



STATE OF MICHIGAN
EXECUTIVE OFFICE
LANSING

RICK SNYDER
GOVERNOR

BRIAN CALLEY
LT. GOVERNOR

November 1, 2018

Barbara J. Brown, Vice-Chair
Mackinac Bridge Authority
84 Prospect Street
St. Ignace, MI 49781
SENT VIA EMAIL

Dear Vice-Chair Brown:

I write to formally request that at your meeting on November 8, the Mackinac Bridge Authority hear a presentation regarding a proposal for the Authority to oversee the construction, operation and maintenance of a utility tunnel that would better connect the two peninsulas, provide energy reliability and virtually eliminate the risk of an oil spill from Enbridge's Line 5. As you know, I have signed an agreement with Enbridge that establishes a process for the construction, operation and maintenance of such a tunnel, and I am asking you to consider making sure, on behalf of all the people of Michigan, that the construction of this tunnel is carried out well and the tunnel is maintained properly.

The presentation would be made by Keith Creagh, the Director of the Department of Natural Resources, and Valerie Brader, who heads the legal team for the State on this issue. Additionally, representatives of the Michigan Agency for Energy (including Michael Mooney, an expert in underground tunnel construction), and the Department of Environmental Quality will be in attendance in the event that the Board wishes to seek their expertise on this issue. It is my understanding that Enbridge will also have available representatives who can answer any questions or engage in discussion with the Board as requested.

I am enclosing a number of documents that I hope will aid your deliberations. A draft outline of possible terms of an agreement between Enbridge and the Authority is the first item, since your priorities will guide the development of any agreement into which you would be asked to enter. Additionally, I have included copies of both binding agreements that relate to the tunnel which have been executed to date, a feasibility study regarding the tunnel that was completed under the terms of the First Agreement, and a copy of the Straits easement for Line 5.

The Mackinac Bridge Authority has a sterling record of connecting our peninsulas and could continue this important work for our state by ensuring Straits infrastructure is properly constructed and maintained. Thank you for your service to the people of Michigan and for your consideration of this important matter.

Sincerely,

Rick Snyder
Governor

Attachments:
Draft Tunnel Agreement Outline
Second Agreement between Enbridge and the State
First Agreement between Enbridge and the State
Feasibility Study
Straits Easement for Line 5

Draft Tunnel Agreement Outline

Parties: Mackinac Bridge Authority (“Authority”) and Enbridge Energy, Limited Partnership (“Enbridge”) (collectively “Parties”).

Recitals/Preamble:

- A. On October 3, 2018, the State of Michigan, the Michigan Department of Environmental Quality, and the Michigan Department of Natural Resources entered into an agreement (“Second Agreement”) that contemplates that Enbridge will enter into further agreements with the Authority to construct an underground tunnel (“Tunnel”) connecting the Upper and Lower Peninsulas to accommodate a replacement of that portion of Enbridge’s Line 5 pipeline (“Line 5”) that crosses the Straits of Mackinac (“Straits”) and to provide the potential to accommodate use by other third-party linear utilities (“Utilities”).
- B. In accordance with the Second Agreement, and as provided in this Agreement, Enbridge desires to construct and the Authority desires to receive a Tunnel in which a replacement to the Line 5 Dual Pipelines could be constructed, operated, and maintained (“Straits Line 5 Replacement Segment”) so as to allow for the discontinuation of service on the existing Line 5 Dual Pipelines’ crossing of the Straits upon the Straits Line 5 Replacement Segment being placed into service within the underground Tunnel, and to allow for the possibility of other utilities to be moved from their current locations at the Straits and into the Tunnel.
- C. The Parties agree that: (1) Enbridge will, at its expense, design, construct, operate and maintain the Tunnel; (2) Enbridge and the Authority will jointly obtain all Governmental Approvals and Permits required for the Tunnel; and (3) the Authority will (a) obtain certain rights in public property needed for construction and operation of the Tunnel, (b) authorize Enbridge to enter, use, and occupy such public property to construct the Tunnel and the Straits Line 5 Replacement Segment; (c) concurrent with the execution of this Agreement, issue a lease to Enbridge authorizing it operate and maintain the “Straits Line 5 Replacement Segment” within the Tunnel (“Straits Tunnel Lease”); and (d) accept ownership of the Tunnel after it is constructed in accordance with agreed upon Technical Specifications.

Article 1 Definitions and Interpretation

1.1. Definitions

- (a) List of defined terms (e.g., “Agreement,” “Government Approvals”, etc.)
- (b) Generic meanings (e.g. “including”, “or”, “party”, etc.)

1.2 Order of Preference / Priority Among Documents (e.g. amendments, attached schedules/ appendices, etc.)

Article 2 Representations

2.1 Authority- Signatories for each party represent that they have authority to enter into this Agreement.

Article 3 Property Interests

3.1 Needed for Construction

(a) Authority has or will acquire the lawful right to use, and will provide Enbridge the right to enter, occupy, and use, lands beneath the lakebed of the Straits of Mackinac necessary for the construction, operation, and maintenance of the Tunnel (“Lakebed Right of Way”), which will include the right to construct a liquid hydrocarbon pipeline within the Tunnel.

(b) Enbridge has or will acquire the necessary property rights to use lands on the north and south sides of the Straits necessary for the construction, operation, and maintenance of the Tunnel and the Straits Line 5 Replacement Segment (“Additional Tunnel Right of Way”).

(c) Enbridge will own the Tunnel up to the time of Final Construction of the Tunnel, as provided in Section 3.4(a) below.

3.2 Tunnel Lease to Enbridge- Concurrent with the execution of this Agreement, and subject to its terms, the Authority will execute and grant to Enbridge the Tunnel Lease Agreement, in form and substance consistent with Schedule ____ - Tunnel Lease, authorizing Enbridge to use the Tunnel for purposes of constructing, operating, and maintaining the Line 5 Straits Replacement Segment within the Tunnel for a term of ninety-nine (99) years.

(a) Nothing in this Agreement or the Tunnel Lease will: (i) prevent Enbridge from proceeding to construct the Straits Line 5 Replacement Segment in the Tunnel at any point during the Tunnel construction process, including prior to Final Construction of the Tunnel, as provided in Section 3.4(a) below; or (ii) make the Authority responsible for establishing the design and construction standards for the Straits Line 5 Replacement Segment.

3.3 Tunnel Leases for Other Utilities- The Authority may grant leases to Third-Parties authorizing uses of the Tunnel for the construction, operation and maintenance of other utilities, except, unless Enbridge’s written consent is obtained, the Authority will not grant leases to any Third-Parties that: (i) will require a change in design and did not seek access to the Tunnel prior to the stage of the Front End Engineering Design (“FEED”) process for the Tunnel, at which point inputs to the design development have been frozen ; (ii) that interfere with, pose a safety risk to, or limit the ability of Enbridge to operate and maintain the Line 5 Straits Replacement Segment within the Tunnel. The procedure by which Third Parties may obtain access to the Tunnel is set forth in Schedule _____ - Third Party Access. The Authority agrees that it will not grant a lease to a third party to use the Tunnel for pipeline transport of hydrocarbons without the written consent of Enbridge.

3.4 After Construction

(a) After Final Construction of the Tunnel and acceptance of the completed Tunnel by the Authority in accordance with Section 7.11(b) below, Enbridge will transfer ownership of the Tunnel to the Authority, subject to Enbridge's continuing rights and responsibilities under the Tunnel Lease, Operations and Maintenance Plan, and this Agreement. Construction completion of the Tunnel will be aligned with and meet the requirements of Enbridge's Project Lifecycle Gating Control standards and procedures. Tunnel ownership will be transferred to the Authority for its acceptance in accordance with Section 7.11, once Enbridge has completed the Project Gating and Close-out activities and related documentation pertaining to construction of the Tunnel.

(b) After Final Construction of the Tunnel and transfer of Tunnel ownership to the Authority, Enbridge will, upon written request of the Authority, assign to the Authority rights to use the Additional Tunnel Right of Way for purposes of the Tunnel's operation and maintenance, and compliance with any law, regulation, rule or other agreements.

(c) The Straits Replacement Segment of Line 5 will at all times be owned by Enbridge, and the Authority will have no responsibility or liability of any kind related to the construction, operation, or maintenance of the Straits Line 5 Replacement Segment. This provision will not be construed to limit the Authority's obligation consistent with this Agreement to allow Enbridge to construct, operate, or maintain the Straits Line 5 Replacement Segment within the Tunnel.

(d) If third-party utilities are placed in the Tunnel, neither Enbridge nor the Authority will own them or have any responsibility or liability of any kind related to their construction, operation, or maintenance. Such third-party utilities will instead be the property of the third-party entities that caused them to be installed. or their assigns. Enbridge's rights and responsibilities with respect to operation and maintenance of the Tunnel will be limited to those specified in the Operation and Maintenance Plan approved by the Authority and Enbridge.

Article 4 Government Approvals/Permits

4.1 Necessity of Government Approvals/Permits- Enbridge and the Authority intend and agree to obtain or cause to be obtained any Government Approvals or Permits for the construction, operation, and maintenance of the Tunnel as required by applicable law.

4.2 Joint Applications by Enbridge and the Authority- Except for any permit application(s) related to Preliminary Engineering Activities already submitted by Enbridge before the effective date of this Agreement, and subject to Section 4.4 below, Enbridge and the Authority will cooperate on, and jointly apply for such Governmental Approvals or Permits for the construction, operation, and maintenance of the Tunnel. Enbridge will be: (a) primarily responsible for obtaining and compiling information needed for such applications; and (b) solely responsible for paying any fees or costs associated with such applications.

(a) Nothing under Section 4.2 will preclude Enbridge from independently applying, at its own risk, for any Government Approvals or Permits necessary for the preliminary engineering,

design, construction, operation, and maintenance of the Tunnel if the Authority does not join the application within ninety (90) days after it was provided to the Authority for joint signature.

4.3 Compliance with Governmental Approvals and Permits for Tunnel- Enbridge and its contactors/agents performing the work will be responsible for maintaining compliance with Government Approvals and Permits for preliminary engineering, design, construction, operation and maintenance of the Tunnel, and as between the Parties, will be solely responsible for any fines, sanctions, or costs arising from non-compliance.

4.4 Approvals/Permits for Straits Replacement Segment of Line 5- Enbridge will be solely responsible for applying for and complying with Government Approvals and Permits for the construction, operation and maintenance of the Straits Line 5 Replacement Segment, except to the extent that the same Governmental Approval or Permit is required for both the Tunnel and the Straits Line 5 Replacement Segment, a single application may be submitted in accordance with Subsection 4.2 above that requests a Governmental Approval or Permit for both the Tunnel and the Straits Line 5 Replacement Segment. The Authority will have the right to inspect Permit applications upon request in order to ensure that the Permit applications for the Tunnel and the Straits Line 5 Replacement Segment and associated conditions are consistent with one another.

Article 5 Costs and Obligation to Construct, Operate, Maintain, and Decommission Tunnel

5.1 Costs of Tunnel Design, Construction, Operation, Maintenance and Decommissioning- Enbridge will be solely responsible for all costs of designing, constructing, operating, maintaining and decommissioning the Tunnel, including Preliminary Engineering, procurement and payments to contractors performing the work. Enbridge's obligations are subject to the other terms of this Agreement, including Article 16 (Third Agreement between the State of Michigan and Enbridge) and Article 17 (Termination). Enbridge's performance of its responsibilities related to the Tunnel and this Agreement is subject to and conditioned upon the approval by Enbridge's Board of Directors of the expenditure of sufficient funds for those purposes.

5.2 No Use of Existing or Future Mackinac Bridge Assets and Revenues- The existing assets of the Authority as of the date of this Agreement, as well as all other revenues related to the operation of the existing Mackinac Bridge and all revenues derived from operation of the Bridge are dedicated to its operation and maintenance and may not be used by the Authority for any activities related to the Tunnel and this Agreement. Nothing in this Agreement will be deemed to limit in any way the powers of the Authority to operate the Mackinac Bridge, including but not limited to leasing of space on the Bridge. The Authority's performance of its responsibilities related to the Tunnel and this Agreement is subject to and conditioned upon the appropriation of sufficient funds for those purposes.

5.3 Independent Quality Assurance Contractor- Enbridge will provide funds necessary for the Authority to retain an Independent Quality Assurance Contractor with appropriate technical expertise to monitor the construction of the Tunnel and provide information to the Authority.

5.4 Costs of Third-Party Utilities- Neither Enbridge nor the Authority will be responsible for costs attributable to the design, construction, installation, commissioning, or operation of Third-Party Utilities in the Tunnel, or the costs of their operation and maintenance. All such costs will be the responsibility of the entity that caused them to be installed, or their assigns.

5.5 Third-Party Costs for Tunnel Operation and Maintenance- If third-party utilities obtain permission from the Authority to use space within the Tunnel, such third-party utilities will pay to Enbridge, as calculated by the model provided in Schedule ___ - Third-Party Access: (i) operation and maintenance costs for the Tunnel; and (ii) a contribution for the cost of constructing the Tunnel, which such amount is to be based on whether the third-party utility has sought access to the Tunnel prior to or (with Enbridge's consent) after the completion of the Front End Engineering and Design ("FEED") process.

(a) Under no circumstance shall Enbridge be responsible for any construction, operation, or maintenance costs arising from a Third-Party's use of the Tunnel.

Article 6 Project Description

6.1 Project Description- The Tunnel, subject to the design and engineering work including the Geotechnical Investigations required under this Agreement, is to: (i) be approximately four (4) miles in length, extending from an opening point as near as practical to Enbridge's existing station located on the north shoreline of the Straits to an opening point as near as practical to Enbridge's existing Mackinaw station located on the south shoreline of the Straits; (ii) except for the opening points on either side of the Straits, be constructed entirely underground, below the lakebed of the Straits; (iii) be approximately ten (10) feet in finished diameter or other diameter that is deemed by Enbridge to not be greater than that necessary to construct, operate and maintain a 30-inch Line 5 Replacement Segment, in which third-party linear cable utilities, including but not limited to electric and broadband cables, may also be housed, provided that: (a) such utilities do not increase the diameter of the Tunnel beyond that necessary to construct, operate, and maintain a 30-inch Straits Line 5 Replacement Segment; and (b) the presence of such utilities is not incompatible with the operation or maintenance of the Line 5 Replacement Segment; (iv) be designed and constructed in accordance with prevailing, state of the practice tunnel standards and specifications for a design life of no less than ninety-nine (99) years; and (v) be constructed of a suitable structural lining, providing secondary containment to prevent any leakage of liquids from the Line 5 Replacement Segment into the lakebed or Straits.

Article 7 Development, Design, and Construction of the Tunnel

7.1 Preliminary Engineering Activities

(a) Enbridge shall prepare and, within forty-five (45) days after the Effective Date of this Agreement, submit to the Authority for its review a "Preliminary Engineering Activities Work Plan." Enbridge will consider any comments provided by the Authority and perform all

preliminary engineering activities appropriate for the development, design and construction of the Tunnel including, but not limited to Geotechnical Investigations, as described in the “Preliminary Engineering Activities Work Plan.”

(b) Enbridge will initiate FEED within sixty (60) days after the effective date of this Agreement.

7.2 Project Specifications- No later than March 1, 2019, the Authority and Enbridge will identify members of a team to jointly develop the project specifications related to design and construction of the Tunnel. The jointly developed project specifications will be submitted to the Authority for approval. Following such submittal, Enbridge shall prepare and issue a Request for Proposal (RFP) to qualified construction contractors and/or qualified design-construct contractors, soliciting proposals from these companies to design, construct and/or to design and construct the Tunnel in accordance with the description and scope of work, applicable technical specifications, codes and standards, commercial requirements, and contractual terms and conditions outlined in the RFP document. No RFP will be issued without prior approval of project specifications by the Authority.

7.3 Geotechnical- Within sixty (60) days after receiving the Governmental Approvals and Permits required to conduct Geotechnical Investigations, Enbridge will, weather permitting, initiate field work for Geotechnical Investigations. This field work involves a combination of marine, near shore and onshore geotechnical investigations, including onshore borehole and test pits. Upon completing all required Geotechnical Investigations, Enbridge will complete the Geotechnical reports related to the various field investigation results.

7.4 Applications for Governmental Approvals and Permits for Tunnel- Within one hundred eighty (180) days after Enbridge receives the Geotechnical Baseline Report, applications for any federal or state Governmental Approvals or Permits necessary for the construction of the Tunnel shall be submitted to the Authority in accordance with Article 4 above.

7.5 Request for Proposals and Contracting Strategy

(a) Enbridge shall, by April 30, 2019, prepare for the Authority’s review a Draft Procurement and Contracting Execution Plan, including, without limitation:

- (i) The applicable Contract execution model(s) for said work that will be included in the RFP(s);
- (ii) Enbridge Procurement and Quality processes that include a general description of the RFP and bid solicitation process, Contractor qualification process, and Contractor proposal evaluation and selection criteria; and
- (iii) Timeline for the execution of each applicable RFP package.

(b) In accordance with the timeline established under Subsection 7.5(a)(iv) above, Enbridge will prepare for the Authority’s review Draft RFP(s) to solicit proposals from contractors to design and/or construct the Tunnel. The Draft RFP(s) will include, without limitation:

- (i) Qualifications of proposed contractors, which shall include a requirement that the contractor and any proposed subcontractors do not appear on a list, provided by the State of Michigan, of contractors with violations of environmental and safety laws, regulations, rules and permits;
 - (ii) Jointly Developed Project Specifications;
 - (iii) A statement that the Authority and the State are not subject to any financial risks or liabilities.
 - (iv) Commercial Structure;
 - (v) Key progress reports and deliverables required from the contractor throughout the duration of the work; and
 - (vi) Change management procedures for proposed modifications of or alternatives to any of the conditions post contract award.
- (c) Upon obtaining the Authority's concurrence that any RFP complies with Section 7.5(b)(i, ii, iii), Enbridge will release such RFPs. Enbridge will select any contractors, provided that designated representatives of the Authority will, upon request, be authorized to observe the contractor selection process. The Authority will have the right to review any contracts entered into by Enbridge and the Tunnel Contractors to verify that such contracts comply with Section 7.5(b)(i, ii, iii).
- (d) No later than one hundred eighty (180) days after obtaining all Government Approvals and Permits necessary to begin construction of the Tunnel and the Straits Line 5 Replacement Segment, Enbridge will engage the selected contractor(s) ("Tunnel Contractors") and commence construction.

7.7 Tunnel Project Execution

- (a) Enbridge and its selected Tunnel Contractors will prepare a Draft Tunnel Project Execution Plan ("PEP") that sets forth the key activities required for completion of the Tunnel and the Straits Line 5 Replacement Segment, including the schedule and milestones associated with the execution of such key activities. The Authority may recommend suggested changes to the Draft Tunnel PEP, which Enbridge and its Tunnel Contractors will take into account in developing the Final Tunnel PEP.
- (b) Enbridge will construct the Tunnel in accordance with the Final Tunnel PEP, except as provided in 7.3(c) below.
- (c) If Enbridge proposes to make any material change to the Final Tunnel PEP, it will provide written notice of the proposed change to the designated representative of the Authority. Enbridge will not implement any such proposed material change unless either: (i) the Authority concurs with the proposed change(s) in writing; or (ii) the Authority fails to respond to Enbridge's notice of proposed change(s) within thirty (30) calendar days of the Authority's receipt of such notice. For purposes of this section, "material change" will mean any substantive departure from the Project Specifications set forth in Section 7.2 above.

7.8 Progress of Construction

(a) On a monthly basis, or as otherwise agreed by the Parties, Enbridge will provide to the designated representatives of the Authority: (i) copies of reports documenting the progress of the Tunnel project, and (ii) copies of Enbridge's and/or Tunnel Contractors' reports documenting construction quality assurance / quality control reviews of selective project activities.

(b) Upon request, Enbridge will provide designated representatives of the Authority access, at reasonable times and manner; to: (i) other records relating to the construction of the Tunnel; and (ii) locations and facilities controlled by Enbridge where construction of the Tunnel may be safely observed.

7.9 Permits and Compliance with Applicable Law

(a) Enbridge and its contractors and subcontractors shall construct the Tunnel in compliance with the requirements of applicable law and of any required Government Approvals and Permits.

(b) If Enbridge or the Authority becomes aware of information indicating that Enbridge, its contractors, or subcontractors may have violated a requirement of applicable law, a Governmental Approval or Permit, Enbridge and the Authority will immediately notify the other Party of the violation or potential violation. Enbridge will promptly take all necessary measures to cease and remedy the violation and to notify the Authority of those measures. If Enbridge fails to timely document that such measures have been taken and a violation remains, the Authority may direct Enbridge to cease and cause its contractors or subcontractors to cease the construction activities related to the violation until such time that the violation has been remedied.

7.10 Payments to Contractors and Subcontractors

(a) In the absence of a breach of contract or other sufficient reason, Enbridge will pay all contractors and subcontractors in accordance with the terms of any applicable contracts or subcontracts.

(b) Enbridge will be responsible for responding to and resolving any claims or disputes raised by contractors or subcontractors regarding payments or non-payments, regardless of whether the claim is directed toward Enbridge or the Authority.

7.11 Construction Completion

(a) Upon completion of Tunnel construction, Enbridge will provide the Authority with a Tunnel Completion Report, documenting completion of the Tunnel. The Report will include a Certification by Enbridge that: (a) the Tunnel has been completed in accordance with the Project Specifications set forth in Section 7.2, and any materials changes approved in accordance with Subsection 7.7(c) above; and (b) the title to the Tunnel is free from any encumbrances or liens.

(b) Based upon the Tunnel Completion Report and Certification described in 7.11(a), and other available information, the Authority will accept the Tunnel and take title thereto, subject to the Dispute Resolution procedure described in 7.11(c).

(c) If the Authority disputes, in good faith, the substantive provisions of the Certification, the Parties agree that such a dispute will be resolved as follows: First, through a period of informal negotiations between designated representatives of the parties, not to exceed 60 days. Second, if not resolved through informal negotiations, through submission of the subject of the dispute to the Independent Quality Assurance Contractor retained under Section 5.3, which shall make a determination during a period not to exceed 30 days. Third, if either party is not satisfied with the determination of the Independent Quality Assurance Contractor, through submission of the dispute to a mutually identified court of competent jurisdiction. In the event that the findings of the Independent Quality Assurance Contractor on the subject of the dispute supports the position of Enbridge rather than that of the Authority, the Parties agree that Enbridge will be deemed to be in compliance with the requirements of this Section through the final disposition of any judicial dispute resolution proceedings, including any appeals.

Article 8

[Reserved]

Article 9 Delay Events

9.1 Definition- For purposes of this Agreement, “Delay Event” is defined as any event arising from causes beyond the control of a Party or of a Party’s contractor, that delays or prevents the performance of any obligation under this Agreement, despite the Party’s best efforts to fulfill the obligation. “Best efforts to fulfill the obligation” includes using best efforts to anticipate any potential Delay Event and best efforts to address the effects of any such event: (a) as it is occurring; and (b) following its occurrence, such that the delay and any adverse effects of the delay are minimized.

9.2 Automatic Delay Events- The Parties agree that the following circumstances automatically constitute a Delay Event:

- (a) A delay longer than one year in obtaining a decision on a timely requested application for a Government Approval or other legal authorization required under this Agreement;
- (b) Acts of God, fires, floods, epidemics, labor disputes;
- (c) Unavailability of necessary materials or equipment because of industry-wide shortages;
- (d) An injunction or other judicial or governmental order preventing the timely performance of the obligation.

9.3 Other Delay Events- The Parties further agree that any other circumstance included within the definition of Delay Event in Section 9.1 may on a case-by case basis be determined by Enbridge and the Authority to constitute a Delay Event.

9.4 Notice- If a Delay Event occurs, the Party whose performance is affected by the Delay Event will notify the other Party of the Delay Event within a reasonable time after the Party is aware that a Delay Event has occurred. The notice will describe the Delay Event, the anticipated duration of the Delay Event, if known, and the efforts taken by the Party to minimize the delay and any adverse effects of the delay.

9.5 Disputes- Any dispute between the Parties relating to the existence or duration of a Delay Event will be resolved in accordance with Article 14, Dispute Resolution.

Article 10 Insurance

10.1 Requirement to Procure and Maintain Insurance- Enbridge and its contractors performing work under this Agreement will procure and maintain or cause to be procured and maintain insurance policies meeting the requirements of this Section 10 and Schedule _____ [Insurance Specifications], collectively “Insurance Requirements.” [Schedule will list types of policies, e.g. general liability, etc. and minimum coverage limits]. Each required policy will include the Authority and the State of Michigan additional insureds.

10.2 Qualified Insurers- All insurance required under this Agreement will be procured from insurers that at the time coverage commences are authorized to do business in the State and have a current policyholder’s management and financial size category rating of not less than A-:VI according to A.M. Best’s Financial Strength Rating and Financial Size Category or must be rated in one of the two top categories by two nationally recognized financial rating agencies (“Qualified Insurer”), except as otherwise provided in Schedule ___ (Insurance Specifications) or approved in writing by the Authority in its good faith.

10.3 Premiums, Deductibles and Self-Insured Retentions- Enbridge will timely pay, or cause to be paid, the premiums for all Insurance Policies and insurance coverages required by this Agreement. There will be no recourse against the Authority or any of the other Insured Parties for payment of premiums or other amounts with respect to the Insurance Policies, Enbridge will be responsible for paying all insurance deductibles or self-insured retentions, and the Authority will have no liability for deductibles, self-insured retentions or claim amounts exceeding the required policy limits.

10.4 Primary and Noncontributory Coverage

10.5 Verification of Coverage

Article 11 Indemnification

11.1 Subject to Section 11.2 and Article 12, Enbridge will defend, indemnify, protect and hold harmless the Authority and the State of Michigan, and all of its officers, officials, agents, and employees, each in their capacities as such (Indemnitee) from and against (a) any Claim or Liability arising out of or in connection with the work done by Enbridge or its contractors under this Agreement, including without limitation, the design, construction, operation and maintenance of the Tunnel or the Line 5 Straits Replacement Segment, and (b) any Claim or

Liability relating to the Tunnel arising out of or in connection with the condition of state-owned lands beneath the Straits of Mackinac. It is the specific intent of the Parties to this Agreement that the Indemnatee will, in all instances except for loss or damage resulting from the sole and exclusive negligence or wrongful acts or omissions of the Indemnatee, be indemnified against all liability, loss or damage for or on account of any injuries to or death of any third person or any damages to or destruction of real or personal property belonging to any third person arising out of or in any way connected with the performance of this Agreement, regardless of whether or not the liability, loss, or damage is caused in part, or alleged to be caused in part by, the negligence or fault of the Indemnatee.

11.2 Defense and Indemnification Procedures [procedures to be followed with respect to a Claim or Liability covered in Section 11.1]

Article 12 Joint Defense with Respect to Certain Claims

12.1 Claims Subject to Joint Defense- The Parties agree to jointly defend the following specific types of Claims: (a) claims seeking a judicial determination that this Agreement is legally invalid; (b) claims seeking to enjoin the performance of either Party's obligations under this Agreement; (c) claims challenging the validity of any Governmental Approval or Permit granted based upon an application submitted under this Agreement; (d) claims initiated by Enbridge or the Authority to challenge a Governmental Entity's denial of a Governmental Approval or Permit applied for under this Agreement; (e) claims challenging the Authority's and/or Enbridge's right to use any State lands required for the Tunnel; (f) claims alleging failure to perform under this Agreement or other agreements between the Parties that limits the use of the Tunnel by either Enbridge or the Authority, or Enbridge's ability to operate the existing Line 5 Dual Pipelines or the Straits Line 5 Replacement Segment, provided that Enbridge is in compliance with this Agreement and the Tunnel Lease; and (g) claims challenging the validity of or seeking to enjoin the issuance of any approval by the Authority to Enbridge under this Agreement.

12.2 Procedures- Each Party will promptly notify the other Party of the filing or assertion of any Claim covered under Section 12.1. The Parties will promptly enter into a joint defense agreement specific to the Claim filed or asserted and thereafter cooperate and coordinate in the joint defense of the Claim through final disposition, including appeals. Each Party will be represented by its separate legal counsel and retains the right to advance whatever legal arguments or positions they each deem appropriate under the circumstances. The joint defense agreement may, if necessary, and to the extent allowed by applicable law, include provisions to ensure independent legal representation of the Authority's position.

12.3 Costs- Each Party will pay its own attorney fees, costs, and expenses associated with any Claim covered by Section 12.1.

Article 13

[Reserved]

Article 14 Dispute Resolution

14.1 Except as otherwise specified in this Agreement, the Parties agree to the following procedures to resolve all disputes between them arising under this Agreement.

14.2 Informal Dispute Resolution- First, designated representatives of the Parties will engage in good faith efforts to informally resolve the dispute for a period of up to sixty (60) days, provided that the Parties may mutually agree in writing to extend that period.

14.3 Optional Mediation- If the dispute is not resolved informally through Section 14.2, the Parties may, through mutual written agreement, select a neutral mediator to facilitate the resolution of the dispute. Unless otherwise agreed, the parties will equally share the costs of the mediator's services.

14.4 Judicial Dispute Resolution- If the dispute is not resolved informally through Section 14.2, or, if applicable, through Section 14.3, Either Party may submit the dispute to a court of competent jurisdiction for resolution.

Article 15 Amendment

15.1 This Agreement may be amended only through written agreement executed by authorized representatives of both Parties.

Article 16 Third Agreement Between the State of Michigan and Enbridge

16.1 The Parties understand and agree that this Agreement is to be entered in contemplation of a separate, but closely related agreement to be designated, Third Agreement between the State of Michigan, the Michigan Department of Environmental Quality and the Michigan Department of Natural Resources (collectively "the State of Michigan") and Enbridge Energy, Limited Partnership, Enbridge Energy Company, Inc., and Enbridge Energy Partners, L.P. (collectively "Enbridge") ("Third Agreement"). The Authority will not be a Party to the Third Agreement.

16.2 It is anticipated that the Third Agreement will:

(a) Provide for the continued operation by Enbridge of the Line 5 Dual Pipelines, subject to Enbridge's compliance with applicable law and the terms of this Agreement with the Authority, until the Line 5 Replacement Segment is placed into service within the Tunnel.(b) Subject to agreement on the terms described in Section 16.2(a), above, provide as further incentives to the timely completion of the Tunnel and the Line 5 Replacement Segment that:

(i) Enbridge will agree to cease use of the Line 5 Dual Pipelines no later than December 31, 2028 or the date which is five years after the receipt of all Government Approvals and Permits necessary to commence construction, whichever date comes later, subject to automatic extension for delays due to (a) orders issued by a court or other government

body delaying or preventing construction of the Tunnel; (b) pending litigation in which an injunction against the construction of the Tunnel is being sought; or (c) Delay Events as described in Article 9 of this Agreement.

(ii) Enbridge and the State will agree to an enhanced inspection regime for the Line 5 Dual Pipelines in years 2023-2028 (and for such later periods of Line 5 Dual Pipeline operation as provided in Section 16.2(i)), while the Line 5 Dual Pipelines are still in use. This will include a hydrotest (or an equally reliable alternative technology for confirming integrity and material strength) of the Line 5 Dual Pipelines which Enbridge will perform in 2026 if the Line 5 Dual Pipelines are still in use. Reports of the inspections will be made available to the State of Michigan for review.

(iii) The inspection regime as described in (ii) will be used to evaluate whether agreed-upon technical criteria, to be specified in the Third Agreement, are being met.

Article 17 Termination

17.1 Termination by Either Party. Either Party may terminate this Agreement if: (i) circumstances, other than a Delay Event under Article 9 that lasts less than 180 days, beyond the control of the terminating Party prevents the construction, operation, or maintenance of the Tunnel or the Straits Line 5 Replacement Segment; or (ii) the Tunnel, as described in Article 6, is determined by Enbridge and the Authority to be technically infeasible for engineering reasons based on the results of the GBR.

17.2 Termination by the Authority. The Authority may terminate this Agreement if, after being notified in writing by the Authority of any material breach of this Agreement, Enbridge fails to correct said breach within 90 days, or having commenced remedial action within such 90-day period, such later time as it is reasonably possible for Enbridge to correct said breach by appropriate action and the exercise of due diligence in the correction thereof.

17.3 Termination by Enbridge. Enbridge may terminate this Agreement by written notice to the Authority if: (i) Enbridge has involuntarily ceased operation of the existing Line 5 Dual Pipelines as a result of a court order or at the direction of a Governmental Entity at any point during the design or construction of the Tunnel; (ii) Enbridge has voluntarily chosen to permanently cease operations on the existing Line 5 Dual Pipelines at any point during the design or construction of the Tunnel; (iii) after being notified in writing by Enbridge of any breach by the Authority of this Agreement or the Straits Tunnel Lease or any unreasonable impairment by the Authority of Enbridge's ability to construct the Tunnel or construct, operate, and maintain the Straits Line 5 Replacement Segment within the Tunnel, the Authority has failed to commence remedial action within 90 days to correct the identified breach or impairment or failed to use due diligence to complete such remedial action within a reasonable time thereafter; or (iv) either (A) the Third Agreement is rescinded, revoked, or terminated for any reason, or (B) after being notified in writing by Enbridge of any breach by the State of the Third Agreement or any unreasonable impairment by the State of Enbridge's ability to construct the Tunnel or construct, operate, and

maintain the Straits Line 5 Replacement Segment within the Tunnel, the State has failed to commence remedial action within 90 days to correct the identified impairment or breach or failed to use due diligence to complete such remedial action within a reasonable time thereafter.

17.4 Effect of Termination.

(a) If this Agreement is terminated in accordance with Section 17.1: (i) Enbridge will be solely responsible for all costs associated with the abandonment of the Tunnel and the decommissioning of the Straits Line 5 Replacement Segment in accordance with Article ___; and (ii) Enbridge's obligation to indemnify the Authority under Article 11 shall survive with respect to any Claims and Liability arising out of or in connection with the work done under this Agreement.

(b) If this Agreement is terminated in accordance with Section 17.2 or 17.3(ii), Enbridge will be responsible for complying with Section 17.4(a), and will also reimburse the Authority for any reasonable costs incurred by the Authority in retaining a staff official and third parties to assist the Authority's performance under this Agreement.

(c) If this Agreement is terminated in accordance with Section 17.3, excluding clause(ii) thereof, Enbridge's right to construct, operate, and maintain the Tunnel and the Straits Line 5 Replacement Segment on the property described in the Tunnel Lease will survive termination of this Agreement and/or the Tunnel Lease, and Enbridge will retain ownership of the Tunnel and will not transfer ownership of the Tunnel to the Authority under Section 3.4(a).

Article 18 Records and Information

Article 19 Notices

Article 20 Miscellaneous

20.1 Approvals under this Agreement- Each Party agrees that whenever this Agreement provides for it to approve, concur with, or jointly act with the other Party, such approval, concurrence or joint action will not unreasonably be withheld.

20.2 Good Faith- The Parties agree to act in good faith in the interpretation, execution, performance, and implementation of this Agreement.

Article 21 Assignment

21.1 Enbridge may assign, charge, or transfer its rights or obligations under this Agreement provided that it obtains the written consent of the Authority.

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