exchange of relevant non-privileged documents and information to be used in support of claims and defences	Three (3) Business Days
Submission of concise statement of position, including summary of facts and statement of applicable law and the basis of the relief sought and supporting exhibits	Seven (7) Business Days
Oral Hearing	None
Final Award	Seven (7) Business Days

For greater certainty, the expedited dispute resolution procedures shall be undertaken and completed within twenty-one (21) Business Days, unless a counterclaim is made, when the process shall be undertaken and completed within twenty-three (23) Business Days.

The sole arbitrator shall have the power to proceed with the arbitration and deliver the award notwithstanding the default by any Party in respect of any procedural order made by the arbitrator.

The sole arbitrator may grant such remedy or relief that is just and equitable and within the scope of this Agreement and available under Applicable Law, except as otherwise provided in Section 5 of Article IX. The sole arbitrator shall not award any remedy or relief other than a declaration, an injunction, or specific performance of a contract, unless a declaration, an injunction, or specific performance of a contract would not provide adequate relief or would be otherwise impractical, in which case the sole arbitrator may award any other relief or remedy that is just and equitable and within the scope of this Agreement and available under Applicable Law, except as otherwise provided in Section 5 or Article IX.

The decision of the sole arbitrator shall be final and binding and no appeal shall lie therefrom. The Parties waive their right to any form of recourse against any award rendered by the sole arbitrator to any court or other competent authority, insofar as such waiver can validly be made under Applicable Law. Subject to Applicable Law, judgment upon the award rendered by the sole arbitrator may be entered in any court having jurisdiction.

Exclusive Remedy

The provisions of this Article XIV shall be the sole and exclusive remedy of the Parties with respect to any Dispute. The Parties agree not to bring, or cause to be brought, in a court of law any action, proceeding, or cause of action whatsoever with respect to any Dispute, other than as necessary to enforce the award or decision of the arbitral panel or the sole arbitrator acting under this Agreement.

XV GOVERNING LAW

The provisions of this Agreement with respect to the authorization and execution of this Agreement by the Michigan Parties, the establishment of the International Authority and the interpretation of any provisions of the Laws of Michigan and the Laws of the United States of America shall be governed by and construed in accordance with the Laws of Michigan and the Laws of the United States of America. All other provisions of this Agreement shall be construed in accordance with the Laws of the Province of Ontario and the Laws of Canada. No provision of this Agreement shall be construed as a waiver of governmental or sovereign immunity by Canada or Michigan.

XVI EFFECTIVE DATE; TERM AND TERMINATION

Section 1. **Initial Execution Date.** After the Initial Execution Date, each Party shall cooperate with the other Parties in good faith, and shall use commercially reasonable efforts, to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper, advisable or convenient to carry out the intent and purpose of this Agreement in accordance with and subject to the terms and conditions of this Agreement.

Section 2. **Effective Date.** This Agreement shall not be effective and binding on the Parties until the Effective Date.

Section 3: **Term.** This Agreement shall remain in effect until and shall expire on the later of (a) one hundred (100) years after the Effective Date, and (b) the first Canadian Contributions Recoupment Date, unless otherwise terminated in accordance with the provisions of this Agreement prior to the expiration of the term of this Agreement. This Agreement may be extended upon agreement by all Parties.

Section 4. **Rights of Termination.**

The Parties may terminate this Agreement by mutual agreement.

Canada and the Crossing Authority, in their sole discretion, may terminate this Agreement at any time prior to commencement of construction of the bridge component of the International Crossing.

The Michigan Parties, in their sole discretion, may terminate this Agreement if the Crossing Authority has not entered into this Agreement within one (1) year after the Initial Execution Date or if the Crossing Authority has not entered into a Public-Private Agreement within ten (10) years after the Effective Date.

Canada and the Crossing Authority, in their sole discretion, may terminate this Agreement at any time after the occurrence of an event or a circumstance, other than an event or circumstance within the sole control of Canada or the Crossing Authority, that (i) renders a Party unable to carry out all or substantially all of its then current obligations pursuant to this Agreement so as to frustrate the overall purpose and intent of this Agreement; (ii) results in the termination of any Public-Private Agreement or US Federal Plaza Public-Private Agreement and in the sole opinion of Canada and the Crossing Authority it would be commercially unreasonable for the Crossing Authority to enter into another Public-Private Agreement or another US Federal Plaza Public-Private Agreement, as the case may be; or (iii) causes damage or destruction to the International Crossing, the Michigan Interchange or the US Federal Plaza or a substantial part of any thereof to such extent that in the sole opinion of Canada and the Crossing Authority it would be commercially unreasonable to repair and restore the International Crossing, or if Michigan has not agreed to expeditiously repair and restore the Michigan Interchange at its sole cost and expense, or if the US Federal Agencies have not agreed to expeditiously repair and restore the US Federal Plaza at their sole cost and expense, as the case may be, to the condition immediately before the damage or destruction.

Section 5. Rights and Obligations on Termination and Expiration.

Upon expiration of the term of this Agreement or upon termination of this Agreement in accordance with the provisions of this Agreement, in addition to any other rights and remedies provided for under this Agreement, any lease or licence of the Michigan Crossing Lands to the Crossing Authority shall terminate; the Crossing Authority shall retain all assets, liabilities and obligations of the Crossing Authority in respect of the Canadian Crossing; except as otherwise provided in this Section 5, the Michigan Parties shall assume all liabilities and obligations of the Crossing Authority in respect of the Michigan Crossing; and all assets net of liabilities of the International Authority shall be distributed equally to the Crossing Authority and collectively to the Michigan Parties, and the International Authority shall thereupon be deemed dissolved.

Upon termination of this Agreement in accordance with the provisions of this Agreement, notwithstanding any other provisions of this Agreement, the Parties shall negotiate in good faith an agreement with respect to the disposition of the Michigan Crossing Lands, the Michigan Interchange Lands, and the US Federal Plaza Lands, and, until the Parties agree upon the disposition of the Michigan Crossing Lands, the Michigan Interchange Lands and the US Federal Plaza Lands, the Michigan Parties shall not (a) sell or otherwise dispose of all or any part of the Michigan Crossing Lands, the Michigan Interchange Lands, the US Federal Plaza Lands or any interest therein, (b) use or permit the use of all or any part of the Michigan Crossing Lands, the Michigan Interchange Lands or the US Federal Plaza Lands, or (c) mortgage, hypothecate, pledge or otherwise create a security interest in all or any part of the Michigan Crossing Lands, the Michigan Interchange Lands or the US Federal Plaza Lands, except (i) a use of US Federal Plaza Lands by US Federal Agencies or a disposition of an interest in US Federal Plaza Lands to US Federal Agencies, each as provided for and in accordance with a lease or licence of the US Federal Plaza Lands to US Federal Agencies or (ii) as otherwise agreed by the Crossing Authority and the Michigan Parties.

Upon termination of this Agreement in accordance with the provisions of this Agreement, notwithstanding any other provisions of this Agreement, the Michigan Parties shall reimburse all unexpended monies funded by the Crossing Authority to any of the Michigan Parties for any Michigan Crossing Land Activities, Michigan Interchange Land Activities and US Federal Plaza Land Activities, provided that unless Canada and the Crossing Authority shall have terminated this Agreement upon the occurrence of an event or circumstance, within the control of one or more of the Michigan Parties, that renders a Party unable to carry out all or substantially all of its then current obligations pursuant to this Agreement so as to frustrate the overall purpose and intent of this Agreement, the Crossing Authority shall reimburse the Michigan Parties for all costs and expenses incurred by any of the Michigan Parties arising from actions taken by any of the Michigan Parties prior to the termination of this Agreement upon the request of the Crossing Authority and in accordance with Applicable Law, for any Michigan Crossing Land Activities, Michigan Interchange Land Activities and US Federal Plaza Land Activities.

XVII CONFIDENTIALITY

Section 1. **Confidential Information to International Authority.** The Parties agree that all confidential information provided to the International Authority, including information provided under Sections 4 and 5 of Article V and under Parts I to IV of Section 5 of Article VI, shall remain confidential to the maximum extent permitted by Applicable Law. Before any confidential information is delivered or made available to the International Authority, the provider of the information and the International Authority shall agree to a process or method for maintaining confidentiality of all confidential information provided to the maximum extent permitted by Applicable Law.

Section 2. **Confidential Information to the Parties.** The Parties agree that all confidential information provided to any Party, including information provided under Sections 4 and 5 of Article V, shall remain confidential to the maximum extent permitted by Applicable Law. Before any confidential information is delivered or made available to any Party, the provider of the confidential information and the recipient of the confidential information shall agree to a process or method for maintaining confidentiality of all confidential information provided to the maximum extent permitted by Applicable Law.

Section 3. **Confidential Information in Arbitration Proceedings.** The Parties agree that, to the maximum extent permitted by Applicable Law, the Parties, the International Authority and the arbitrators shall keep confidential any arbitration proceeding and Canada, the Crossing Authority and the Executive Office of the Governor of Michigan shall keep confidential all materials and information delivered to or maintained by it related to any such arbitration proceeding, including any decision of the arbitrators. All materials and information related to any arbitration proceeding shall be exchanged and

maintained exclusively by and through Canada, the Crossing Authority and the Executive Office of the Governor of Michigan.

Section 4. **Confidential Information to Others.** The Parties agree that a recipient's obligation of confidentiality shall include all staff, attorneys and consultants of the recipient who may receive such information.

XVIII GENERAL PROVISIONS

Section 1. **Notices.** All notices given under this Agreement ("**Notice**") shall be in writing and shall be delivered personally or by courier addressed:

- (a) in the case of either of Canada and the Crossing Authority to

Minister of Transport
Transport Canada
Place de Ville, Tower C
330 Sparks Street
Ottawa, Ontario
K1A 0N5

and

Crossing Authority
c/o Minister of Transport
Transport Canada
Place de Ville, Tower C
330 Sparks Street
Ottawa, Ontario
K1A 0N5

or to such other address or addressed in such other manner as the Minister of Transport may from time to time designate in writing to the Michigan Parties; and

- (b) in the case of any of the Michigan Parties to

Governor of Michigan
State of Michigan
Romney Building
111 South Capitol Avenue
Lansing, Michigan 48933

With copy to:
Michigan Department of Attorney General

G. Mennen Williams Building
525 West Ottawa Street
Lansing, Michigan 48090
Attention: Attorney General

and

Michigan Department of Transportation
Van Wagner Building
425 West Ottawa Street
Lansing, Michigan 48909
Attention: Director

and

Michigan Strategic Fund
200 North Washington Square
Lansing, Michigan 48913
Attention: President and Chair

or to such other address or addressed in such other manner as the Governor of Michigan may from time to time designate in writing to Canada and the Crossing Authority.

Any Notice shall be considered to have been received on the date of delivery.

Section 2. **No Assignment.** No Party may assign this Agreement or any of its rights, duties or obligations thereunder and any attempt by a Party to assign this Agreement or any of its rights, duties or obligations under this Agreement shall be null and void.

Section 3. **Amendments.** This Agreement may be amended, supplemented or restated by a written agreement signed by all Parties. No amendment, supplement, or restatement to or of this Agreement shall have any force or effect unless it is in writing and unless signed by all Parties and, except as otherwise permitted by Applicable Law, approved by the U.S. Secretary of State.

Section 4. **Waiver.** The failure of any Party to insist in any one instance upon the strict performance by any other Party of its obligations under this Agreement shall not constitute a waiver or relinquishment of any such obligations as to any other instances, and the same shall continue in full force and effect. No covenant or condition of this Agreement may be waived by any Party except by written consent of that Party, and forbearance or indulgence of that Party in any regard whatsoever and no matter how long shall not constitute a waiver of the covenant or condition until performed or waived in writing, and that Party shall be entitled to invoke any remedy available to that Party under this Agreement or by Applicable Law, despite the forbearance or indulgence.

Section 5. **Entire Agreement.** This Agreement shall constitute the entire agreement between the Parties in respect of the subject matter and supersedes and revokes all negotiations, arrangements, letters of intent, representations and information conveyed, whether oral or in writing, between the Parties or their representatives or any other Person purporting to represent one or more of the Parties.

Section 6. **No Partnership.** Except as specifically provided to the contrary, each of the Parties expressly disclaims any intention to create an agency, partnership, joint venture or joint enterprise. It is understood, acknowledged and agreed that, except as specifically provided to the contrary, nothing contained in this Agreement nor any acts of any of the Parties shall constitute or be deemed to constitute any of the Parties as partners, joint venturers or principal and agent in any way or for any purpose. None of the Parties shall hold itself out to be a partner of or joint venturer with any other Party. Except as specifically provided to the contrary, no Party shall have the authority to act for or to assume any obligations or responsibility on behalf of any other Party.

Section 7. **No Delegation.** Except as specifically provided to the contrary, nothing contained in this Agreement shall constitute or be construed or be deemed to constitute or be construed as a delegation by Canada of any of the powers, duties or functions of Canada to the Crossing Authority or a delegation by Michigan of any of its sovereign or constitutional powers to either of Canada or the Crossing Authority.

Section 8. **No Rights of Third Parties.** Nothing in this Agreement is intended or shall be construed to confer or give any Person, other than the Parties and their respective successors and the International Authority, any rights or remedies under or by reason of this Agreement.

Section 9. **Severability.** If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction or in respect of any Party, the illegality, invalidity or unenforceability of that provision in that jurisdiction or in respect of that Party shall not affect:

- (a) the legality, validity or enforceability of that provision in any other jurisdiction or in respect of the other Parties, or
- (b) the legality, validity or enforceability of the remaining provisions of this Agreement.

If any provision of this Agreement is or becomes illegal, invalid or unenforceable in respect of the International Authority, the Parties shall negotiate in good faith to replace the provisions of this Agreement in respect of the International Authority with provisions that provide substantially the same rights and obligations for the Parties as the current provisions in respect of the International Authority.

To the extent necessary or appropriate for this Agreement or any provision thereof to be enforceable under Applicable Law, this Agreement shall be considered and deemed to be a separate agreement by and among Canada and the Crossing Authority, on the one hand, and each of Michigan, MDOT and MSF, on the other hand, with respect to any power,

privilege, or authority that Canada and the Crossing Authority, on the one hand, and each of Michigan, MDOT and MSF, on the other hand, share in common and that each might exercise separately.

Section 10. **Time of Essence.** Time shall be of the essence of this Agreement.

Section 11. **Further Assurances.** Each Party shall, from time to time, promptly execute and deliver and take all further action as may be reasonably necessary or appropriate to give effect to the provisions and intent of this Agreement and to complete the transactions contemplated in this Agreement.

Section 12. **Counterparts.** This Agreement and any amendment, supplement, restatement or termination of any provision of this Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.

Section 13. **Survival.** The provisions of Articles III; IV; XI in respect of acts or omissions prior to the expiration or termination of this Agreement; XIV; XV; XVI, Section 5; XVII and XVIII, in each case as and to the extent such provision has been modified or superceded through Schedule A having become effective prior to the expiration or termination of this Agreement for any reason whatsoever, shall survive the expiration or termination of this Agreement for any reason whatsoever.

Section 14. **Post Canadian Contributions Recoupment Date.** Schedule A shall not be effective and apply to this Crossing Agreement until satisfaction of the requirements specified in Section 1 of Schedule A. The Parties do not anticipate that the first Canadian Contributions Recoupment Date will occur until at least fifty (50) years after the Effective Date. After Schedule A is effective and applies to this Crossing Agreement, if any provision of Schedule A conflicts with any other provision of this Agreement, the provision of Schedule A shall prevail and the provisions of this Agreement shall be modified or superceded accordingly.

Section 15. **Michigan Secretary of State.** After the Initial Execution Date, Michigan shall cause an original executed copy of this Agreement to be filed with the Michigan Secretary of State, Office of the Great Seal and with the Clerk of Ingham County, in the State of Michigan.

EXECUTED by Canada and Michigan on this 15th day of June, 2012.

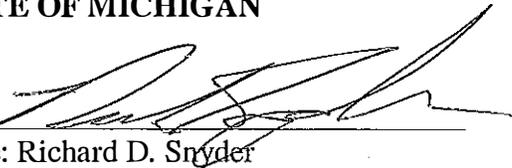
**HER MAJESTY THE QUEEN
IN RIGHT OF CANADA, as
represented by the Minister of
Transport**

By:  _____

Name: The Honourable Denis Lebel

Title: Minister of Transport

STATE OF MICHIGAN

By:  _____

Name: Richard D. Snyder

Title: Governor

EXECUTED by the Crossing Authority on this _____ day of _____, 20__

By: _____

Name:

Title: Chair & President

EXECUTED by the Michigan Department of Transportation on this _____ day of _____, 20__

**MICHIGAN DEPARTMENT OF
TRANSPORTATION**

By: _____

Name:

Title: Director

EXECUTED by the Michigan Strategic Fund on this _____ day of _____, 20__

MICHIGAN STRATEGIC FUND

By: _____

Name:

Title: President & Chair

SCHEDULE A
CROSSING AGREEMENT
POST CANADIAN CONTRIBUTIONS RECOUPMENT DATE

Section 1. **Effectiveness.** This Schedule shall be effective and apply to this Crossing Agreement as at and from the time that

- (a) the Michigan Legislature (unless otherwise authorized under Michigan Law) shall have sanctioned the collection by the Crossing Authority of International Crossing Tolls in accordance with this Agreement and the funding by the Michigan Parties of 50% of the amount, if any, by which the aggregate of International Crossing Costs, US Federal Plaza Costs, Crossing Authority Costs and the International Authority Costs, subject to any increase or decrease approved by the International Authority in any reserves reasonably required for ongoing and projected International Crossing Costs, US Federal Plaza Costs, Crossing Authority Costs, and International Authority Costs, exceeds the aggregate of Crossing Authority Revenue and US Federal Agency Contributions; and
- (b) within six (6) months after
 - i. any Canadian Contributions Recoupment Date, the Michigan Parties shall have agreed with Canada and the Crossing Authority, in form and substance satisfactory to Canada and the Crossing Authority acting reasonably, to the collection by the Crossing Authority of International Crossing Tolls in accordance with this Agreement and to the funding by the Michigan Parties of fifty percent (50%) of the amount, if any, by which the aggregate of International Crossing Costs, US Federal Plaza Costs, Crossing Authority Costs and International Authority Costs, subject to any increase or decrease approved by the International Authority in any reserves reasonably required for ongoing and projected International Crossing Costs, US Federal Plaza Costs, Crossing Authority Costs, and International Authority Costs, exceeds the aggregate of Crossing Authority Revenue and US Federal Agency Contributions; or
 - ii any calendar year end, the Michigan Parties shall have paid the Crossing Authority an amount equal to fifty percent (50%) of the Unrecouped Canadian Contributions as at such calendar year end and the Michigan Parties shall have agreed with Canada and the Crossing Authority, in form and substance satisfactory to Canada and the Crossing Authority acting reasonably, to the collection by the Crossing Authority of International Crossing Tolls in accordance with this Agreement and to the funding by the Michigan Parties of fifty percent (50%) of the amount, if

any, by which the aggregate of International Crossing Costs, US Federal Plaza Costs, Crossing Authority Costs and International Authority Costs, subject to any increase or decrease approved by the International Authority in any reserves reasonably required for ongoing and projected International Crossing Costs, US Federal Plaza Costs, Crossing Authority Costs, and International Authority Costs, exceeds the aggregate of the Crossing Authority Revenue and the US Federal Agency Contributions.

Section 2. **Paramountcy.** If any provision of this Schedule A conflicts with any provision of this Crossing Agreement (other than this Schedule A), the provision of this Schedule A shall prevail and the provisions of the Crossing Agreement shall be modified or superceded accordingly.

Section 3. **Interpretation.** When used in this Crossing Agreement as amended by this Schedule A, the following words and terms have the following meanings unless the context clearly indicates a different meaning or intent:

- (a) **“International Authority Oversight”** means the oversight by the International Authority in accordance with the provisions of Section 5 of Article VI of this Agreement together with oversight by the International Authority to monitor the improvement, operation, maintenance and use of the International Crossing and to approve rates for the International Crossing Tolls.
- (b) **“Crossing Authority Revenue”** means all revenue received by the Crossing Authority (other than a payment by the Michigan Parties pursuant to Section 1(b)(ii) of this Schedule A and other than US Federal Agencies Contributions), including monies received from Canada or the Michigan Parties, related to the International Crossing or the US Federal Plaza including International Crossing Tolls, all revenue received arising from any Public-Private Agreement or any US Federal Plaza Public-Private Agreement, interest or other money on account of investments by the Crossing Authority, and proceeds of insurance in the event of damage or destruction of any portion of the International Crossing or the US Federal Plaza.
- (c) **“Imputed Cost of Unrecouped Party Contributions”** means, at each calendar year end, the aggregate amount accrued on Unrecouped Party Contributions in Canadian dollars, during such calendar year, calculated at a rate per annum equal to the Government of Canada benchmark long-term bond yield effective on the last business day of the previous calendar year end, as published by the Bank of Canada (Weekly Financial Statistics, series V39056), plus 100 basis points, and compounded annually, or at such other rate as shall be agreed upon, from time to time, by the Parties.

- (d) **“International Crossing Tolls”** means the tolls, fees or other charges for use of the International Crossing.
- (e) **“Unrecouped Party Contributions”** means an amount equal to the Unrecouped Canadian Contributions as at the calendar year end immediately prior to the date this Schedule becomes effective and means, at each calendar year end thereafter, such amount plus the aggregate amount of Imputed Cost of Unrecouped Party Contributions compounded at any calendar year thereafter minus any surplus applied or paid equally to the Crossing Authority and to the Michigan Parties pursuant to Section 4(f)(iv) of this Schedule A.

Responsible for. The term **“responsible for”** shall be interpreted to mean to undertake or cause to be undertaken, the relevant activities and be liable for all costs and expenses in respect thereof; in the case of Canada, subject, to all procedures and approvals required by Canada for the payment of funds, including appropriation by the Parliament of Canada, to pay for such costs and expenses; in the case of the Crossing Authority, subject to availability of Crossing Authority Revenue to pay for such costs and expenses and US Federal Agencies Contributions to pay for US Federal Plaza Costs, as applicable; and, in the case of the Michigan Parties, subject to all procedures and approvals required by Michigan for the payment of funds, including appropriation by the Michigan Legislature, to pay for such costs and expenses.

Fund/Funding. The terms **“fund”** and **“funding”** shall be interpreted to mean to provide all monies required to pay for the costs and expenses incurred in respect of the relevant activities without any requirement for reimbursement (except for US Federal Agencies Contributions as provided for in this Agreement); in the case of Canada and the Michigan Parties, subject to all procedures and approvals required by Canada or Michigan, as the case may be, for the payment of funds, including appropriation by the Parliament of Canada or the Michigan Legislature, respectively; and, in the case of the Crossing Authority, subject to availability of Crossing Authority Revenue or US Federal Agencies Contributions to pay for US Federal Plaza Costs, as applicable. The terms **“fund”** and **“funding”** shall also be interpreted to mean to provide real or personal property or services in lieu of monies in respect of the relevant activities without any requirement for reimbursement, subject to all procedures and approvals required by Canada or Michigan, as the case may be, for the gift, contribution or delivery of real or personal property or services.

Section 4. Crossing Authority Revenue.

- (a) Any Canadian Contributions during the period described in Section 1(b)(i) or (ii) of this Schedule A shall be deemed International Crossing Costs.
- (b) If Canada or any of the Michigan Parties receives any amounts that if received by the Crossing Authority would be Crossing Authority Revenue,

Canada or any of the Michigan Parties, as the case may be, shall receive such amounts in trust for the Crossing Authority and shall immediately pay such amounts to the Crossing Authority.

- (c) The Crossing Authority shall be entitled to set rates for and to collect, or cause to be collected, International Crossing Tolls, subject to approval of the rates by the International Authority, and subject to Applicable Law.
- (d) The International Authority shall approve rates for the International Crossing Tolls estimated to be sufficient, together with other Crossing Authority Revenue and US Federal Agencies Contributions, to satisfy all ongoing and projected International Crossing Costs, US Federal Plaza Costs, Crossing Authority Costs and International Authority Costs, subject to any increase or decrease approved by the International Authority in any reserves reasonably required for ongoing and projected International Crossing Costs, US Federal Plaza Costs, Crossing Authority Costs, and International Authority Costs, and the amortization approved by the International Authority of any Unrecouped Party Contributions, without recourse to Canada, the Crossing Authority, or the Michigan Parties, provided that the Parties may agree, from time to time, upon another standard upon which the International Authority shall approve rates for International Crossing Tolls.
- (e) No Parties may establish or collect International Crossing Tolls, except as otherwise provided in this Agreement.
- (f) The Crossing Authority shall apply the Crossing Authority Revenue and the US Federal Agencies Contributions received in any calendar year to or to the payment of:
 - i. the International Crossing Costs, the US Federal Plaza Costs, the Crossing Authority Costs and the International Authority Costs;
 - ii. all costs of anything else necessary or appropriate for the Michigan Crossing or the US Federal Plaza requested by the Crossing Authority, and undertaken by any of the Michigan Parties;
 - iii. any increase in any reserves as approved by the International Authority reasonably required for ongoing and projected International Crossing Costs, US Federal Plaza Costs, Crossing Authority Costs and International Authority Costs; and
 - iv. any surplus equally to the Crossing Authority and to the Michigan Parties,in each calendar year.

- (g) The Crossing Authority, subject to funding by Canada and the Michigan Parties shall fund, equally, in any calendar year, the payment of:
- i. the International Crossing Costs, the US Federal Plaza Costs, the Crossing Authority Costs and the International Authority Costs;
 - ii. all costs of anything else necessary or appropriate for the Michigan Crossing or the US Federal Plaza requested by the Crossing Authority, and undertaken by any of the Michigan Parties; and
 - iii. any increase in any reserves as approved by the International Authority reasonably required for ongoing and projected International Crossing Costs, Crossing Authority Costs and International Authority Costs,
- in such calendar year, to the extent such costs are not funded by the Crossing Authority Revenue and the US Federal Agencies Contributions in such calendar year.

Section 5. Liabilities.

- (a) All liabilities of the Crossing Authority to third parties arising out of the design or construction of the International Crossing, the Michigan Interchange or the US Federal Plaza shall be satisfied by the Crossing Authority or by one or more third parties, other than Canada (except as otherwise specifically agreed by Canada in its sole discretion) and other than the Michigan Parties.
- (b) All liabilities of the Crossing Authority to third parties arising out of administration, operation, maintenance or improvement of the International Crossing or the US Federal Plaza shall be satisfied solely by the Crossing Authority or by one or more third parties, other than Canada (except as otherwise specifically agreed by Canada in its sole discretion) and other than the Michigan Parties.

Section 6. Books and Audit. The Crossing Authority shall be responsible for the maintenance of proper, complete and accurate books and records, inter alia, for Crossing Authority Revenue, International Crossing Costs, US Federal Plaza Costs and Crossing Authority Costs.

SCHEDULE 'B'
CROSSING AGREEMENT
PROCUREMENT REQUIREMENTS FOR INTERNATIONAL CROSSING

Section 1. RFQ Process Requirements. The following are specific requirements for the RFQ process:

- (a) Selection of a short-list of Private Entities to respond to the RFP, with or without negotiations.
- (b) The following shall be considered in evaluating an RFQ submission:
 - i. Criteria based on general reputation, qualifications, industry experience, safety record, experience related to development and execution of community benefits plans and community consultations, technical and financial capacity, or any combination of these, without discrimination on the basis of nationality.
 - ii. Evidence that the Private Entities have the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omission insurance.

Section 2. RFP Process Requirements. The following are specific requirements for the RFP process:

- (a) The solicitation of proposals for the selection of a Concessionaire for the International Crossing shall follow a competitive bidding process.
- (b) Before the RFP is issued, there shall be at least 1 public meeting in Michigan on the selection process.
- (c) The following shall be considered in evaluating an RFP proposal:
 - i. The proposed value for money for the Crossing Authority including the proposed cost of and financial plan for the International Crossing and the Michigan Interchange.
 - ii. The proposed design, financing, construction, repair, maintenance, and/or operation of the International Crossing and the proposed design and/or construction of the Michigan Interchange.
 - iii. The proposed plan of the proponent to hire legal residents and citizens of Canada and legal residents and citizens of the United States of America for work relating to the International Crossing and the Michigan

Interchange, without discrimination on the basis of nationality, to the extent permitted by Applicable Law.

- iv. The proposed community benefits plans, as described in the RFP, covering both Canada and Michigan, which includes, in relation to both the construction and operation of the International Crossing: (A) the manner in which stakeholders and community are to continue to be involved; (B) the manner in which host community input relating to community benefits and stakeholder involvement are to be factored; (C) the manner in which bidders plan to work with local institutes of higher learning, unions and others; and (D) the manner in which job training and local job development will be encouraged.
- v. The proposed plan for compliance with the Federal Aid Eligibility Requirements as specifically set forth in the RFP in accordance with Article IX, Section 5 of the Crossing Agreement.

Section 3. Public-Private Agreement Requirements. The following are specific requirements for any Public-Private Agreement:

(a) General requirements for any Public-Private Agreement and procedures relating thereto:

- i. A Public-Private Agreement must be consistent with Applicable Law and the Crossing Agreement.
- ii. A Public-Private Agreement must state that Michigan is not liable, either directly or indirectly, under the Public-Private Agreement.
- iii. A Public-Private Agreement must provide for the efficient, safe and financeable construction and operation of the International Crossing.
- iv. A Public-Private Agreement must state that there will be no discrimination on the basis of nationality as between Canada and the United States of America.

(b) Specific provisions to be included in a Public-Private Agreement:

- i. A requirement that to the extent control of the International Crossing is granted to the Concessionaire, such control shall revert from the Concessionaire to the Crossing Authority at the end of the Public-Private Agreement.
- ii. A provision that ownership of the Michigan Crossing and the Michigan Interchange is vested in the State of Michigan and the ownership of the Canadian Crossing is vested in Canada.

requirement that the Concessionaire cooperate with all appropriate public agencies on all matters concerning the security of the International Crossing or disaster recovery for the International Crossing.

- iv. A requirement that the Concessionaire submit to all appropriate public agencies written plans for the security of the International Crossing and disaster recovery for the International Crossing.
- v. A provision that the Concessionaire maintain the International Crossing in accordance with the standards specified in the Public-Private Agreement.
- vi. A provision that Michigan, MDOT, MSF, or any political subdivision of Michigan, and the International Authority are not liable for the acts or omissions of the Concessionaire.
- vii. The Public-Private Agreement shall require sufficient security to fulfill the purposes of payment and performance bonds, which may include payment or performance bonds, a letter of credit, parent corporation guarantees or other security from the Concessionaire or from private entities other than the Concessionaire so long as the purposes of payment and performance bonds are fulfilled.
- viii. A provision that when the Public-Private Agreement is final and effective, the Crossing Authority shall transmit a copy to the Parties, excluding any trade secrets, proprietary commercial or financial information, or other confidential information exempted from disclosure in accordance with the RFP, the Public Private Agreement or Applicable Law.
- ix. A provision that Michigan, MDOT, MSF and any political subdivision of Michigan are not liable for the acts or omissions of the International Authority or the Crossing Authority in connection with the Public-Private Agreement.
- x. A provision that the Michigan Crossing and the Michigan Interchange must comply with the mitigation and enhancement measures included in the Green Sheet of the Final Environmental Impact Assessment as contained in the Record of Decision for the Michigan Interchange and the Michigan Crossing.
- xi. A provision that the Concessionaire is not authorized to condemn property in Michigan.
- xii. A provision that the Concessionaire is not authorized to levy taxes.
- xiii. Provisions requiring the Concessionaire to comply with the Federal Aid Eligibility Requirements and provisions for the enforcement of those requirements, each as specifically set forth in the Public-Private

Agreement in accordance with Article IX, Section 5 of the Crossing Agreement.

(c) Specific provisions that shall not be included in a Public-Private Agreement:

- i. Any provision that the public would be deprived of the use and benefit of the International Crossing except as necessary to implement tolls, user fees or other charges authorized or permitted by Applicable Law and this Agreement, to regulate the level or character of permissible uses of the International Crossing to ensure safe and efficient operation of the International Crossing, to address issues of public safety or security, or to maintain, repair, or improve the International Crossing.
- ii. Any prohibition against MDOT, any public agency in Michigan, or a private entity in Michigan, researching, planning, procuring, designing, financing, constructing, maintaining, operating, improving, or repairing a transportation project or facility in Michigan that is included in MDOT's long-range plan in effect on the date that proposals for the Public-Private Agreement are submitted.
- iii. Any prohibition against a private entity in Michigan researching, planning, procuring, designing, financing, constructing, maintaining, operating, improving, or repairing a transportation project or facility in Michigan that is otherwise authorized by Law of Michigan.
- iv. Any provision that Michigan, any of its political subdivisions, MDOT, MSF or an agency or authority of Michigan, are obligated to use Michigan state funds to make any payment to the Concessionaire or any third party.