

CONCESSION AND LEASE AGREEMENT

This Concession and Lease Agreement (this “**Agreement**” or this “**Lease**”) is effective as of March 1, 2023 (the “**Lease Commencement Date**”), by and between the City of Bay City, Michigan, a municipal corporation (the “**City**”), and UBP Bay City, LLC, a limited liability company organized and existing under the laws of the State of Delaware and doing business as Bay City Bridge Partners (“**UBP**”). Capitalized terms used in this Lease and not defined herein shall have the meaning set forth in **Appendix A** hereto.

RECITALS

A. The City has certain ownership and/or other rights in a bridge commonly referred to as the “**Independence Bridge**”, which crosses the Saginaw River in the City (the “**Independence Bridge**”), and in the real property associated with the Independence Bridge described on the attached Exhibit A (the “**Land**”), rights-of-way for Independence Bridge, and other improvements thereon;

B. The Independence Bridge’s structural condition, aged mechanical systems and aged electrical systems are in need of significant, expensive and serious repairs and rehabilitation and modernization to ensure and enhance the safe and reliable operation of the Independence Bridge;

C. The operation and maintenance of the Independence Bridge creates an undue burden on the finances of the City and diverts funds from other City priorities;

D. The City is interested in the modernization, upgrade, and full rehabilitation of the Independence Bridge to achieve at least a 75-year useful life, which 75-year period shall commence upon completion of such modernization, upgrade and rehabilitation;

E. The City desires to enter into a long-term concession and lease agreement with UBP for such fully rehabilitated and modernized bascule bridge, referenced in the foregoing Recitals, and for the associated real property, rights-of-way for approaches from the tie-in points designated by UBP to existing roadways, access ramps, air rights, riparian rights, temporary and permanent easements, buildings, structures, appurtenances, and other improvements, to the extent such rights are owned by the City, in order for UBP to finance, design, construct, operate, and maintain the Independence Bridge for the benefit of Bay City motorists and the economic prosperity of the region;

F. Prior to the execution of this Lease, the City and UBP entered into that certain Acquisition and Development Agreement made effective as of January 2, 2020 (as amended from time to time, the “**ADA**”), which originally set forth, in part, certain maintenance, repair and rehabilitation obligations related to the Liberty Bridge and the Independence Bridge;

G. Simultaneous with the execution of this Lease, the City and UBP have entered into that certain Amended and Restated Concession and Lease Agreement effective September 1, 2021 for the bridge located in the City and commonly known as the Liberty Bridge addressing certain

maintenance, repair and rehabilitation obligations related to such Liberty Bridge (the “**Liberty Lease**” and collectively, with this Lease, the “**Leases**”);

H. A Memorandum of Understanding agreement and related documents are anticipated to be executed between the City, the Michigan Department of Transportation (“**MDOT**”) and the Federal Highway Administration to reflect the understanding of government agency interests in the Independence Bridge, the applicability of 23 U.S.C. 129(a) to the operation of Liberty Bridge as a Toll Facility, and the obligation of the City and MDOT to comply with 23 U.S.C. 129(a) in the operation of the Independence Bridge as a Toll Facility (collectively, “**MOU**”);

I. In addition, it is anticipated that the City and MDOT will be entering into a Special Maintenance Contract addressing the obligations of the City with respect to the rehabilitation of the Independence Bridge, the use of toll funds for such rehabilitation and compliance with 23 U.S.C. Code Section 129 (“**Special Maintenance Contract**”, and together with MOU, the “**MOU Documents**”);

J. During the Term (as defined below), UBP shall have sole responsibility for the operations and maintenance of the Independence Bridge pursuant to and subject to the terms of this Lease; and

K. The risk and expense for the modernization and rehabilitation of the Independence Bridge will be borne by UBP, at no cost or expense to the City.

AGREEMENT

Now, after good and valid mutual consideration, effective contingent in all respects on the execution and delivery by the Parties of both Leases, the Parties agree to the foregoing recitals and to enter into this Lease on the terms and conditions set forth herein.

1. Grant of Lease.

(a) Upon the execution of this Lease, UBP shall pay the City the amount of ten dollars (\$10.00) in cash. In exchange for such payment, and subject to the terms and conditions of this Lease, the City shall lease to UBP the Independence Bridge (and all of its components) from abutment to abutment; including the Land and all of the City’s rights in all rights-of-way for the crossing over the Independence Bridge, approaches from the tie-in points of existing roadway to the Independence Bridge, and all air rights, riparian rights, temporary and permanent easements, buildings, structures, appurtenances and other improvements located on, benefitting or appurtenant to such Land (the “**Real Property**”), free and clear of liens and encumbrances which would prohibit the Parties from exercising their rights under this Lease, other than (i) easements and restrictive covenants of record, (ii) restrictions, covenants, provisions, terms, rights and obligations contained in the MOU Documents, (iii) any easements, restrictions, covenants and/or agreements related to the construction and/or use of the Independence Bridge over the railway that is under the Independence Bridge including, but not limited to, the Agreement dated January 3, 1973

between The Grand Trunk Western Railroad Company and the City, as amended and supplemented by the Supplemental Agreement dated May 7, 1973 between the City, the Michigan Department of State Highways, and Grand Trunk Western Railroad Company, and the Easement Agreement dated March 12, 1973 between The Grand Trunk Western Railroad Company and the City, (iv) easements reserved by or dedicated to the City prior to or concurrent with the lease of the Real Property and (v) any easements, restrictions, exceptions and/or other encumbrances reflected on the title commitment from Superior Title – Midland as agent for American Land Title Association, identified by File Number 2267791 ((i) through (v), collectively, the “**Permitted Encumbrances**”). Subject to the terms and conditions of this Agreement, applicable law, and the City’s termination rights following the occurrence of a Fundamental Breach, the lease of Real Property granted to UBP herein grants UBP during the Term the exclusive right to refinance, operate, expand, upgrade, improve, maintain, rehabilitate, repair, manage, and toll the Independence Bridge for the benefit of the traveling public and the economic prosperity of the region; provided, however, notwithstanding the foregoing, any refinancing which involves a Transfer (as defined in Section 33 of this Lease) will be subject to the terms of Section 33 of this Lease, and with respect to any material refinancing which does not involve a Transfer, the City must receive advance written notice of such material refinancing directly for the rehabilitation and operation of the Independence Bridge, or the expansion, upgrade, improvement, rehabilitation or repair of the Independence Bridge. For purposes of this Section 1(a), material shall mean an aggregate amount in each instance, in excess of \$25,000 or, in the case of refinancing in excess of \$10,000,000. For the avoidance of doubt, City approval is not required for any material refinancing set forth in this Section 1(a) provided that no Transfer (as defined in Section 33 of this Lease) has occurred, unless otherwise expressly required in this Lease.

(b) Subject to the terms and conditions of this Lease, the City shall lease to UBP, on an “as is, where is” basis, all tangible personal property and rights thereto that are owned by the City, appurtenant to the Real Property, and used in connection with the Independence Bridge or otherwise necessary for its operation and maintenance (the “**Personal Property**”). The Personal Property shall not include intangible personal property other than assignable interests in rights and approvals, if any, relating to the Independence Bridge. Such Personal Property may not be replaced with other personal property, unless such Personal Property is replaced with a similar or better quality item for the same or similar purpose for which title to such item shall vest with the City and be returned to the City upon the expiration of the Term or occurrence of a Fundamental Breach. Any such personal property that replaces the Personal Property shall be deemed “Personal Property” for purposes of this Lease.

(c) In addition to the Real Property and Personal Property described in Sections 1(a) and 1(b) above, the City will use reasonable efforts to grant to UBP the following easements, but only to the extent of any rights the City may have in such property and pursuant to such obligations as the City may have with respect to such property, and as more particularly described in **Exhibit A**:

- (i) Intentionally omitted;
- (ii) Easement for gantry infrastructure and electrical housing on City property, substantially in the form of that certain Easement Agreement attached as **Exhibit A(c)(ii)**;
- (iii) Easement for access to the Independence Bridge from City-owned real property beneath, and adjacent to, the bridge structure as more particularly described in that certain Easement Agreement attached as **Exhibit A(c)(iii)**; and
- (iv) Intentionally omitted.
- (v) Temporary construction easements for lay-down, staging, and storage, as more particularly described in that certain Easement Agreement attached as **Exhibit A(c)(v)**.

(d) The City will lease, license or otherwise cooperate to provide to UBP all rights of the City, if any, under any existing easement with Grand Trunk Western Railroad Company or its successor for right-of-entry related to construction and operation of the Independence Bridge, for the Term, to the extent such lease, license or cooperation is permitted under such existing easement and/or by Grand Trunk Western Railroad Company or its successor, and provided that UBP agrees in writing with the City to assume all obligations of the City under such existing easement. Notwithstanding anything to the contrary in this subparagraph (d), the City shall not be obligated to assign any rights to UBP which the City will need during the Term or which would require UBP to re-assign back to the City at the end of the Term.

Notwithstanding the foregoing, temporary construction easements may be made available, but upon reasonable notice by the City, UBP shall have sixty (60) days to vacate any applicable easement (excluding access roads easements) and the City shall use reasonable efforts to offer alternate City-owned property for use as temporary lay-down, staging or storage areas for the rehabilitation of the Independence Bridge.

2. **Term.** The term of this Lease (“**Term**”) shall commence on the Lease Commencement Date and expire on the 75th anniversary of the Liberty Lease Commencement Date (the “**Primary Term**”), unless terminated earlier or extended as herein provided. Further, provided that no UBP Default or Fundamental Breach exists, the Primary Term may be extended in UBP’s sole discretion for two (2) additional 5-year periods (each a “**UBP Extended Term**”), subject in each event to UBP demonstrating at the time it elects to so extend that it remains a Qualified Operator and has the financial wherewithal to maintain and operate the Independence Bridge pursuant to the terms of this Lease. In the event UBP determines to exercise its extension right pursuant to the forgoing sentence, UBP must deliver written notice to the City of its intent to so exercise at least three (3) years prior to the expiration of the then-current Primary Term or UBP Extended Term, as applicable, or such extension right shall be deemed waived, together with any documents and other information reasonably requested by the City so as to allow the City to assess

UBP's financial wherewithal and status as a Qualified Operator. Thereafter, provided that no UBP Default or Fundamental Breach exists, the Term shall be automatically extended for additional one-year periods (each an "Automatic Extended Term"), subject to UBP demonstrating at the time of each such extension that it remains a Qualified Operator and has the financial wherewithal to maintain and operate the Independence Bridge pursuant to the terms of this Lease, unless either Party notifies the other Party by written notice given at least eighteen (18) months before the end of the second UBP Extended Term or the then-current Automatic Extended Term that it does not wish to extend the Term.

3. Ownership. The Property, including without limitation the Independence Bridge, and all improvements, structures, buildings, facilities, and fixtures constructed by UBP of any and every kind whatsoever forming a part of and used in connection with the Independence Bridge from time to time, shall be subject to the terms and conditions of this Lease at all times until expiration or earlier termination of the Term. At the expiration or earlier termination of the Term, (y) the Property shall, without any additional consideration paid to UBP, be returned to City free and clear of any liens or encumbrances, other than liens or encumbrances in existence prior to the Lease Commencement Date and/or liens or encumbrances arising from the acts or agreements of the City or its contractors (other than UBP or UBP's contractors) and (z) UBP shall execute and deliver to the City such (i) bills of sale, assignments, and other instruments as may be reasonably necessary and acceptable to City to quitclaim UBP's title, if any, to the Property to City and (ii) termination of lease and other instruments as may be reasonably requested by and acceptable to the City, in each case (y) and (z) without demand and effective as of the expiration of the Transition Period.

4. Quiet Enjoyment and Possession. The City agrees that UBP shall, at all times during the Term, be entitled to and shall have the quiet possession and enjoyment of the Property, UBP's interests, and the rights and privileges granted to UBP hereunder, subject to Section 10, and other provisions specifically contained in this Lease. The City shall, at all times during the Term, defend its title to the Property, UBP's leasehold interest in the Property, and UBP's rights hereunder, or any portion thereof, against any Person claiming any interest adverse to the City or UBP in the Property, other than: (a) any interest resulting from any action by or agreement with UBP; and/or (b) any mechanics lien arising after the Lease Commencement Date. Any entry by the City onto the Property required or permitted under this Lease shall not constitute a re-entry, trespass, or breach of the covenant of quiet enjoyment contained in this Lease.

5. Cooperation.

(a) After the expiration of the Term and/or termination of this Agreement, UBP agrees to exercise its good faith efforts to (a) cooperate fully with the City and its respective counsel in connection with any pending or future litigation, arbitration, administrative proceedings, or investigation relating to any matter ("Controversy") that occurred during or arises from activities occurring during the Term; and (b) respond to any telephone calls and/or information requests from UBP or its representatives within a reasonable period of time. Failure to cooperate or respond in a timely fashion in accordance with this Section 5(a) will be considered a material breach of this Agreement and the City shall have all remedies which the City would have under this Agreement

for a UBP Default. The provisions of this Section 5(a) shall survive the expiration of the Term and/or termination of this Agreement.

(b) Each Party agrees to execute and deliver, or cause to be executed and delivered, at or after the date this Lease is executed, such additional or further transfers, assignments, resolutions, endorsements, power of attorney, and other instruments or documents as may reasonably be requested by the other for the purpose of carrying out the intentions of this Agreement. Each Party agrees to cooperate with the other in effecting the transactions contemplated hereunder.

(c) Each Party will cooperate, but at the sole expense of UBP, to obtain the necessary environmental and utility clearances, right-of-way certifications and permits, if any, needed for the rehabilitation and operation of the Independence Bridge, through the United States Coast Guard, U.S. Army Corp of Engineers, Federal Highway Administration, MDOT and all other governmental agencies having jurisdiction over the matter.

6. Legislative Authority; Compliance with laws.

(a) Authority for the City to lease the Property to UBP, for the City and UBP to assess tolls for use of the Independence Bridge, and authority for tax exemptions and abatement of taxes with respect to the Independence Bridge is granted pursuant to, and subject to the obligations, limitations and restrictions set forth in the following state statutes which are effective March 24, 2021:

Act No.353 of Michigan Public Acts of 2020 (Enrolled Senate Bill No. 1215 to amend 1909 PA 279)

Act No. 354 of Michigan Public Acts of 2020 (Enrolled Senate Bill No. 1216 to amend 1851 PA 156)

Act No. 355 of Michigan Public Acts of 2020 (Enrolled Senate Bill No. 1217 to amend 1893 PA 206)

Act No. 356 of Michigan Public Acts of 2020 (Enrolled Senate Bill No. 1218 to amend 1953 PA 189)

(b) UBP acknowledges and agrees it will comply with all applicable laws and court orders with respect to the Independence Bridge and tolling or other charges related to the use of the Independence Bridge including, but not limited to, and to the extent applicable, Michigan Public Act 325 of 2018, 23 USC Section 129, 23 CFR 710, and the laws set forth in this Section 6, as though UBP were the fee simple owner of such Independence Bridge. Furthermore, UBP agrees as follows:

(i) Federal Highway Administration has stated that compliance with 23 USC Section 129(a)(3) will be reviewed and audited by the City, as the

governmental entity referenced in Title 23, Section 129(a)(3). UBP and the City have agreed that compliance with 23 U.S. Section 129(a)(3) will be evidenced and reviewed as set forth in **Exhibit B**. To the extent that Title 23, Section 129(a)(3) is amended to make the provisions in **Exhibit B** inconsistent or in violation with 23 USC Section 129(a)(3), as amended, or if MDOT or Federal Highway Administration notifies the City that its audit and compliance procedures do not comply with the obligations under the MOU Documents or Section 129(a)(3), UBP will indemnify and hold the City harmless from and against any claims, liabilities, penalties, fines or damages incurred or threatened as a result of any alleged violation of, or non-compliance by the City of, 23 USC Section 129(a)(3) or the MOU Documents.

(ii) UBP will comply with 49 CFR 625 and 23 CFR 710, to the extent applicable.

(iii) UBP will comply with any state or federal law requiring the delivery and performance of a Transportation Asset Management Plan for the Independence Bridge including, but not limited to, any such Transportation Asset Management Plan required by MDOT.

(c) Where a government entity requires the City, as owner of the Real Property, to communicate with such entity or be involved in administrative processes, UBP will be responsible to notify the City of such obligation not less than 10 days prior to any deadline for such communication, together with drafts of any required documents. If the City receives a notice or communication from any government entity regarding the Independence Bridge or the Real Property, the City will promptly deliver such notice or communication to UBP so that a timely response can be made.

(d) UBP, at its sole expense, shall obtain all federal and state governmental permits and authorizations required in order to rehabilitate, improve, repair and operate the Independence Bridge.

7. Use. Except as otherwise specifically provided herein, UBP shall, at all times during the Term, (a) be responsible for all aspects of the toll bridge operations, (b) be authorized to take all actions related to UBP's exclusive right to finance, develop, construct, refinance, operate, expand, debottleneck, upgrade, improve, maintain, rehabilitate, repair, manage, and toll the Independence Bridge, and (c) cause the Independence Bridge operations to be performed in accordance with the provisions of this Lease and all laws. UBP shall, at all times during the Term, cause the Independence Bridge to Continually Operate, except for partial or complete closures (i) required by applicable law on the written advice of competent counsel, (ii) due to a Force Majeure Event, (iii) as reasonably necessary to upgrade, improve, maintain, rehabilitate and repair the Independence Bridge, which, for the avoidance of doubt, shall mean that UBP may close the Independence Bridge for a period of time up to three (3) months, or such longer period as reasonably necessary (provided the UBP is using diligent efforts to expeditiously complete such upgrades, improvements, maintenance, rehabilitation and repairs), for the express purpose of making improvements or repairs to, or for maintenance of, the Independence Bridge, or in cases

of casualty, equipment failure, or extraordinary repairs for such time as reasonably necessary to accomplish necessary repairs so long as UBP is using diligent efforts to expeditiously complete such repairs, or (iv) approved in writing by the City in advance, which approval may be withheld, conditioned or delayed in the City's reasonable discretion (any such closure during and solely due to any of the foregoing (i) through (iv) events, a "Permitted Cessation").

8. As-Is Condition. UBP understands, agrees and acknowledges that UBP (i) by the execution of this Lease, agrees to accept the Property in its "AS IS" physical and environmental condition as of the Lease Commencement Date; and (ii) UBP has inspected the Property and is aware of its physical and environmental condition and acknowledges that the City has not made nor is the City making any representation or warranty, express or implied, regarding the physical or environmental condition of the Property (or any part thereof) or its suitability for UBP's proposed use.

9. Assumed Interests. UBP shall assume and discharge or perform when due, all debts, liabilities, and obligations whatsoever relating to the Property and the toll bridge operations that occur, arise out of, or relate to, facts or actions occurring during the Term, but only to the extent such debts, liabilities, or obligations do not arise from or relate to any breach by the City of any covenant, representation, or obligation set forth in this Lease. UBP shall contract in its own name, to the extent feasible, and pay for all charges for water, sewer charges, gas, oil, electricity, fuel, telephone and other utilities used in or serving the Property and/or Independence Bridge during the Term of this Lease.

10. Access and Utility Easements.

(a) The City reserves the right to retain public easements for utilities, multi-use trails, and other public purposes on, over, under, across, and along the Real Property. In addition, UBP agrees to grant reasonable utility easements on, over, under, across and along the Independence Bridge to the City and/or utility companies for use in the installation, operation and maintenance of public utilities. The City agrees to use good faith efforts to determine the location of utility easements in collaboration with UBP's design of the rehabilitation work to maximize the timely prosecution of the construction schedule. The granting of such easements is conditioned and subject to the City and public utilities:

(i) being in compliance with the engineering and other design standards of the Independence Bridge;

(ii) not interfering with the construction, operation or maintenance of the Independence Bridge; and

(iii) not resulting in material economic loss to UBP.

(b) With respect to such easements set forth in Section 10(a) above, the City will reserve its rights of access on the Real Property without compensation to UBP, but the City shall remain responsible for all construction and maintenance costs for the

installation, operation, maintenance, and removal of the City-owned utilities or public utilities for which the access rights are reserved, and for any loss or damages incurred by UBP as a result of the use or activities performed within such easements, including, without limitation, the installation, operation, maintenance, or removal of the City-owned utilities associated with the easement(s).

(c) The City and UBP will coordinate the permitting and location of Directional Signage along the rights-of-way leading to and from the Independence Bridge for the purpose of maximizing the use of, and ability to direct the traveling public to, the Independence Bridge, which Directional Signage shall be subject to all applicable federal, City, state and county ordinances, laws and regulations, as amended from time to time, and permitting application procedures, as well as future conditions which may necessitate the relocation of such Directional Signage, provided that, any such relocation will be to a location with comparable visibility as the original location.

11. Saginaw River Interests. The Parties acknowledge that the Saginaw River is subject to federal and state regulations as a navigable waterway and that the United States and the State of Michigan may have other recognized interests in the Saginaw River, including but not limited to public trust rights. The City makes no representation regarding its actual or potential interests or rights in the river bottom, riparian or otherwise, nor does the City make any representation concerning any actual or potential liabilities or obligations that may arise out of crossing the Saginaw River.

12. Rehabilitation of Independence Bridge. UBP shall design, upgrade, modernize, fully rehabilitate, operate, and maintain the Independence Bridge, which shall remain a bascule type (moveable) bridge, in a manner that does not unreasonably affect the navigability of the Saginaw River and meets the clearance requirements and environmental permitting of any and all approval agencies having jurisdiction over such project. UBP shall comply with all federal, state, and local laws, ordinances, regulations, codes, and rules applicable to the design, construction, operation, and maintenance of the Independence Bridge. UBP shall bear all risks, responsibilities, costs, and obligations of any kind associated with the design, construction, operation, and maintenance of the Independence Bridge. UBP agrees to engage a third-party title company to administer construction payments and lien releases to ensure the Property is free and clear of liens and encumbrances after completion of construction, other than those liens and encumbrances in existence prior to the Lease Commencement Date and those arising as a result of the acts of the City or its contractors (other than UBP or UBP's contractors). In the event it is necessary for UBP to acquire additional property in order to construct the Independence Bridge, UBP shall be solely responsible for the acquisition of such property and the associated costs. The City may, but is not required to, provide UBP with assistance with such acquisition.

13. Access to Independence Bridge. UBP shall ensure that the Independence Bridge shall at all times remain available for use by the general public, subject to the tolls described in Section 18, customary maintenance and repairs, closures allowed pursuant to Section 7, emergency situations or weather. UBP will not attempt to limit the persons or class of persons using the structure or accesses thereto, except as may be dictated by: (a) the design and load

capacities of the structure; (b) physical limitations beyond UBP's control; or (c) applicable federal, state and local laws, ordinances and regulations. The City shall ensure that at all times public roads will connect to the Independence Bridge, and the access roads to the Independence Bridge Continually Operate, except for partial or complete closures (i) due to a Force Majeure Event (any such closure being for the duration of the Force Majeure Event and for a reasonable period of time after the end of the Force Majeure Event), (ii) as reasonably necessary to upgrade, improve, maintain, rehabilitate and repair such public roads and/or access roads, for a period of time up to three (3) months, or such longer period as reasonably necessary (provided diligent efforts are being made to expeditiously complete such upgrades, improvements, maintenance, rehabilitation and repairs by the City or such other party responsible for such upgrades, improvement, maintenance, rehabilitation and repairs), for the express purpose of making improvements or repairs to, or for maintenance of, such public roads and/or access roads, or in cases of casualty, equipment failure, or extraordinary repairs for such time as reasonably necessary to accomplish necessary repairs so long as diligent efforts to expeditiously complete such repairs are being made by the City or such other party responsible for such repairs, (iii) due to any improvements, repairs, maintenance or upgrades of such public roads or access roads to be conducted or performed pursuant to the direction or mandate of the State of Michigan, Federal Highway Administration, County of Bay or other governmental agency, other than the City, (iv) as required pursuant to any applicable law or court order including, but not limited to, any improvements, repairs, maintenance or upgrades of such public roads or access roads required by such applicable law or court order, for such time as required by, or as reasonably necessary to comply with, such court order or applicable law, or (v) approved in writing by UBP in advance, which approval may be withheld, conditioned or delayed in UBP's reasonable discretion.

14. Minimum Design Criteria.

(a) UBP agrees that the Independence Bridge shall:

(i) adhere to the design standards published by the American Association of State Highway and Transportation Officials ("AASHTO") applicable to standard public bridges;

(ii) comply with all applicable federal, state and local laws, ordinances and regulations; and

(iii) be subject to review by a third-party independent engineering company (selected by the City and at UBP's cost) to participate in the regulatory review of the design documents to confirm the design has been completed in accordance with AASHTO and any other applicable City, county, and state regulations.

(iv) substantially conform in appearance and design with the plans and specifications submitted to the City and approved in writing by MDOT;

(v) include four twelve-foot (12') travel lanes (two lanes in each direction) for motor vehicle traffic designed to meet AASHTO standards;

(vi) include two outside two-foot (2') shoulders (both sides) and two inside two-foot (2') shoulders (both sides) and a four (4) foot center median;

(vii) include an approximate five-foot (5') sidewalk for pedestrian use, compliant with the Americans with Disabilities Act, on both sides of the Independence Bridge, generally consistent with the current configuration of sidewalks serving the Independence Bridge;

(viii) include landscaping as part of the site restoration that is necessary in connection with rehabilitation, including but not limited to the under deck, in an attractive manner;

(ix) maintain the existing roadway profile including travel lanes, shoulders, center median, and sidewalk; and

(x) include the remodel and upgrade of the existing tender house.

(b) To the extent required by applicable law, UBP shall obtain, at its sole expense, approval of the MDOT (formerly Michigan Public Service Commission) or any successor governmental agency with respect to any construction of the Independence Bridge including, but not limited to, approval of any overpass structure which is part of or to be part of the Independence Bridge and which crosses over or above any railroad.

(c) UBP shall provide the City with a certification by an engineer certified in the design and inspection of bridges that the Independence Bridge has been rehabilitated and constructed in accordance with AASHTO safety standards applicable to public bridges under state and federal law.

15. Materials, Equipment and Labor. UBP agrees to use LED lighting and other eco-friendly building materials in designing, constructing, and maintaining the Independence Bridge to the extent economically feasible. UBP will utilize local union labor and the resources of the Bay City Local Vendor Program along with local materials in the rehabilitation and modernization of the Independence Bridge to the extent economically feasible. UBP agrees to adhere to all applicable construction standards for a project in the locality and of the kind and scope contemplated herein.

16. Completion of the Independence Bridge. UBP shall substantially complete the upgrade, modernization and all rehabilitation work on the Independence Bridge in accordance with this Lease (including, but not limited to Section 14 of this Lease) and shall cause the Independence Bridge to be continuously open and operational for use by the public for highway purposes, 24 hours a day, in the ordinary course for thirty consecutive (30) days ("Completion") on or before the date that is four years after the Notice to Proceed for commencement of the rehabilitation of the Independence Bridge and at all times thereafter, except as otherwise permitted in this Lease. UBP shall use its best efforts and shall cooperate in order for the Notice to Proceed to occur as soon as possible. Within five (5) days of the date of the Notice to Proceed,

UBP shall notify the City of such date and shall provide the City with evidence of completion, satisfaction and obtainment of all items required for a Notice to Proceed.

17. Intentionally omitted.

18. Tolls. Subject to the terms and conditions of this Lease, UBP may charge monetary tolls to use the crossing of the Independence Bridge in order to compensate the private investors and provide for all ongoing operations and maintenance. UBP shall be solely responsible for obtaining all approvals and permits necessary to set and collect Independence Bridge users' tolls, as well as setting the amount to be collected, subject to the terms set forth in **Exhibit C**. UBP and the City have agreed to initial toll rates and incentives substantially as outlined in the attached **Exhibit C**. Notwithstanding anything to the contrary in this Lease, no tolls shall be charged for using or crossing the Independence Bridge until after: (a) the MOU has been executed by the City, MDOT and the Federal Highway Administration; (b) the Special Maintenance Contract has been executed by the City and MDOT; and (c) the Completion has occurred.

19. Future Adjustments to Toll Structure. UBP shall be allowed to reevaluate the existing toll once each calendar year, and may adjust such tolls in accordance with the TOLLING ADJUSTMENT STRUCTURE set forth in **Exhibit C** including, for any tolls exceeding the Toll Cap described in **Exhibit C**, a Public Notice and Public Comment Period.

20. Toll Collection Devices. Any toll charged to cross the Independence Bridge will be collected with modern electronic technologies designed to be compatible with other electronic toll collection facilities in the City and the State of Michigan (referred to and as defined in **Exhibit C** as “**Transponders**”), or such other collection methods for users without Transponders. All costs and permitting associated with the design, approval, installation, operation, and maintenance of the electronic toll collection facilities for the Independence Bridge shall be the sole responsibility of UBP. All toll collection and sale or supply of toll passes to be made by UBP shall take place in the City of Bay City to the extent practicable, except that this provision shall not apply to supply or purchase of electronic or other devices in and for different locations but utilized on the Independence Bridge, such as, by way of example, use of an “EZ Pass” purchased in another jurisdiction but used on the Independence Bridge.

21. Toll Administration, Collection and Enforcement. UBP may enter into separate written agreements with governmental authorities other than the City, including without limitation the Department of Motor Vehicles, the Michigan Secretary of State, or other third parties to govern the process, procedures, and methods by which tolls, fees, and other charges related to the use of the Independence Bridge are administered, collected, and enforced; provided such agreements are not inconsistent with or do not violate any federal or state laws or regulations nor the terms of this Lease; provided, however, if any governmental authorities require the City's written authorization with respect to such written agreements, the City will execute such written authorization provided such written authorization does not cause the City to incur any costs or expose the City to any potential liabilities or obligations.

22. Emergency and Other Toll-Exempt Uses. No toll shall be charged for crossing of the Independence Bridge by state, local or federal emergency vehicles, including vehicles operated by the Bay City Department of Public Safety, emergency medical services, county sheriff, state or other police personnel, vehicles owned or leased by the City, or school buses carrying students of the Bay City Public School District, and any other on-duty public or private first responder or emergency medical service provider under contract with, and identified as such by, the City, subject to the procedures in **Exhibit D** and **Appendices 1 and 2** attached thereto. The City shall enter into an arrangement on an annual basis with UBP to identify toll-exempt vehicles and subject to exemption procedures for qualifying vehicles, and including non-disclosure obligations, all as more specifically provided on **Exhibit D** and **Appendices 1 and 2** attached thereto. No tolls shall be charged for passage by any vehicle or pedestrian over the Independence Bridge in the event the charging of such tolls is prohibited by any applicable law or court order including, but not limited to, any State of Emergency prohibiting the charging of such tolls. Tolls shall not be assessed upon any vehicle accessing the approaches to the Independence Bridge, except if such vehicle crosses over the Independence Bridge and the Saginaw River.

23. Fundamental Breach: Force Majeure Event.

(a) The Parties agree that the following events, occurring at any time on or after the Lease Commencement Date, shall constitute a fundamental breach by UBP under this Lease (each, a “**Fundamental Breach**”):

(i) any Transfer which is not in compliance with all of the terms of Section 33 of this Lease or if this Lease or all or any portion of UBP’s interests in and to the Property as provided in this Lease is transferred in contravention of Section 33;

(ii) failure to rehabilitate and open the Independence Bridge, consistent with the requirements of this Lease and applicable law, on or before the date that is four years after the Notice to Proceed for commencement of the rehabilitation of the Independence Bridge;

(iii) failure of the Independence Bridge to Continually Operate in the ordinary course of business, except in cases of a Permitted Cessation;

(iv) failure to satisfy any claim which results in a lien on the Property unless such lien is discharged, released and/or bonded over within 90 days or if a levy under execution or attachment has been made against all or any material part of or interest in the Property as a result of any encumbrance (other than an encumbrance of record in existence prior to Lease Commencement Date) created, incurred, assumed, suffered, or permitted to exist by UBP or any Person claiming through it, and such execution or attachment has not been vacated, removed, or stayed by court order, bonding or otherwise within a period of ninety (90) days, unless such levy resulted from actions or omissions of the City or its Representatives;

(v) if the Notice to Proceed has not occurred more than 6 years after the Lease Commencement Date, provided, however, that if the failure to achieve the Notice to Proceed is due to a delay or inability of the City to complete those conditions of Notice to Proceed which are the City's obligations, this subsection (v) will not be a Fundamental Breach;

(vi) a Fundamental Breach (as defined in the Liberty Lease) by UBP;
or

(vii) failure of UBP to satisfy, perform and pay in full any of the following: (A) any and all monetary obligations of UBP to the City under any and all awards, orders and/or judgments entered in favor of the City and against UBP related to this Lease or obligations of UBP under this Lease, if such obligations are not satisfied in full by UBP within ninety (90) days of the date of such award, order or judgment; (B) any and all monetary obligations of UBP to the City under any and all settlement agreements, requirements or directives of a final award in a matter submitted to dispute resolution in accordance with Section 38 of this Lease or other similar agreements entered into after the Lease Commencement Date, which resolve one or more claims and/or disputes between UBP and the City under a legal action, dispute resolution proceeding or threatened legal action related to this Lease or any of the obligations of UBP under this Lease, if such obligations are not satisfied and paid in full within ninety (90) days of the date such obligations are due and payable to the City under such settlement agreement, final award or such other similar agreement; and (C) all interest, fees (including attorneys' fees), costs, and expenses that UBP is required to pay to the City under any such awards, orders, judgments, settlement agreements or other similar agreements.

(b) Without otherwise limiting any of the City's other rights and remedies provided for hereunder or under applicable law, upon written notice by the City to UBP of its intent to terminate this Lease following the occurrence of a Fundamental Breach and UBP's failure to cure such Fundamental Breach within ninety (90)-days after UBP has received such written notice, without compensation to UBP (including any refund of amounts previously paid to the City or cancellation or setoff of any amounts otherwise due and owing (or set to become due and owing) to the City under the Leases), (i) this Lease shall be automatically terminated without any further action of the Parties at the end of such ninety (90)-day period, unless the City has elected to consider the Fundamental Breach a UBP Default, in which case this subsection (b) will not apply, and (ii) at the end of the Transition Period, as defined in Section 23(c), (A) the Property shall be returned to City in its "as-is condition" subject to UBP having met and complied with all of its obligations under this Lease related to the condition of the Independence Bridge through the end of the Transition Period, and free and clear of any liens and encumbrances on the Property, other than liens and encumbrances in existence prior to the Lease Commencement Date and/or liens and encumbrances arising from the acts or agreements of the City or its contractors (other than UBP or UBP's contractors), and (B) UBP shall execute and deliver to the City such (I) bills of sale, assignments, and other

instruments as may be reasonably necessary to quitclaim UBP's title, if any, to the Property to City and (II) termination of lease and other instruments as may be reasonably requested by the City, in each case effective as of the date of such notice of termination. Upon termination of this Lease pursuant to this Section 23, the City will have no obligation to reimburse UBP for any costs, expenses or betterments expended for the rehabilitation, modification or repair of the Independence Bridge or any other costs incurred by UBP pursuant to UBP's obligations under this Lease.

(c) Notwithstanding that the Lease has automatically terminated effective as of the date of a notice of termination, UBP will continue to operate, maintain and toll the Independence Bridge for a period of thirty (30) days (the "**Transition Period**"), during which UBP will continue to be responsible to pay all costs and expenses and receive all revenue and will cooperate with the City to turn over the operation, maintenance and tolling services to the City.

(d) A Party shall be excused from any delay or failure in performance of their obligations hereunder (other than payment obligations), including, without limitation, a Fundamental Breach or UBP Default, to the extent directly caused solely by the following events (each, a "**Force Majeure Event**": acts of God, extraordinary weather events, earthquake, acts of terrorism, civil disorder, war, national, state or local emergency, national or regional labor strikes not limited to UBP's contractors or subcontractors, or acts of government. Neither Party shall be liable for any loss or damage resulting from such Force Majeure Event, provided that such Party (i) gives written notice within seventy-two (72) hours of such Force Majeure Event to the other Party, and within 10 days thereafter provides supporting details and a good faith estimate of the period of time the occurrence is expected to continue, (ii) uses commercially reasonable efforts to end the delay or failure and ensure the effects of such Force Majeure Event are minimized, and (iii) resumes performance as soon as reasonably practicable after removal of the circumstances causing the Force Majeure Event.

24. Operation, Maintenance and Inspections. UBP shall be responsible for performance of the operations and maintenance of the Independence Bridge, including routine maintenance, emergency repairs, regular inspections, snow and ice removal, trash and litter collection and landscaping. UBP agrees to offer the City the opportunity to bid on snow and ice removal, trash and litter collection, and other services for the Independence Bridge any time bids for such services are requested by UBP. UBP agrees to adhere to the National Bridge Inspection Program as appropriate in conducting inspections and shall provide the City with validations of such inspections by a licensed engineer following completion of each inspection. In the event UBP deems the National Bridge Inspection Program to be inappropriate, in whole or in part, UBP may present an alternative bridge inspection program to the City for review and approval, which approval by the City may be withheld, conditioned or delayed in the City's sole discretion. UBP agrees to adhere to any approved alternative bridge inspection program. UBP's duty to maintain and repair the Independence Bridge shall include all accesses, structures, and appurtenances constructed or erected by UBP. The Parties shall cooperate and

coordinate applicable maintenance agreements for ramps and other facilities that merge with, or connect to, City streets to ensure adequate coverage and allocation of costs related to such maintenance. UBP shall maintain a physical office within the City's limits to provide general services including, but not limited to, assisting individuals to pay fines, purchase Transponders, and engage in customer-service activities.

25. Taxes. UBP shall be solely responsible for all taxes, fees, and charges that may be assessed or charged upon the Property located in the City. UBP shall also be solely responsible for all taxes, fees and charges relating to planning, permitting, construction, materials, labor and the conduct of business in the State of Michigan. In the event the City's ownership interest in the Property may be adversely impacted by UBP's nonpayment of any such taxes, fees or charges, the City may, after 10 days' written notice and UBP's failure to cure such non-payment, pay any such taxes, fees or charges on UBP's behalf, and UBP shall immediately reimburse the City for all such amounts paid.

26. Access to Records. UBP shall allow the City, or its designee, to review all records relating to the design, rehabilitation, upgrade, modernization, maintenance, and repair of the Independence Bridge, upon the City's or its designee's written request. UBP shall allow the City to review and reproduce non-proprietary records relating to design, construction, maintenance, and repair of the Independence Bridge upon the City's written request. In order to protect any records that are considered proprietary or trade secret by UBP, UBP shall clearly designate such records by labeling them "Proprietary Documents: Not Subject to Disclosure Pursuant to FOIA", providing them or making them available to the City's designee for review and reproduction. Copies (including any electronic copies) of any records that are deemed by UBP to be proprietary or trade secret shall not be provided directly to the City and shall not be maintained in the City's records.

27. City Obligations and Warranties.

(a) Until the lesser of such time that the Independence Bridge is no longer operated by UBP or its successors and assigns, or a period of forty (40) years starting on the Lease Commencement Date, except as otherwise required by law, the City will not construct or cause to be constructed any public or private vehicular crossing, other than commercial railroad crossings, over the Saginaw River in the City of Bay City, Michigan without the consent of UBP or its successors and assigns; *provided*, however, that this prohibition shall not apply to the rehabilitation or rebuilding of any bridge existing as of the Lease Commencement Date including, but not limited to, the Lafayette Street Bridge and Veterans Memorial Bridge.

(b) The City warrants and represents to UBP the following:

(i) There is no undisclosed action, suit, or proceeding, pending or known to be threatened against or affecting the City or any affiliate of the City in any court or before any arbitrator or any governmental body, nor, to the City's actual knowledge, are there any City contracts, instruments or obligations which in any manner raises any question affecting the validity or enforceability of this

Lease, could adversely affect the ability of the City to perform its obligations hereunder or under any document to be delivered pursuant hereto, or could create a lien on the Property or any part thereof or interest therein, which could adversely affect the Property or any part thereof or interest therein;

(ii) The City has no actual knowledge of the release, manufacture, production, treatment, storage, or disposal of any hazardous substance or material on the Real Property, including the groundwater on, under, or about the Real Property, of which it has not disclosed to UBP or which is not a matter of public record, and the City has no undisclosed knowledge of any pending, threatened or anticipated environmental proceedings, claims, judgments, or orders against any of the Real Property other than those matters listed in **Exhibit E**;

(iii) To the City's actual knowledge, there are presently no existing tenancies or leases upon or affecting the Property; and

(iv) To the City's actual knowledge, there are no present or anticipated impediments or prohibitions to driving onto, or accessing the Independence Bridge.

As used in the Lease, and only with respect to the City, the term "knowledge" (or similar language) shall mean the knowledge of the City's commissioners, Mayor or City Manager, who are in office as of the date of execution of this Lease, with the assumption that such persons shall have made reasonable and diligent inquiry of the matters presented.

28. Title Work Contingency. UBP acknowledges that it has received a leasehold title insurance policy, at its sole expense, insuring UBP's leasehold interest in the Real Property. The Parties further acknowledge that if a search of title work, and/or public records disclose defects in title or encumbrances which are not Permitted Encumbrances with respect to the Real Property and which would prevent the City from leasing the Real Property pursuant to the terms of this Lease, the City will, at UBP's sole cost and expense, take immediate efforts to attempt to cure such defects in title or remove such encumbrances, including instituting a quiet title action or exercising its right of eminent domain to resolve any defects in title which would prevent the City from leasing the Real Property pursuant to the terms of this Lease. Further, and for the avoidance of doubt, (i) the City or its agents shall not be liable to UBP for costs, fees, refunds, amounts or return of consideration paid or incurred by UBP, and (ii) UBP shall not at any time or for any reason claim or seek damages of any kind against or from the City, or any departments, divisions, agencies, offices, commissions, officers, employees, agents or representatives of the City, based upon any defects in, or encumbrances on, title to the Real Property or the real property related to the Liberty Bridge (including, but not limited to, the City not having title to any portion of: i) the Real Property; ii) the real estate on which the Liberty Bridge is located; and/or iii) any of the real estate on which the City has granted an easement to UBP pursuant to this Lease or the Liberty Lease).

29. Insurance. UBP shall provide and maintain, or cause to be provided and maintained, during the construction of the rehabilitation of the Independence Bridge, the insurance coverages and requirements specified in **Exhibit F** attached hereto. During the Term of this Lease, UBP shall provide and maintain, or cause to be provided and maintained, the insurance coverages and requirements specified in **Exhibit G** attached hereto. Upon written request by the City, UBP will provide the City with certificates of insurance and full copies of such insurance policies evidencing that such insurance is being maintained by UBP, as well as evidence of the insurance policies being carried by the designer of record for the Independence Bridge rehabilitation project. UBP will cause its general contractor to name the City as an additional insured on the applicable insurance coverages specified in **Exhibit F**.

30. Indemnification.

(a) The Parties agree that the City shall have no responsibility or liability for the design, planning, permitting, construction, operation, repair, maintenance, and rehabilitation of the Independence Bridge, and that UBP shall be liable for all such obligations, and any and all liabilities, costs, expenses, fines, fees, attorney fees, damages, injuries, and any other charges, except to the extent caused by the acts or omissions of the City, its contractors, or any other party for whom the City is legally responsible.

(b) UBP shall defend, indemnify and hold the City harmless from any and all liabilities, costs, expenses, fines, fees, attorney fees, damages, injuries, and any other charges arising out of, or alleged to arise out of, the rehabilitation, construction, operation, and maintenance of the Independence Bridge, except to the extent directly caused by the acts or omissions of the City, its contractors, or any party for whom the City is responsible, which acts or omissions shall not include the City making available to UBP any supplies, equipment or spare parts pursuant to Section 39(f) of this Lease.

(c) UBP or its successors and assigns, as the case may be, shall defend, indemnify, and hold the City, its officials, employees, and agents, harmless from and against any and all liabilities, costs, expenses, fines, fees, attorney fees, damages, injuries, and any other charges whatsoever that arise, or are alleged to arise out of: (i) UBP's or its successor's and assign's performance of, or failure to perform under, the terms of this Lease, except to the extent caused directly by the acts or omissions of the City, its contractors, or any other party for whom the City is legally responsible; and/or (ii) failure of UBP or its successor and assigns to assume and perform all obligations of the City under the MOU Documents or to otherwise comply with the MOU Documents as if the UBP was a party to the MOU Documents in lieu of the City, provided that City has provided to UBP within ten (10) days of receipt by the City from MDOT and/or the Federal Highway Administration, of any and all written notices which the City has received from MDOT or the Federal Highway Administration related to the obligations of the City under the MOU Documents and provided that the City has provided MDOT and/or the Federal Highway Administration with all items that UBP has provided to the City if such items are required to be delivered to MDOT and/or the Federal Highway Administration in order to meet the obligations under the MOU Documents; and/or (iii)

any claim made against the City that the City is in default or violation of the MOU Documents or that the toll revenues have not been used in accordance with the MOU Documents, provided that City has provided to UBP within ten (10) days of receipt by the City from MDOT and/or the Federal Highway Administration, of any and all written notices which the City has received from MDOT or the Federal Highway Administration related to the obligations of the City under the MOU Documents and provided that the City has provided MDOT and/or the Federal Highway Administration with all items that UBP has provided to the City if such items are required to be delivered to MDOT and/or the Federal Highway Administration in order to meet the obligations under the MOU Documents.

31. Other Revenues; Naming Rights. All sources of revenues and activities generating revenues related to the use or operation of the Independence Bridge or advertisement on the Independence Bridge, including revenues from the granting of rights of way, licenses, or easements, the installation of utilities, the erection of billboards, and the authorization of other forms of advertisement, including naming rights, shall be controlled by, and the property of, UBP. UBP's rights under this Section are subject to the City's applicable rules, regulations, and ordinances (other than any rules, regulations, and ordinances that are enacted after the date of this Lease that would disproportionately impair UBP as compared to other persons). UBP shall own the naming rights and shall have the sole and exclusive right to name or rename the Independence Bridge; provided, however, that such naming rights shall not be given, granted, sold, licensed, or otherwise authorized to any entity which involves adult oriented entertainment, a sexually oriented business, illegal drugs or sex or illegal drugs paraphernalia, cannabis, alcohol, tobacco, or pharmaceuticals of any kind; nor shall the name of the Independence Bridge include the title of or any reference to any of the aforementioned. The City shall have the right to enforce and/or prohibit the name right restrictions contained in this Section 31.

32. Police and Emergency Services. The City, without charge to UBP, shall cause the Bay City Police Department ("**BCPD**") to provide traffic patrol and traffic law enforcement services on the Independence Bridge at the same level as the City provides on City-owned and operated roads, and, in connection therewith, the BCPD shall be empowered to enforce all laws within the BCPD's jurisdiction. UBP shall have the right to contract with the BCPD for enhanced levels of BCPD service for the control of traffic for special events, construction or maintenance activities, predicted peak traffic patterns or as otherwise needed or may obtain such services from another entity, and in each case at its sole cost and expense.

33. Pledge; Transfer.

(a) Subject to applicable law and only after Completion, UBP shall have the right to pledge, transfer or assign ("**Transfer**") any or all of UBP's interests, any or all of UBP's interest in and to the Property, or UBP's rights, responsibilities, or obligations under or in connection with this Lease to or in favor of any Person (a "**Transferee**"), subject to approval by the City Commission, which approval shall not be unreasonably withheld, conditioned or delayed.

(i) The City agrees that, within forty-five (45) days after receipt of written notice, it will reasonably approve a request for:

(A) any Transfer to any lender whose financing or refinancing is to be secured, in whole or in part, by UBP's leasehold interest under this Lease, provided (1) such lender agrees in writing to contract with one or more Qualified Operator(s) to maintain and operate the Independence Bridge pursuant to the terms and conditions of this Lease, as amended, in the event such security interest is foreclosed, (2) such lender agrees to be bound by the terms and conditions of this Lease, as amended, in the event such security interest is foreclosed, and (3) such lender has the financial wherewithal to meet all financial obligations of UBP under this Lease (including, but not limited to, the financial wherewithal to meet all financial obligations related to maintaining and operating the Independence Bridge), as reasonably determined by the City; or

(B) any other Transfer so long as (1) such Transferee is, or contracts with, one or more Qualified Operator(s) to maintain and operate the Independence Bridge pursuant to the terms and conditions of this Lease, as amended, (2) such Transferee agrees to be bound by the terms and conditions of this Lease, as amended, and (3) such Transferee has the financial wherewithal to meet all financial obligations of UBP under this Lease (including, but not limited to, the financial wherewithal to meet all financial obligations related to maintaining and operating the Independence Bridge), as reasonably determined by the City.

(ii) Notwithstanding the foregoing, a Transfer made under this Section 33 shall not be effective unless: (x) UBP gives the City Manager at least ninety (90) days' prior written notice of any intended assignment or transfer, (y) Transferee is not a person or entity designated by the United States Department of Treasury, Office of Foreign Assets Control (OFAC), or successor agency, as persons that have been designated by executive order or by the sanction regulations of the OFAC as persons with whom a United States citizen may not transact business or must limit their business to types approved by the OFAC, and (z) the transfer or assignment requires the Transferee to meet all obligations and requirements of UBP in this Lease.

(iii) In the event of an approved transfer or assignment meeting the requirements in this Section 33(a), UBP will be released from any future liability arising under this Lease after the date of such transfer; otherwise, UBP shall remain fully liable on this Lease and for the performance of all terms, covenants, and provisions of this Lease.

(b) A Change in Control of UBP or United Bridge Operating, LLC shall be deemed to be a Transfer for purposes of this Section. As used herein, "Change in Control" means, whether accomplished through a single transaction or a series of related or unrelated transactions and whether accomplished directly or indirectly, either (i) a change in ownership so that 50% or more of the direct or indirect voting or economic interests in such Person is Transferred; (ii) the Transfer of the power, directly or indirectly, to direct or cause the direction of management and policy of such Person,

whether through ownership of voting securities, by contract, management agreement, or common directors, officers or trustees or otherwise; or (iii) the merger, consolidation, amalgamation, business combination or sale of substantially all of the assets of such Person; provided, however, that (A) clause (i) and clause (ii) above shall not apply to transactions in shares of a publicly traded company and (B) notwithstanding the occurrence of any of the foregoing, a “Change in Control” shall not occur for the purposes of this Lease so long as United Bridge Operating, LLC, a limited liability company organized and existing under the laws of the State of Delaware (“**United Bridge Operating, LLC**”), controls, directly or indirectly, UBP and so long as there has not been a Change in Control of United Bridge Operating, LLC.

(c) The City shall provide such reasonable assistance and cooperation to UBP as may be necessary to secure debt and equity financing from the UBP Financing Sources, including providing information regarding the project and the Property reasonably available to the City on a confidential basis and responding to any questions asked by any UBP Financing Sources. The City hereby consents to the collateral assignment of this Lease pursuant to the terms and conditions of this Section 33. The City also agrees to consider in good faith entering into reasonable customary consent agreements or similar documents with the UBP Financing Sources regarding this Lease, which may, among other things, include the customary estoppel provisions and provide for the City to give the UBP Financing Sources copies of certain notices delivered to UBP hereunder and to afford the UBP Financing Sources with customary step-in rights and an independent right to cure (including providing the UBP Financing Sources with extended periods to cure) any breach or default of this Lease by UBP; provided however, that any such consent shall be subject to such UBP Financing Source agreeing to all of the obligations of a lender in the event of a Transfer under Section 33(a) of this Lease.

34. UBP Default. The occurrence of any one or more of the following events during the Term shall constitute a “**UBP Default**” under this Lease:

(a) if UBP fails to comply with, perform, or observe any material obligation, covenant, agreement, term, or condition in this Lease, and such failure continues unremedied for a period of ninety (90) days following notice thereof (giving particulars of the failure in reasonable detail) from the City to UBP or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that UBP has demonstrated to the reasonable satisfaction of the City that (i) it is proceeding with all due diligence to cure or cause to be cured such failure, (ii) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time reasonably acceptable to the City acting reasonably and (iii) such failure is in fact cured within such period of time;

(b) if UBP, United Bridge Operating, LLC (as defined in Section 33(b)) or any of their successors or assigns, (1) admits, in writing, that it is unable to pay its debts as such become due, (2) makes an assignment for the benefit of creditors, (3) files a voluntary petition under the United States Bankruptcy Code, or if such petition is filed against it and an order for relief is entered, (4) files any petition or answer seeking, consenting to or

acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States Bankruptcy Code or any other present or future law, (5) seeks or consents to or acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, liquidator, or other similar official over the Property or a material interest therein, (6) become insolvent; or (7) takes any corporate action in furtherance of any action described in this Section 34(b);

(c) if within ninety (90) days after the commencement of any proceeding against UBP seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future United States Bankruptcy Code or any other present or future law, such proceeding has not been dismissed, or if, within ninety (90) days after the appointment, without the consent or acquiescence of UBP, of any trustee, receiver, custodian, assignee, liquidator, or other similar official over the Property or a material interest therein, such appointment has not been vacated or stayed on appeal or otherwise, or if, within sixty (60) days after the expiration of any such stay, such appointment has not been vacated;

(d) if UBP fails to comply with the requirements or directives of a non-monetary final award in a matter submitted to dispute resolution in accordance with Section 38, and such failure continues unremedied for a period of ninety (90) days following notice thereof from the City to UBP;

(e) if UBP commits a UBP Default (as defined in the Liberty Lease), after any applicable notice and cure periods; or

(f) the occurrence of a Fundamental Breach provided that the City has elected to consider such Fundamental Breach a UBP Default and not to terminate this Lease based on such Fundamental Breach.

35. Remedies of City for UBP Default. Upon the occurrence of a UBP Default, the City may, by notice to UBP, declare UBP to be in default and may, do any or all of the following as the City, in its discretion, shall determine:

(a) if a UBP Default is by reason of the failure to pay any monies, the non-payment of which could adversely impact the City's interests in the Property (other than any monies the amount or validity of which is being contested by UBP in good faith), the City may after 10 day's written notice to UBP of its intent to make payment (without obligation to do so) make payment on behalf of UBP of such monies, and any amount so paid by the City shall be payable by UBP to the City within sixty (60) business days after demand therefor by the City;

(b) the City may cure a UBP Default (but this shall not obligate the City to cure or attempt to cure a UBP Default or, after having commenced to cure or attempted to cure a UBP Default, to continue to do so), and all costs and expenses reasonably incurred by the City in curing or attempting to cure such UBP Default, shall be payable by UBP to the City within sixty (60) business days of demand by the City;

(c) the City may seek to recover its losses arising from such UBP Default and any amounts due and payable under this Lease and, in connection therewith, exercise any recourse available to the City on behalf of the City;

(d) the City may seek specific performance, injunctive relief, or other equitable remedies, requiring UBP to perform its obligations under this Lease; and

(e) the City may exercise any of its other rights and remedies provided for hereunder or under applicable law.

Notwithstanding anything to the contrary in this Lease, in the event of a UBP Default under this Lease arising as a result of a UBP Default (as defined in and under the Liberty Lease), any damages under this Lease and under the Liberty Lease shall be based on actual damages incurred and shall not be automatically doubled due to there being a UBP Default under both of the Leases.

36. City Default. The occurrence of any one or more of the following events during the Term shall constitute a “**City Default**” under this Lease:

(a) if the City fails to comply with, perform or observe any material obligation, covenant, agreement, term or condition in this Lease, and such failure continues unremedied for a period of ninety (90) days following notice thereof (giving particulars of the failure in reasonable detail) from UBP to the City or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the City has demonstrated to the reasonable satisfaction of UBP that (i) it is proceeding with all due diligence to cure or cause to be cured such failure, (ii) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time reasonably acceptable to UBP and (iii) such failure is in fact cured within such period of time;

(b) if a levy under execution or attachment has been made against all or any part of the Property or UBP’s interests in and to the Property as a result of any encumbrance (other than a Permitted Encumbrance) created, incurred, assumed, suffered or permitted to exist by the City or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of sixty (60) days, unless such levy resulted from actions or omissions of UBP or its Representatives or if all or a material part of the Property shall be subject to, a condemnation or similar taking by the City or any agency thereof; and

(c) if the City (i) admits, in writing, that it is unable to pay its debts as such become due, (ii) makes an assignment for the benefit of creditors, (iii) receives authorization under Michigan state law to become a debtor under the United States Bankruptcy Code or from a governmental authority empowered by Michigan state law to authorize the City to become a debtor under the United States Bankruptcy Code and it is reasonably expected that the City will imminently seek to become a debtor under the United States Bankruptcy Code, (iv) files a voluntary petition under the United States Bankruptcy Code, or if such petition is filed against it and an order for relief is entered, or

if the City files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States Bankruptcy Code or any other present or future law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, liquidator or other similar official over all or any substantial part of the Property (in each case, to the extent applicable to a municipality), or (v) takes any action in furtherance of any action described in this Section 36(c); or if within ninety (90) days after the commencement of any proceeding against the City seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States Bankruptcy Code or any other present or future law, such proceeding has not been dismissed, or if, within ninety (90) days after the appointment, without the consent or acquiescence of the City, of any trustee, receiver, custodian, assignee, liquidator or other similar official over all or any substantial part of the City's properties (in each case, to the extent applicable to a municipality), such appointment has not been vacated or stayed on appeal or otherwise, or if, within ninety (90) days after the expiration of any such stay, such appointment has not been vacated.

37. Remedies for City Default. Upon the occurrence of a City Default, UBP may, by notice to the City, declare the City to be in default and may, do any or all of the following as UBP, in its discretion, shall determine:

(a) if a City Default is by reason of the failure to pay any monies, UBP may (without obligation to do so) make payment on behalf of the City of such monies, and any amount so paid by UBP shall be payable by the City to UBP within sixty (60) business days after demand therefor by UBP;

(b) UBP may cure a City Default (but this shall not obligate UBP to cure or attempt to cure a City Default or, after having commenced to cure or attempted to cure a City Default, to continue to do so), and all costs and expenses reasonably incurred by UBP in curing or attempting to cure such City Default, shall be payable by the City to UBP within sixty (60) business days of demand by UBP;

(c) UBP may seek specific performance, injunctive relief, or other equitable remedies, requiring the City to perform its obligations under this Lease;

(d) UBP may exercise any of its rights and remedies at law or in equity;

(e) UBP may seek to recover its losses and any amounts due and payable by the City under this Lease and, in connection therewith, exercise any recourse available to UBP;

(f) The Term of the Lease (and the term of the Liberty Lease) shall be extended for such period as the City Default continues until cured, at which point the extended Term of the Leases will be evidenced by amendment; and

(g) UBP may exercise any of its other rights and remedies provided for hereunder.

38. Dispute Resolution. Except as otherwise provided in Exhibit C with respect to tolls, any dispute arising out of, relating to, or in connection with this Lease, including any question as to whether such dispute is subject to arbitration, shall be resolved as set forth in this Section 38. A Party may seek monetary damages, specific performance, injunctive relief, or other equitable remedies pursuant to this Section 38:

(a) Informal Dispute Resolution Procedures. The Parties shall attempt in good faith to resolve any dispute within fifteen (15) days. If the Parties are unable to resolve the dispute within fifteen (15) days, and upon notice by either Party to the other, the dispute shall be referred to a senior executive designated by each Party (the “**Designated Senior Person**”). The Designated Senior Persons shall negotiate in good faith to resolve such dispute, conferring as often as they deem reasonably necessary, and shall gather and furnish to each other all information pertinent to the dispute.

(b) Arbitration. If the procedures described in Section 38(a) do not result in resolution of the dispute within 30 days of appointment of all Designated Senior Persons, the dispute shall be exclusively and finally settled by arbitration in accordance with the Commercial Arbitration Rules of the AAA (the “AAA Rules”). Either Party may initiate the arbitration, as provided in the AAA Rules. The place of arbitration shall be Bay City, Michigan unless the Parties agree otherwise in writing. The arbitral panel shall determine the rights and obligations of the Parties in accordance with the substantive laws of the State of Michigan, applying the terms and conditions of this Lease, and without regard to conflicts of laws principles thereof. Except as agreed by the Parties, the arbitral panel shall have no power to alter or modify any terms or provisions of this Lease, or to render any award that, by its terms or effects, would alter or modify any term or provision of this Lease. The arbitral panel shall be composed of three arbitrators. The first arbitrator shall be selected by the City, the second arbitrator shall be selected by UBP, and the third arbitrator (who shall act as chair of the panel) shall be selected by the two previously-selected arbitrators. Once the arbitral panel has been composed, the arbitrators shall act as neutrals and not as Party arbitrators and no Party shall engage in any ex parte communication with any member of the arbitral panel. Each Party shall bear its own attorney fees, expenses, and costs. The award shall be in writing and state the reasons upon which it is based. The award shall be final and binding on the Parties. Judgment on the award may be entered by any court with jurisdiction. The Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, shall govern any arbitration conducted pursuant to this Section 38(b).

39. Additional Covenants.

(a) UBP shall require a parent company guaranty and payment and performance bond(s) from the general contractor that contracts with UBP for the rehabilitation of the Independence Bridge in the amount of such contract for rehabilitation of the Independence Bridge (“**Construction Contract**”) and substantially in the forms attached as **Exhibit H** and in full compliance with MCL 129.20 *et seq.* The performance and payment bonds shall be executed by a surety company authorized to do business in Michigan and listed in U.S. Treasury Circular 570. UBP shall use

commercially reasonable efforts to cause the City to be a third-party beneficiary of all such parent guarantees and payment bonds. The performance bonds referenced in this Section 39(a) shall identify the City as obligee and shall insure the faithful performance of the Construction Contract in accordance with the plans, specifications and terms thereof, which Construction Contract shall require that the Independence Bridge be repaired, constructed, and rehabilitated pursuant to Sections 12 and 14 of this Agreement and in accordance with the Study (defined below).

(b) To the extent authorized under the Michigan Constitution and applicable law, the City shall not amend its charter, adopt a new ordinance, or take any other action by which it would impose any fees, charges, taxes, or assessments upon UBP or the Property that would apply only (directly or indirectly) to the operation of a toll bridge, except for damages resulting from any breach or other default by UBP under this Lease. With respect to any fees, charges, taxes or assessments which currently do not exist, but which may come into effect after the Lease Commencement Date, to the extent authorized under the Michigan Constitution and applicable law, the City agrees to exempt UBP or the Property from such fees, charges, taxes or assessments.

(c) UBP shall assume, at UBP's sole expense, all obligations of the City under the MOU Documents.

(d) Except as otherwise permitted under this Lease, the City shall keep the Real Property free and clear of all liens and encumbrances which prohibit or could prohibit UBP from exercising its rights under this Lease, other than Permitted Encumbrances, and which result or arise from any loan agreement or other contract (other than this Lease) entered into between the City and any person, other than UBP.

(e) UBP shall pay for all expenses incurred by the City or UBP with respect to the title commitments, title work, title searches and leasehold policies obtained with respect to the Real Property including those obtained pursuant to Section 28 of this Lease. Furthermore, UBP shall, at its sole expense, provide the following to the City:

(i) an ALTA survey of the Real Property prior to the execution of this Lease; and

(ii) conceptual renderings, including temporary lay down, staging, storage and office areas, depicting the Independence Bridge upon completion of rehabilitation, prepared or obtained by UBP (the "**Plans**"), prior to the Notice to Proceed; provided, however, that the Plans shall be in accordance with the Independence Bridge Over Saginaw River Rehabilitation Scoping Study dated August 19, 2022 prepared by TranSystems Corporation of Michigan (the "**Study**"), a complete copy of which has been provided to the City prior to the execution of this Lease and a copy of which is attached as **Exhibit I** (excluding Appendix A and Appendix B to such Study).

(f) Prior to the Notice to Proceed, UBP shall be responsible for the cost and performance of the operations and maintenance of the Independence Bridge, as

described in this paragraph and in Section 39(g) below. UBP and the City will collaborate using reasonable efforts to determine whether it is reasonable to make Extraordinary Repairs consistent with the planned rehabilitation and modernization of the Independence Bridge. The Parties agree that if public safety or structural and operational deficiencies require Extraordinary Repairs with an aggregate cost of \$750,000 (the “**Extraordinary Repair Cost**”) or more for the Independence Bridge prior to the Notice to Proceed (not including any fines for bridge closure, which shall be UBP’s sole responsibility), UBP may, after written notice and at the reasonable discretion of the City, which shall not be unreasonably withheld, elect to close the Independence Bridge until the bridge has been rehabilitated pursuant to the Plans and the terms of this Lease. Whether or not the Independence Bridge is closed, UBP will have no obligation to make an Extraordinary Repair of which it has notified the City unless the City has elected to pay the amount of the Extraordinary Repairs in excess of the Extraordinary Repair Cost. The City shall make available to UBP all supplies, equipment, and spare parts, wherever located, owned by the City for the purpose of operating, maintaining and repairing the Independence Bridge; provided, however, that the City shall have no liability to UBP for the use thereof and UBP shall defend, indemnify and hold the City harmless from any and all liabilities, costs, expenses, fines, fees, attorney fees, damages, injuries, and any other charges arising out of, or alleged to arise out of the use of such supplies, equipment and/or spare parts. The City shall also make available to UBP all existing documentation for the Independence Bridge, including, but not limited to, original design drawings, as-built drawings, O&M equipment manuals, historic operation and maintenance records, and other similar documents and records during ordinary business hours and upon reasonable written notice. Prior to the Notice to Proceed, UBP will assume, or reimburse the City for, the payments under the contract for the bridge tenders and reimburse the City for the time spent (based on agreed-upon hourly rates) by City-employed operations and maintenance personnel for the operation and maintenance of the Independence Bridge under the direction of UBP. The City agrees that UBP may engage in discussions with such City personnel about potentially becoming employees of UBP.

(g) At all times during the Term, UBP shall be responsible for performance of the operations and maintenance of the Independence Bridge including routine maintenance, emergency repairs, regular inspections, snow and ice removal, trash and litter collection and landscaping. UBP agrees to at all times during the Term carry not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate of commercial general liability insurance coverage. UBP’s duty to maintain and repair the Independence Bridge shall include all accesses, structures, and appurtenances constructed or erected by UBP. UBP shall maintain a physical office within the City’s limits to provide general services including, but not limited to, allowing individuals to pay fines, purchase Transponders, engage in customer-service activities, etc.

(h) In addition to other consideration to be provided by UBP for UBP’s rights under the Leases, UBP is obligated to pay Five Million Dollars (\$5,000,000) to the City, of which the City acknowledges that Two Million Dollars (\$2,000,000) has already been

paid to the City to reimburse the City for capital improvement projects recently completed by the City at the Bridges. Within ten (10) days of the Notice to Proceed, UBP shall pay to the City the remaining Three Million Dollars (\$3,000,000). As additional consideration for this Lease, UBP agrees to finance, design, construct, operate and maintain the Independence Bridge, all at no cost to the City, in accordance with the terms of this Lease.

40. Notice. Notice given under this Lease shall be made in writing and delivered to the Parties by first-class U.S. Mail, certified and return receipt requested, or by overnight courier, or by email with electronic confirmation, mailed to the following representatives, or to such other persons or place as the Parties may otherwise direct in writing:

City of Bay City:

Dana Muscott, City Manager
301 Washington Avenue
Bay City, Michigan 48708
dmuscott@baycitymi.org

UBP Bay City, LLC

Doug Witt, President
2679 W. Main Street, Suite 300-756
Littleton, CO 80120
dwitt@unitedbridgepartners.com

With a copy to (which shall not constitute notice):

David W. MacDonald
Warner Norcross + Judd LLP
45000 River Ridge Drive, Suite 300
Clinton Township, MI 48038
dmacdonald@wnj.com

With a copy to (which shall not constitute notice):

Lynn Pavlawk
General Manager
300 Center Ave. Suite 101
Bay City, MI 48708
lpavlawk@unitedbridgepartners.com

With a copy to (which shall not constitute notice):

William Lentine
Warner Norcross + Judd LLP
40701 Woodward Ave., Suite 105
Bloomfield Hills, MI 48304-5078
wlentine@wnj.com

With a copy to (which shall not constitute notice):

Melody Pickett
Corporate Counsel
2679 W. Main Street, Suite 300-756
Littleton, CO 80120
mpickett@unitedbridgepartners.com

41. **Hazardous Materials**

The following terms shall have the meanings ascribed to them under this Section 41:

(a) **“Hazardous Materials”** shall mean and include petroleum, petroleum products and petroleum-derived substances, radioactive materials, polychlorinated biphenyls (PCBs), lead based paint, urea formaldehyde, and any other materials defined as a pollutant, contaminant, or as hazardous or toxic under any Environmental Law (defined below). For purposes of this Lease the term “Hazardous Materials” shall include mold and asbestos.

(b) **“Environmental Cleanup Work”** shall mean any cleanup, remediation, removal, construction, alteration, demolition, renovation or installation that is required in connection with Hazardous Materials installed, used, stored, handled or located on the Real Property or disposed of from the Real Property in order to comply with any Environmental Law.

(c) **“Environmental Law”** means and includes, without limitation, any federal, state or local law, statute, regulation or ordinance, now or hereinafter enacted, promulgated or issued, regulating or relating to any Hazardous Materials or pertaining to health, safety, or the environmental conditions on, under or about the Real Property, including, without limitation: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act of 1976, as amended (“RCRA”), 42 U.S.C. §6901 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. §2601 et seq.; the Clean Air Act, as amended, 42 U.S.C. §7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 et seq.; the Federal Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq.; the National Environmental Policy Act of 1975, as amended, 42 U.S.C. §4321 et seq.; any Michigan state law relating to pollution, contamination, or Hazardous Materials; and the rules, regulations and ordinances of the U.S. Environmental Protection Agency, and of all governmental agencies having jurisdiction over the Real Property.

(d) **“Pre-Existing Environmental Condition”** means any Hazardous Materials on or under the Real Property or in the groundwater under or adjacent to the Real Property arising prior to the Lease Commencement Date.

In addition to any other representations and warranties contained herein, UBP hereby represents and warrants the following to City:

(a) Except for Hazardous Materials routinely used in or related to the operation and maintenance of the Real Property, the Real Property will not be used by UBP for the disposal of refuse or waste, or for the generation, processing, manufacture, storage, handling, treatment, release, discharge or disposal of any Hazardous Materials provided, however, that UBP shall comply with all Environmental Laws in its storage, use, and disposal of any such Hazardous Materials routinely used in or related to the operation and maintenance of the Real Property.

(b) UBP agrees it shall not contaminate the Real Property with any Hazardous Materials or allow, directly or indirectly, the Real Property to become contaminated with Hazardous Materials in violation of Environmental Laws. If City, in its reasonable discretion, has reason to believe that the Real Property has become contaminated with Hazardous Materials in breach of UBP’s obligations under this Lease, the City, in addition to its other rights under this Lease, may enter upon the Real Property and obtain samples from the Real Property for the purposes of analyzing the same to determine whether and to what extent the Real Property has become so contaminated. In the event that City or its third party contractor determines that the Real Property has become contaminated with Hazardous Materials in violation of this Lease, then UBP shall have the opportunity to hire its own contractor to take samples and otherwise confirm or reject the findings of City or City’s third party contractor. For purposes of this Section 41, each Party shall be responsible for the costs and expenses associated with the hiring of its own

contractor. In the event that each Party's contractors agree that the Real Property is contaminated with Hazardous Materials in violation of this Lease, it shall be UBP's responsibility to take all necessary steps to remove such Hazardous Material from the Real Property and to bring the Real Property into compliance with all applicable Environmental Laws and regulations. In the event that the parties' respective contractors do not agree that the Real Property is contaminated with Hazardous Materials in violation of this Lease, the parties shall mutually agree on the hiring of a third, independent contractor who shall make a final determination as to whether the Real Property is contaminated with Hazardous Materials in violation of this Lease. The non-prevailing Party shall pay the fees and costs of the third, independent contractor, whose findings shall be binding on the parties.

(c) UBP shall be responsible for and agrees to defend, indemnify and hold City harmless from and against any and all claims (including without limitation third party claims for personal injury or real or personal property damage), obligations, losses, actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, expenses, liabilities (including sums paid in settlement of claims), interest or losses, reasonable attorneys' fees (including any fees and expenses incurred in enforcing this indemnity), consultant fees, expert fees, claims of any kind or nature, including, but not limited to, claims involving strict or absolute liability in tort, claims arising from or in connection with any violation or alleged violation of any Environmental Laws or governmental order, any and all costs, expenses, and actions necessary or appropriate to remedy any such violation or alleged violation, which may be imposed upon, incurred by or asserted against UBP and/or the City that arise directly or indirectly from or in connection with the presence, suspected presence, release, or suspected release of any Hazardous Materials caused or brought into or on the Real Property by UBP its agents, invitees, employees or others under its control in violation of Environmental Laws.

(d) By executing this Lease, UBP agrees that: a) UBP has had sufficient time prior to the commencement of this Lease to perform all appropriate inquiry into the environmental condition of the Real Property ; b) the City has provided all of the information in its possession or under its control relative to the environmental condition of the Real Property, and the City has no further obligation to provide any information relative to the environmental condition of the Real Property; c) UBP shall be solely responsible for the operation and maintenance of the Real Property as it relates to the environmental condition of the Real Property, including preparation of and compliance with a Due Care Plan, if applicable; and d) UBP shall be solely responsible for any and all environmental conditions at the Real Property, including, without limitation, any Pre-Existing Environmental Condition.

(e) The provisions of this Section 41 will survive the termination or expiration of this Lease and the surrender of the Real Property by UBP.

42. Entire Understanding. This Agreement represents the final understanding among and between the Parties, and any other prior agreements or understandings are hereby made invalid and void. This Section shall not preclude the Parties from entering into future understandings and agreements, provided that any amendment to or modification of the terms of this Lease shall be in writing and signed by the Parties hereto.

43. No Derogation of Authority. Nothing in this Lease shall be construed or interpreted as a waiver of the City's municipal express or implied powers granted under state law or to be in derogation of the City's authority.

44. Successors and Assigns. The obligations, responsibilities, and benefits of this Lease shall inure to each Party's successors and permitted assigns.

45. Governing law. This Agreement shall be interpreted, governed, and enforced under the laws of the State of Michigan. The Parties agree that the venue for any state judicial action between the Parties or their respective successors in interest brought under or in connection of this Lease shall be the Circuit Court for the County of Bay.

46. Interpretation. The headings in this Lease are for reference only and shall not affect the interpretation of this Lease. Whenever not contrary to the sense of this Lease, the masculine shall include the feminine and vice versa and the singular shall include the plural and vice versa.

47. Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Lease delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Lease.

48. Survival. Unless the context otherwise requires, or the specific language contained within this lease otherwise states, all the provisions of this Lease, including but not limited to, all representations and warranties, and UBP's indemnification obligations, shall survive termination or expiration of this Lease.

49. Fees and Costs. UBP will pay and/or reimburse the City in full for any and all fees and costs incurred by the City, on, before and/or after the date this Lease is executed related to the negotiation, drafting, consummation, implementation and amendment of the Bridge Documents (collectively, "**Fees**"). Such fees and costs referenced in this Section 49 shall include, but not be limited to, third party attorney fees, survey costs, accounting fees, engineering fees, and title insurance premiums and fees (including title search and title commitment fees and costs). Within ten (10) days of the Notice to Proceed, UBP shall pay any and all additional Fees incurred by the City through the date of the Notice to Proceed which have not previously been paid in accordance with this Agreement. UBP shall pay all of such Fees set forth in this Section 49 within thirty (30) days of receipt by UBP of an invoice from the City reflecting such Fees. Nothing in this Section precludes the payment of fees and costs specifically agreed to be paid in other Sections of this Lease.

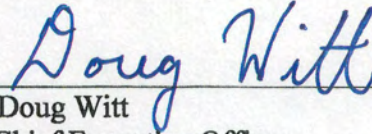
50. Authority. Each Party hereto shall provide to the other Party, at the time of execution of this Agreement, such documents and proof of the other Party's authority and authorization to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates to act for and bind such Party, as may be

reasonably required by the Parties or any title company providing title insurance pursuant to this Agreement.

[Signature page follows]

The undersigned parties have executed this Concession and Lease Agreement on March 1, 2023, but effective as of the Lease Commencement Date.

UBP BAY CITY, LLC, a limited liability company organized and existing under the laws of the State of Delaware



By: Doug Witt
Its: Chief Executive Officer

BAY CITY MICHIGAN, a municipal corporation

By: Kathleen Newsham
Mayor of Bay City

By: Tema Lucero
Clerk of Bay City

ATTEST

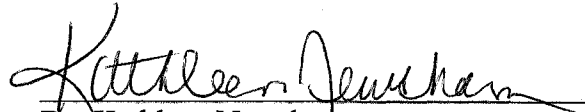
Tema Lucero
Clerk of Bay City

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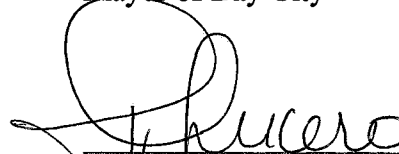
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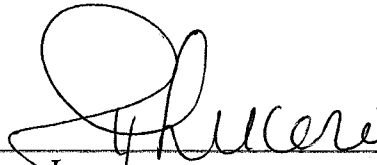


By: Kathleen Newsham
Mayor of Bay City



By: Tema Lucero
Clerk of Bay City

ATTEST



Tema Lucero
Clerk of Bay City