

Tunnel Agreement

Parties: Mackinac Straits Corridor 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 Utilities (as defined below).
- 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) accept ownership of the Tunnel after it is constructed in accordance with agreed upon Technical Specifications; and (d) issue a lease to Enbridge authorizing it to operate and maintain the “Straits Line 5 Replacement Segment” within the Tunnel (“Straits Tunnel Lease”).

Article 1 Definitions and Interpretation

1.1. Definitions

- (a) “Additional Tunnel Right of Way” means the lands on the north and south sides of the Straits that are necessary for the construction, operation, inspections and maintenance of the Tunnel and the Straits Line 5 Replacement Segment.
- (b) “Agreement” means this agreement including all schedules.
- (c) “Applicable Law” means any federal State or local statute, law, code, regulation, ordinance, rule, common law, judgment, judicial or administrative order, decree,

- directive, or other requirement having the force of law or other governmental restriction (including those resulting from the initiative or referendum process) or any similar form of decision or determination by any Governmental Entity.
- (d) “Authority” means the Mackinac Straits Corridor Authority.
 - (e) “Automatic Delay Events” has the meaning set forth in Section 9.2 of this Agreement.
 - (f) “Claim” means any actual or threatened claim, proceeding, action, cause of action, demand or suit (including by way of contribution of indemnity).
 - (g) “Confidential Information” means all confidential and proprietary information inclusive of personal information and information that a Party has designated as confidential and which is supplied, or to which access is granted, to or on behalf of the other Party, either in writing, or in any other form, directly or indirectly pursuant to discussions with the other party and includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a party which contain or otherwise reflect or are derived from such designation information.
 - (h) “Construction Execution Plan” or “CEP” means the document prepared in accordance with Section 7.7 that is to set forth the key activities required for construction of the Tunnel, including the schedule and milestones associated with the execution of such key activities.
 - (i) “Day” means a calendar day unless expressly stated to be a business day. In computing any period of time under this Agreement, where the last Day would fall on a Saturday, Sunday, or U.S. federal holiday or Michigan state holiday, the period shall run until the close of business of the next business day.
 - (j) “Draft Procurement and Contracting Execution Plan” means the document required to be prepared under Subsection 7.5(a) that includes the information specified in Subsections 7.5(a)(i)-(iii).
 - (k) “Delay Event” has the meaning set forth in Section 9.1.
 - (l) “Dual Pipelines” means the 4.09-mile portion of Enbridge’s Line 5 pipeline consisting of two 20-inch diameter seamless pipelines that cross the Straits.
 - (m) “Effective Date” means the date on which this Agreement is executed by all Parties.
 - (n) “Enbridge Board of Directors” means the Enbridge Inc. Board of Directors.
 - (o) “Enbridge” means Enbridge Energy, Limited Partnership or its successors and assigns.
 - (p) “Final Construction” means the point at which Enbridge has completed the construction of the Tunnel, with no outstanding construction claims that could result in a lien or encumbrance, in accordance with the Project Specifications that are jointly-developed by the Parties in accordance with Section 7.2. This includes the completion of any punch list items, restoration of any identified defects or any construction work still outstanding at Substantial Completion.
 - (q) “Front End Engineering Design” or “FEED” means the engineering process that is conducted to identify the Project Specifications and estimated costs for the Tunnel.

- (r) “Geotechnical Baseline Report” means a document that describes the anticipated subsurface conditions and how they will influence construction, constituting a guidance document for bidding a project and a contractual document for managing geotechnical risk.
- (s) “Geotechnical Data Report” means a document that provides the geotechnical and site data generated as a result of the geotechnical investigations.
- (t) “Geotechnical Investigations” means the preliminary work undertaken by Enbridge or its contractors to assess the geologic and geotechnical conditions and parameters required for Tunnel design and construction.
- (u) “Geotechnical Reports” means any reports prepared as a result of or in furtherance of the Geotechnical Investigations undertaken by Enbridge pursuant to Section 7.1 of this Agreement.
- (v) “Governmental Approvals and Permits” means all permissions, consents, approvals, certificates, permits, licenses, agreements, registrations, notices, exemptions, waivers, filings and authorizations (whether statutory or otherwise) required to design, construct, and operate the Tunnel and the Straits Line 5 Replacement Segment in accordance with this Agreement and as required by Applicable Laws in order to authorize Enbridge and the Authority to perform all or any part of the actions required under this Agreement.
- (w) “Governmental Entity” means the government of the United States of America, the State of Michigan, the cities and counties within the State and any other agency, or subdivision of any of the foregoing, including any federal, state, or municipal government, and any court, agency, special district, commission or other authority exercising executive, legislative, judicial, regulatory, administrative or taxing functions of, or pertaining to, the government of the United States of America, the State of Michigan or the cities and counties within the State.
- (x) “Independent Quality Assurance Contractor” means a contractor, firm, or company unaffiliated with Enbridge with appropriate technical expertise to monitor the construction of the Tunnel and to provide information to the Authority, as required under Section 5.3 of this Agreement.
- (y) “Indemnitee” has the meaning set forth in Section 11.1 of this Agreement.
- (z) “Insurance Requirements” means the requirements set forth in Article 10 and Schedule 2 concerning the Insurance Policies required to be procured and maintained under this Agreement.
- (aa) “Liability” includes any debt, obligation, damage, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses, loss, proceedings, demands and charges (whether arising under statute, contract or at common law), compensation, or liability of any kind, actual or prospective or contingent and whether or not currently ascertainable and whether arising under or for breach of contract, in tort, restitution, pursuant to statute or otherwise under law.
- (bb) “Line 5” means the Enbridge light crude and natural gas liquids pipeline that extends from Superior, Wisconsin, through the Upper Peninsula of Michigan to

the Lower Peninsula of Michigan and then across the U.S.-Canada international boundary to Sarnia, Ontario, Canada.

- (cc) “Mackinac Bridge” or “Bridge” means the suspension bridge spanning the Straits that connects the Upper and Lower Peninsulas of the State of Michigan.
- (dd) “Operations and Maintenance Plan” means the plan to be agreed upon by the Authority and Enbridge that sets forth the requirements for Enbridge’s operation and maintenance of the Tunnel during the term of the Tunnel Lease.
- (ee) “Party” means either the Authority or Enbridge, and “Parties” means both the Authority and Enbridge.
- (ff) “Preliminary Engineering Activities” means the activities required to be performed under Section 7.1 of this Agreement, which is limited to those activities appropriate for the development, design, and construction of the Tunnel, including but not limited to Geotechnical Investigations.
- (gg) “Preliminary Engineering Activities Work Plan” means the document prepared in accordance with Section 7.1 of this Agreement which identifies the Preliminary Engineering Activities to be conducted by Enbridge.
- (hh) “Project Specifications” means those specifications jointly-developed by the Parties under Section 7.2 which identify a final design for the Tunnel, or any material changes thereto that are approved in accordance with Subsection 7.7(c).
- (ii) “Qualified Insurer” has the meaning set forth in Section 10.2 of this Agreement.
- (jj) “Second Agreement” means the agreement entered on October 3, 2018 between the State of Michigan, the Michigan Department of Environmental Quality, and the Michigan Department of Natural Resources AND Enbridge Energy, Limited Partnership, Enbridge Energy Company, Inc., and Enbridge Energy Partners, L.P.
- (kk) “State of Michigan” or “State” means the State of Michigan, the Michigan Department of Natural Resources, and the Michigan Department of Environmental Quality.
- (ll) “Straits of Mackinac” or “Straits” means that segment of water between the upper and lower peninsulas of Michigan that connects Lake Michigan and Lake Huron.
- (mm) “Straits Line 5 Replacement Segment” means that segment of 30-inch pipe that is to be constructed, operated, and maintained within the Tunnel to connect to Enbridge’s existing Line 5 pipeline on either side of the Straits so as to serve as a replacement to the Dual Pipelines.
- (nn) “Substantial Completion” has the meaning set forth in Section 7.11(a).
- (oo) “Subsurface Right of Way” means the lands beneath the lakebed of the Straits and its adjoining shorelines necessary for the construction, operation, and maintenance of the Tunnel.
- (pp) “Third Agreement” means the agreement between the State of Michigan, the Michigan Department of Environmental Quality, and the Michigan Department of Natural Resources AND Enbridge Energy, Limited Partnership, Enbridge Energy Company, Inc., and Enbridge Energy Partners, L.P. to be entered concurrently with this Agreement.
- (qq) “Third-Party Utilities” or “Utilities” or “Linear Utilities” means the linear utilities not affiliated with Enbridge, including but not limited to electric and broadband

cables, which may come to be constructed, operated, and maintained within the Tunnel in accordance with the terms of this Agreement, Schedule 1, and the Tunnel Lease.

- (rr) “Tunnel” has the meaning set forth at the description provided at Section 6.1 of this Agreement.
- (ss) “Tunnel Construction Contractor” means contractors to construct the Tunnel that are engaged in accordance with Subsection 7.5(d).
- (tt) “Tunnel Completion Report” means the report required to be prepared and submitted in accordance with Section 7.11(b), which is to include a certification that the Tunnel has been completed in accordance with the Project Specifications, and any material changes thereto, and that the Tunnel is free from any encumbrances or liens.
- (uu) “Tunnel Lease” means the lease in the form attached as Exhibit B, with any changes mutually-agreed to by the Parties, between the Authority and Enbridge, which authorizes Enbridge to construct, operate, and maintain the Straits Line 5 Replacement Segment within the Tunnel for a 99-year period.
- (vv) “Tunnel O&M” has the meaning set forth in Section 7.11(b)(ii) of this Agreement.

1.2 In this Agreement unless the context otherwise requires:

- (a) the words “including”, “includes” and “include” will be read as if followed by the words “without limitation”;
- (b) the meaning of “or” will have the inclusive meaning represented by the phrase “and/or”;
- (c) a reference to any Party includes each of its successors, and permitted assigns, including any Person taking part by way of novation;
- (d) a reference to this Agreement or to any other agreement, document, or instrument includes a reference to this Lease or such other agreement, document or instrument, as amended, revised, supplemented or otherwise modified from time to time;
- (e) a reference to any Governmental Entity, institute, association or body is: (i) if that Governmental Entity, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Government Entity, institute, association or body are transferred to another organization, a reference to the reconstituted, renamed or replaced organization or the organization to which the powers or functions are transferred, as applicable; and (ii) if that Governmental Entity, institute, association or body ceases to exist, a reference to the organization which serves substantially the same purposes or objectives as that Governmental Entity, institute, association or body;
- (f) words in the singular include the plural (and vice versa);
- (g) headings are for convenience only and do not affect the interpretation of this Agreement;
- (h) a reference to this Agreement includes all Schedules, Appendices and Exhibits;

- (i) a reference to an Article, Section, Schedule, Appendix or Exhibit is a reference to an Article or Section of or Schedule, Appendix or Exhibit to the body of this Agreement;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;

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 from the Michigan Department of Natural Resources a Tunnel Easement that will provide the Authority with the lawful right to enter, occupy, and use, lands beneath the lakebed of the Straits of Mackinac necessary for the construction, use, operation, and maintenance of the Tunnel (“Subsurface Right of Way”), which will include the right to construct a liquid hydrocarbon pipeline within the Tunnel, and which will allow and authorize assignment to Enbridge in accordance with this Agreement.
- (b) On the Effective Date of this Agreement, or any later date on which the Authority acquires the Tunnel Easement, the Authority grants and assigns Enbridge, and its contractors and subcontractors, the right to enter, use, occupy and access, including for ingress and egress, the Subsurface Right of Way for the purpose of constructing, operating, and maintaining the Tunnel, and for constructing and using the Line 5 Replacement Straits Segment, in accordance with this Agreement. The grant and assignment of those rights will be in the form set forth as Exhibit A attached to this Agreement.
- (c) 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”).
- (d) Enbridge will own the Tunnel or any portion thereof that has been constructed up to the time of Final Construction of the Tunnel, as provided in Section 3.4(a) below.
- (e) The Authority will not amend or terminate the Tunnel Easement without the written consent of Enbridge. This Section 3.1(e) shall survive any termination of this Agreement under Section 17.3(a)(i), (b), (c), or (d).

3.2 Tunnel Lease to Enbridge.

- (a) Subject to the terms of this Agreement, in exchange for transfer of title to the Tunnel to the Authority and an easement across the Additional Tunnel Right of Way to the Authority, in accordance with Section 3.4, and concurrent with the Authority's acceptance of title to the Tunnel in accordance with Section 7.11, the Authority will execute and grant to Enbridge the Tunnel Lease.
- (b) 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 Agreements with Other Utilities - The Authority may grant use rights 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 use rights 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; or (ii) 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 1 – Third-Party Access. The Authority agrees that it will not grant use rights 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, in exchange for the execution and delivery of the Tunnel Lease by the Authority, 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, and concurrent with execution and delivery of the Tunnel Lease by the Authority.
- (b) After Final Construction of the Tunnel and acceptance of the completed Tunnel by the Authority in accordance with Section 7.11(b) below, and transfer of Tunnel ownership to the Authority, Enbridge will concurrently grant to the Authority an easement across 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. 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, 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: (i) the Authority does not join the application within ninety (90) days after it was provided to the Authority for joint signature; or (ii) the Authority does not accept or become a party to a Governmental Approval or Permit under Section 4.2(b) below.
- (b) Nothing under Section 4.2 will require the Authority to accept or become a party to a Government Approval or Permit if, as a condition of the Government Approval or Permit, the Authority would be required to indemnify any person or entity or be obligated to expend State funds in the absence of sufficient appropriated funds.

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 Activities, procurement and payments to contractors performing the work. Enbridge's obligations are subject to the other terms of this Agreement, including Article 16 (Financial Assurances) 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 the Enbridge Board of Directors of the expenditure of sufficient funds for those purposes.

5.2 No Use or Obligation of State Funds Inconsistent with Applicable Law - Nothing in this Agreement will be deemed to obligate the expenditure of State funds, including, but not limited to money from the Straits Protection Fund, for the construction, operation, maintenance or decommissioning the Tunnel. The Authority's performance of its responsibilities related to the Tunnel and this Agreement are 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 be responsible for all costs identified in Schedule 1 - Third-Party Access.

- (a) Under no circumstance shall Enbridge be responsible for any construction, operation, or maintenance costs arising from a Third-Party Utility'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 efficiently construct the Tunnel and to construct, operate and maintain a 30-inch Line 5 Replacement Segment, in which Third-Party Utilities, including but not limited to electric and broadband cables, may also be housed, provided that: (a) such Third-Party Utilities do not increase the diameter of the Tunnel beyond that necessary to construct, operate, maintain and use a 30-inch Straits Line 5 Replacement Segment; and (b) the presence of such Third-Party Utilities is not incompatible with the operation, maintenance or use 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

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" describing all engineering activities up to development of an RFP for design or design-construct of the Tunnel. Enbridge will consider any comments provided by the Authority and immediately initiate 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."

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.

7.3 Geotechnical - Enbridge will complete Geotechnical Investigations and provide to the Authority or its designated representatives the Geotechnical Data Report by December 31, 2019, unless the Parties mutually agree to extend that date until a new date in the year 2020 if it is determined that more extensive Geotechnical Investigations are necessary to ensure compliance with MCL 254.324d(4)(C) or to effectively and safely advance the Tunnel.

7.4 Applications for Governmental Approvals and Permits for Tunnel Construction - Within one hundred eighty (180) days after Enbridge receives and provides to the Authority or its designated representatives 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 for joint application 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) to complete design and construction of the Tunnel;
 - (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 Request for Proposals ("RFP") package.
- (b) No later than April 30, 2020 or one hundred twenty (120) days after the completion of the Geotechnical Investigations, whichever is later, Enbridge will complete the activities identified in the Preliminary Engineering Activities Work Plan and prepare and submit to the Authority for its review a draft RFP to solicit proposals from contractors to design or design-construct the Tunnel. The draft RFP 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.
 - (vii) A requirement that proposed contractors provide a plan of how they intend to engage Michigan’s labor pool in the project, including their means and methods for recruitment, training, and utilization.
- (c) Upon obtaining the Authority’s concurrence that any RFP for design and/or construction of the Tunnel, complies with Section 7.5(b)(i, ii, iii, iv, v, vi, vii), Enbridge will release such RFP. 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, iv, v, vi, vii). The contract to construct the Tunnel shall include a target date for completion of the Tunnel.
- (d) No later than one hundred eighty (180) days after obtaining all Government Approvals and Permits necessary to begin construction of the Tunnel, Enbridge will:
- (i) Engage the Tunnel Construction Contractors selected through the RFP process;
 - (ii) Make any payments required under Enbridge’s contracts with the Tunnel Construction Contractors that may be necessary to allow the Tunnel Construction Contractors to commence construction; and
 - (iii) Commence construction.

7.6 Progress of Engineering and Design

Throughout the course of engineering and design, Enbridge will grant designated representative(s) of the Authority access to project documents necessary for appropriate and timely review. In addition, on a monthly basis, or as otherwise agreed by the Parties, Enbridge will provide to the Authority a progress report of engineering and design activities.

7.7 Tunnel Construction Execution Plan

- (a) Enbridge will prepare a draft Tunnel Construction Execution Plan (“CEP”) that sets forth the key activities required for construction of the Tunnel, including the schedule and milestones associated with the execution of such key activities. The Authority may recommend suggested changes to the draft Tunnel CEP, which Enbridge and its Tunnel Construction Contractors will take into account in developing the final Tunnel CEP.
- (b) Enbridge will construct the Tunnel in accordance with the final Tunnel CEP, except as provided in 7.7(c) below.

- (c) If Enbridge proposes to make any material change to the final Tunnel CEP, 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 provided for in Section 7.2 above.

7.8 Progress of Construction

- (a) Enbridge will provide to the Independent Quality Assurance Contractor and any other designated representative(s) of the Authority, timely and reasonable access to all Tunnel construction documents necessary for standard of practice quality assurance. In addition, on a monthly basis, or as otherwise agreed by the parties, Enbridge will provide a progress report of construction progress.
- (b) Enbridge shall grant to the Independent Quality Assurance Contractor, reasonable access to the construction sites necessary to complete standard of practice quality assurance.

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) Substantial Completion of Tunnel Construction - The construction of the Tunnel shall be substantially complete by the not-to exceed date specified in Enbridge's contract with the Tunnel Construction Contractors. "Substantial Completion" shall mean:
- (i) Tunnel construction has been completed in accordance with the Project Specifications, except for any remaining punch list items, and Enbridge has submitted to the Authority a Tunnel Completion Report as provided for in 7.11b(i);
 - (ii) Construction of the Tunnel has been inspected for completeness and compliance with the Project Specifications,
 - (iii) The Tunnel has been commissioned and is available for normal, safe, and continuous operation pursuant to the purpose for which it was installed and in accordance with the Project Specifications;
 - (iv) Special tools, parts, systems and other items necessary to operate and maintain the Tunnel have been installed and are operable or are available in accordance with the Project Specifications and Applicable Laws; and
 - (v) All Governmental Approvals and Permits required for the operation of the Tunnel have been obtained and are in full force, and all test and inspection certificates, permits, and reports applicable to the construction of the Tunnel have been made available to Enbridge by the Tunnel Construction Contractors.
- (b) Upon Substantial Completion of the Tunnel, Enbridge will provide the Authority with:
- (i) A Tunnel Completion Report, documenting Substantial 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 provided for in Section 7.2, and any material changes approved in accordance with Subsection 7.7(c) above; and (b) the title to the Tunnel is free from any encumbrances or liens; and
 - (ii) A Tunnel Operations and Maintenance ("Tunnel O & M") Plan for approval by the Authority. Tunnel O&M means any and all management, administration, inspection, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement, including routine maintenance, necessary to achieve the Tunnel's 99-year design life and its continued physical integrity for secondary containment purposes. It includes the goods, equipment, and materials necessary for the operation as identified through the Tunnel design and construction process specified in Article 7 of this Agreement. Subject to the final design and construction of the Tunnel, it is expected that the Tunnel O & M Plan will address, in necessary detail and as applicable, each of the matters identified in Schedule 3 attached to this Agreement.

- (c) Based upon the Tunnel Completion Report and Certification described in 7.11(b), and other available information, concurrent with the execution and delivery of the Tunnel Lease, the Authority will (i) accept the Tunnel and take title thereto; and (ii) approve the Tunnel O & M Plan, subject to the Dispute Resolution procedure described in 7.11(d).
- (d) If the Authority disputes, in good faith, the substantive provisions of the Certification or the Tunnel O & M Plan, 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. If the final judicial resolution of the dispute supports the position of Enbridge rather than that of the Authority, concurrent with the execution and delivery of the Tunnel Lease, the Authority will (i) accept the Tunnel and take title thereto and (ii) approve the Tunnel O & M Plan.

Article 8 Timely Performance of Obligations

8.1 Timely Performance of Obligations. Except as provided in Section 9 (Relief Events), each Party shall perform its respective obligations under this Agreement, including but not limited to those listed in Sections 7 and 8.2, within the time periods and schedules specified in the Agreement.

8.2 Major Milestones for Completion of Tunnel. The Parties agree to the following major milestones and procedures as incentives to the expeditious completion of the Tunnel and the replacement of the Dual Pipelines and compensation to the Authority for delays in performance:

- (a) Completion of the Geotechnical Investigation and Data Report Section 7.3. If this work is not completed by December 31, 2019, or the later date that is mutually-agreed to by the Parties in accordance with Section 7.3 above, or the later date that applies because of a Delay Event under Section 9, Enbridge shall deposit into an escrow account the amount of \$15 million. As soon as Enbridge completes this work, the amount in the escrow will be returned to Enbridge, less 5% of the amount deposited, for each 30-day period for which the delay continues. Any amount remaining in the escrow account shall be transferred to the Authority as compensation for the delay.

- (b) Completion of Preliminary Engineering and submittal to the Authority of draft Tunnel RFP in accordance with Section 7.5 (b). If this work is not completed by April 30, 2020, or within one hundred twenty (120) days after the completion of the Geotechnical Investigations, whichever is later, or the later date that applies because of a Delay Event under Section 9, Enbridge shall deposit into an escrow account the amount of \$25 million. As soon as Enbridge completes this work, the amount in the Escrow will be returned to Enbridge, less 5% of the amount deposited, for each 30-day period for which the delay continues. Any amount remaining in the escrow account shall be transferred to the Authority as compensation for the delay.
- (c) Engagement of Tunnel Construction Contractor and Construction Commencement Payment to Contractor in accordance with Section 7.5 (d). If this milestone is not met by the date 180 days after Enbridge obtains all permits and authorizations necessary to begin construction of the Tunnel or the later date that applies because of a Delay Event under Section 9, Enbridge shall deposit into an escrow account the amount of \$25 million. As soon as Enbridge completes this work, the amount in the Escrow will be returned to Enbridge, less 5% of the amount deposited, for each 30-day period for which the delay continues. Any amount remaining in the escrow account shall be transferred to the Authority as compensation for the delay.
- (d) Substantial Completion of Tunnel Construction in accordance with Section 7.11(a). If this milestone is not met by the date specified in the Tunnel construction contract or the later date that applies because of a Delay Event under Section 9, Enbridge shall deposit into an escrow account the amount of \$100,000,000. As soon as Enbridge completes this work, the amount in the Escrow will be returned to Enbridge, less 5% of the amount deposited, for each 30-day period for which the delay continues. Any amount remaining in the escrow account shall be transferred to the Authority as compensation for the delay.

8.3 Procedures for Establishing Escrow Accounts. Within 270 days after the Effective Date of this Agreement, Enbridge will propose for the review and approval by the Authority, a procedure to be used to establish and manage disbursements from any escrow account required under Section 8.2. This procedure will include, at a minimum, requirements that:

- (a) The Escrow Agent will be an independent financial institution selected by mutual agreement of the Parties;
- (b) The terms of the Escrow Agreement will be established through the written agreement of the Parties and the Escrow Agent; and
- (c) Enbridge will be responsible for all costs and administrative fees payable to the Escrow Agent under the Escrow Agreement.

8.4 In any action to enforce an escrow, Enbridge agrees not to dispute that the 5% deductions provided for in Section 8.2(a)-(d) are: (a) not a penalty and (b) are considered liquidated damages agreed to by the Parties.

Article 9 Delay Events

9.1 The Parties will be excused from performing under this Agreement, including but not limited to meeting any deadline specified in this Agreement, as a result of any Delay Event. 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 Governmental Approval or Permit or other legal authorization required to perform Geotechnical Investigations under Section 7.3, for which Enbridge has submitted an application prior to the time of execution of this Agreement, that has not been obtained in time to complete the geotechnical studies by October 15, 2019;
- (b) Any delay longer than one year in obtaining a decision on a timely filed application for a Government Approval or Permit, or other legal authorization required under this Agreement for any activities other than Geotechnical Investigations;
- (c) Acts of God, fires, floods, epidemics, labor disputes;
- (d) Unavailability of necessary materials or equipment, including but not limited to the tunnel boring machine because of industry-wide shortages or mechanical failures; or
- (e) An injunction or other judicial or governmental order or action, including but not limited to the revocation of a Governmental Approval or Permit, preventing the timely performance of the obligation. Additionally, if a legal action has been filed which either Party believes may result in an injunction or other action constituting a Delay Event less than 90 days before the escrow in Section 8.2(c) is required to be funded, the Parties shall meet and confer and may agree to classify such action as a Delay Event.

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 2 Insurance Specifications, collectively "Insurance Requirements." Each required policy will include the Authority and the State of Michigan as additional insureds to the extent commercially available in accordance with customary insurance practice.

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 2 (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 Verification of Coverage - Upon execution of this Agreement, and on an annual basis thereafter until this Agreement is terminated, Enbridge shall provide to the Authority, or the Authority's designated representative, Certificate(s) of Insurance on standard forms regularly accepted in the industry certifying Enbridge's compliance with this Article 10 and Schedule 2 and specifically identifying coverage extensions and endorsements required herein. In the event of a reduction in Enbridge insurance limits during the term of this Agreement, which may otherwise reduce the limits of insurance required to comply with this Article 10 and Schedule 2, Enbridge shall promptly provide the Authority with notice of same, and immediately thereafter secure such additional insurance as is required to comply with the terms of this Article 10 and

Schedule 2. The Authority's acceptance of certificates or correspondence associated thereto does not constitute a waiver, release or modification of the requirements under this Article 10 and Schedule 2.

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, contractors providing expert advice to the Authority, 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 Indemnitee will, in all instances except for loss or damage resulting from the sole and exclusive negligence or wrongful acts or omissions of the Indemnitee, 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 Indemnitee.

11.2 Defense and Indemnification Procedures

11.2.1 If the Authority receives Notice of a Claim or otherwise has actual knowledge of a claim that it believes is within the scope of the indemnities under Section 11.1, the Authority will give prompt Notice of the Claim to Enbridge in accordance with Article 20.

11.2.2 Subject to Section 11.2.5, if the insurer under any applicable insurance policy accepts the tender of defense, the Authority and Enbridge will cooperate in the defense as required by such insurance policy. If no insurer under potentially applicable insurance policies provides defense, then Section 11.2.3 will apply.

11.2.3

- (a) Within 15 business days after receipt of the Authority's Notice, Enbridge will provide Notice to the Authority whether Enbridge has tendered the matter to its insurer. If Enbridge does not tender the matter to its insurer, then within such 15 business days, or if the insurer rejects the tender, then within 5 business days after such rejection, Enbridge will provide Notice to the Authority stating whether Enbridge accepts the tender of defense.
- (b) To the extent allowed by its insurer, prior to the acceptance of the Tunnel by the Authority, Enbridge agrees that: (i) it will not reject a tender; (ii) by accepting the tender of defense, Enbridge will be deemed to confirm that the claim is subject to indemnification under this Agreement without any "reservation of rights"; (iii) if Enbridge believes the claim is not subject to indemnification by Enbridge, it shall provisionally accept the

tender, and the State agrees that Enbridge may stand in its shoes with respect to any indemnity by another tunnel user. If for any reason Enbridge refuses to accept such tender of defense of a claim subject to indemnification, as set forth in this Article 11, Enbridge agrees that the Authority may hire a Special Assistant Attorney General to defend it, at Enbridge's sole cost and expense.

11.2.4 Upon acceptance of the tender of defense, Enbridge will be entitled to select legal counsel for the Indemnified Parties, subject to (i) approval by the Authority in its reasonable discretion and (ii) approval of the legal counsel as a Special Assistant Attorney General for the State of Michigan by the Michigan Attorney General. Enbridge will otherwise control the defense of the Claim and bear the fees and costs of defending and settling such claim. None of the Indemnified Parties will settle any claim for which indemnification is sought in accordance with section 11.2.1. If the Authority receives Notice of a Claim or otherwise has actual knowledge of a Claim that it believes is within the scope of the indemnities under Section 11.1, the Authority will give prompt Notice of the Claim to Enbridge in accordance with Article 20.

- (a) Enbridge will fully and regularly inform the Authority of the progress of the defense and of any settlement discussions; and
- (b) Each of the Indemnified Parties will:
 - (i) reasonably cooperate in said defense;
 - (ii) provide Enbridge all materials and access to personnel Enbridge reasonably requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to the Authority;
 - (iii) maintain the confidentiality of all communications between it and Enbridge concerning such defense.

11.2.5 Notwithstanding Section 11.2.3, the Authority may assume its own defense by delivering Notice to Enbridge of such election and the reasons thereof, if the Authority, at the time it gives Notice of the Claim or at any time thereafter, reasonably determines that:

- (a) A conflict exists between it and Enbridge which prevents or potentially prevents Enbridge from presenting a full and effective defense;
- (b) Enbridge is otherwise not providing an effective defense in connection with the Claim; or
- (c) Enbridge lacks the financial capacity to satisfy potential liability or to provide an effective defense.

Article 12 Coordinated Defense with Respect to Certain Claims

12.1 Claims Subject to Coordinated Defense - The Parties agree to coordinate the defense of 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 to allow construction of the Tunnel based upon an application submitted under this Agreement, notwithstanding whether the Authority does not accept or become a party to the Permit for the reason set forth in Section 4.2(b) of 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 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 coordinated defense agreement specific to the Claim filed or asserted and thereafter cooperate and coordinate in the 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 coordinated 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 - Subject to Section 5.2, each Party will pay its own attorney fees, costs, and expenses associated with any Claim covered by Section 12.1.

Article 13 Tunnel Operations, Maintenance and Decommissioning

13.1 Upon completion of Tunnel construction, Enbridge will, in accordance with and for the duration of the Tunnel Lease, conduct all Tunnel Operations and Maintenance, consistent with the Tunnel O & M Plan approved under Section 7.

13.2 Enbridge shall decommission the Tunnel in accordance with the Tunnel Lease and Section 13.3 below.

13.3 Subject to Section 13.4 below, upon termination of the Tunnel Lease, Enbridge will implement, at its sole expense, a work plan approved by the Authority for decommissioning the Tunnel in a manner that protects public health, safety welfare and the environment and complies with all applicable laws.

13.4 Decommissioning Costs

13.4.1 If, upon termination of the Tunnel Lease, the Authority notifies Enbridge that it has decided not to immediately decommission the Tunnel so that it may consider alternatives for continued use of the Tunnel, Enbridge will pay to the Authority for deposit into the Straits Protection Fund or another designated fund maintained by the State an amount at least equal to the estimated cost (at the time that

Enbridge would otherwise be required to perform the work under Section 13.3) of implementing the work plan approved by the Authority for decommissioning the Tunnel.

13.4.2 The money paid by Enbridge under this Section 13.4 may be used only for either: (a) purposes of decommissioning the Tunnel; or (b) for repayment to Enbridge if another party has entered into a legally binding agreement with the Authority to assume responsibility for decommissioning the Tunnel, as provided under Section 13.4.3 below.

13.4.3 No later than two years after the date that Enbridge makes the payment required under Section 13.4.1, the Authority will either: (a) enter into a contract with a contractor that provides for the full decommissioning of the Tunnel, and such decommissioning will commence as expeditiously as practicable; or (b) repay the full payment made by Enbridge, including any accumulated interest.

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 with respect to or 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 Financial Assurance

16.1 On the date the Authority accepts title to the Tunnel and the Tunnel Lease is executed, and on an annual basis thereafter, Enbridge will file with the Authority financial capability information in a format similar to that provided in Appendix 1. If at any time, the financial capability information shows that the total amount of financial capability available from Enbridge Energy, Limited Partnership is less than \$75M, the Parties agree to meet and confer to

determine an amount of financial assurance (the “Financial Assurance”) that will be required to allow Enbridge Energy, Limited Partnership to perform its obligations under the Lease in the event of a worst-case release from the Straits Replacement Segment located in the Tunnel. The \$75M shall not be interpreted to be a determination of, admittance of liability of, or limitation of liability in the event of an incident.

16.2 In the event that the Parties cannot come to agreement on Financial Assurance amount within six (6) months, the Parties shall agree on a qualified independent technical expert or experts to produce an analysis as to the sum of money that would allow Enbridge Energy, Limited Partnership to perform its obligations under the Lease in the event of a worst-case release from the Straits Replacement Segment located in the Tunnel. The Authority and Enbridge Energy, Limited Partnership shall have 60 calendar days to respond to the technical analysis and request consideration of comments and any additional information. The final determination of the amount by the independent technical expert or experts shall be the required Financial Assurance amount. The Financial Assurance amount shall increase by the PPI rate of inflation each year after it is established.

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 Geotechnical Reports.

17.2 Termination by the Authority. The Authority may terminate this Agreement if: (i) after being notified in writing by the Authority of any material breach of this Agreement, Enbridge fails to commence remedial action within 90-days to correct the identified breach or fails to use due diligence to complete such remedial action within a reasonable time thereafter; (ii) the dispute resolution procedures of Article 14 are followed with respect to the breach; and (iii) the final judicial resolution of the dispute is in favor of the Authority’s position that the Agreement should be terminated.

17.3 Termination by Enbridge. Enbridge may terminate this Agreement:

- (a) 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; or (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;
- (b) If: (i) after being notified in writing by Enbridge of any material breach by the Authority of this Agreement or the Straits Tunnel Lease which shall include but not be limited to 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 in accordance with this Agreement and Tunnel Lease, 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; (ii) the dispute resolution procedures of Article 14 are followed with respect to the breach; and (iii) the final judicial resolution of the dispute is in favor of Enbridge's position that the Agreement should be terminated;

- (c) If the Third Agreement is rescinded, revoked, or terminated for any reason other than as provided under Section 10.2 of the Third Agreement; or
- (d) If: (i) after being notified in writing by Enbridge of any material breach by the State of the Third Agreement, which shall include but not be limited to 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 in accordance with this Agreement, the Tunnel Lease, and the Third Agreement, the State fails to commence remedial action within 90 days to correct the identified breach or fails to use due diligence to complete such remedial action within a reasonable time thereafter; (ii) the applicable dispute resolution procedures of the Third Agreement are followed; and (iii) the final judicial resolution of the dispute is in favor of Enbridge's position.

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 5; 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(a)(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(a)(i), (b), (c), or (d), the assignment of rights to Enbridge under the Tunnel Easement referenced in Section 3.1(b) will remain effective without further action by the Parties.

Article 18 Equitable Relief

Each of the Parties acknowledges that the provisions of this Agreement are essential for the protection of the legitimate interests of the other Party and are fair and reasonable in scope and content, and agrees that an award of money damages would be inadequate for any breach of this Agreement by the other Party or its representatives (recognizing that MCL 254.324 does not provide an opportunity for an obligation of funds as a remedy for breach, and therefore monetary damages cannot provide adequate relief under the law) and that any such breach would cause the

non-breaching Party irreparable harm. Accordingly, in addition to any other remedies that may be available at law or in equity, each of the Parties shall be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief, mandamus, and specific performance and each of the Parties agrees not to oppose the granting of such relief on the basis that the non-breaching party has an adequate remedy at law. Notwithstanding anything in Article 14 to the contrary, Enbridge may seek temporary injunctive relief in a court of law with jurisdiction over the Parties to maintain the status quo or prevent irreparable harm without first following the procedures in Sections 14.2 and 14.3.

Article 19 Records and Information

19.1 Confidentiality

- (a) The Parties acknowledge that Michigan's Freedom of Information Act, MCL 15.231 et seq., ("FOIA") applies to the Authority and that the Authority is required to fully comply with FOIA.
- (b) Except as authorized under this Agreement or as required by law or court order, each Party must hold in confidence, not disclose and not permit any person any manner of access to, whether directly or indirectly, any Confidential Information of the other Party.
- (c) To the extent that the Authority requests, or Enbridge is required under this Agreement to provide the Authority with, any records, documents, or materials that qualify as Confidential Energy Infrastructure Information (CEII) under federal law, Enbridge and the Authority will cooperate to ensure that the Authority has appropriate access to such information in a manner which will preserve its status as CEII.
- (d) In the event that the Authority receives a request under FOIA for disclosure of records provided by Enbridge to the Authority which Enbridge has designated as Confidential Information, the Authority will promptly notify Enbridge of the FOIA request and provide Enbridge an opportunity to timely identify in writing to the Authority any provision(s) of FOIA that Enbridge believes would exempt the requested records from disclosure. Any such notification by Enbridge will not bind the Authority or alter its obligation to fully comply with FOIA.

Article 20 Notices

20.1 Unless otherwise agreed to by the Parties, all notices, submissions, or communications required under this Agreement must be in writing and served either by personal service, by prepaid overnight courier service or by certified or registered mail to the address of the receiving Party set forth below (or such different address as may be designated by such Party in a notice to the other Party, from time to time). Notices, consents and requests served by personal service shall be deemed served when delivered. Notices, consents and requests sent by prepaid overnight courier service shall be deemed served on the day received, if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after

receipt if not received during the recipient's normal business hours. Notices, consents and requests sent by certified or registered mail, return receipt requested, shall be deemed served ten (10) business days after mailing.

As to the Authority:

Attn: Director-Michigan Department of Transportation
425 W. Ottawa
PO Box 30030
Lansing MI 48910

As to Enbridge:

Attn: Vice President of US Operations, Liquids Pipelines
7701 France Avenue South, Suite 600 – Centennial Lakes Park I
Edina, MN 55435

With a copy to Corporate Secretary
5400 Westheimer Court
Houston, TX 77056

With a copy to Director of Great Lakes Region
222 Indianapolis Blvd., Suite 100
Schererville, IN 46375

With a copy to Associate General Counsel U.S. Law
26 East Superior Street, Suite 309
Duluth, MN 55802
And an emailed copy to legalnotices@enbridge.com

Article 21 Miscellaneous

21.1 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.

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

21.3 Execution. This Agreement may be executed in counterparts without the necessity that the Parties execute the same counterpart, each of which will be deemed an original, but which together will constitute one and the same agreement. The exchange of copies of this

Tunnel Agreement by electronic or hard-copy means shall constitute effective execution and delivery thereof and may be used in lieu of the original for all purposes.

21.4 Governing Law. This Agreement shall be construed, interpreted, and applied in accordance with the laws of the State of Michigan without reference to its conflict of laws rules.

21.5 Entire Agreement. This Agreement and Schedules hereto, together with the Tunnel Lease and Third Agreement, contain all covenants and agreements between the Authority and Enbridge relating to the matters set forth in this Agreement.

21.6 Severability. If any provision of this Agreement will be held illegal, invalid, or unenforceable by a court of competent jurisdiction, the same will not necessarily affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable, and the Parties will expeditiously negotiate in good faith in an attempt to agree to another provision or provisions (instead of the provision which is illegal, inoperative or unenforceable) that is legal, operative and enforceable and carries out the Parties' intentions under this Agreement.

Article 22 Assignment

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

FOR MACKINAC STRAITS CORRIDOR AUTHORITY

Name:
Title: Chair
Dated: _____

FOR ENBRIDGE ENERGY, LIMITED PARTNERSHIP
BY: ENBRIDGE PIPELINES (LAKEHEAD) L.L.C. AS GENERAL PARTNER

Name: Bradley F. Shamla
Title: Vice President, U.S. Operations
Dated: _____