



Committee: Directly to Council
Staff: Glenn Orlin, Senior Analyst
Purpose: Receive briefing and have discussion – no vote expected
Keywords: #PurpleLine

AGENDA ITEM #2
September 15, 2020
Discussion

SUBJECT

Briefing by the Maryland Department of Transportation (MDOT) on the Purple Line

EXPECTED ATTENDEES

Greg Slater, Secretary, Maryland Department of Transportation (MDOT)
Kevin Quinn, Administrator, Maryland Transit Administration (MDOT/MTA)
Matt Pollack, Purple Line Project Director, MDOT/MTA
Christopher Conklin, Director, Montgomery County Department of Transportation (DOT)

BACKGROUND

On September 3, the State's Senate Budget and Taxation Committee and House Appropriations Committee received a briefing by the Department of Legislative Services (DLS) and MDOT on the status of Purple Line construction and, in particular, the interactions between MDOT and its concessionaire, Purple Line Transit Partners (PLTP) over the past few months. DLS's PowerPoint presentation is attached. The video of the 35-minute briefing by DLS and MDOT can be found on <https://www.youtube.com/watch?v=syI3cWFRPC8&feature=youtu.be> beginning at about 1:33 and ending at about 2:09.

On August 10, Baltimore City Circuit Court Judge Jeffrey Geller issued a 35-day restraining order that PLTP is "enjoined and restrained" from demobilizing and abandoning the Purple Line project. On September 8 and 10 the Circuit Court held hearings on MDOT's request to extend the restraining order. **After closing arguments on September 10, Judge Geller ruled from the bench to reject MDOT's request.** Of the four tests for injunctive relief, he found that the State failed on all four.

PLTP will now demobilize and work with MTA on how to stabilize the construction site. MDOT has stated its commitment to complete the Purple Line, but now must choose whether to solicit a new P3 partner or to finish the project itself. In its testimony during the hearings, MTA noted that in the latter case it would have to divert funds from other projects, including MARC Commuter Rail projects.

This report contains:

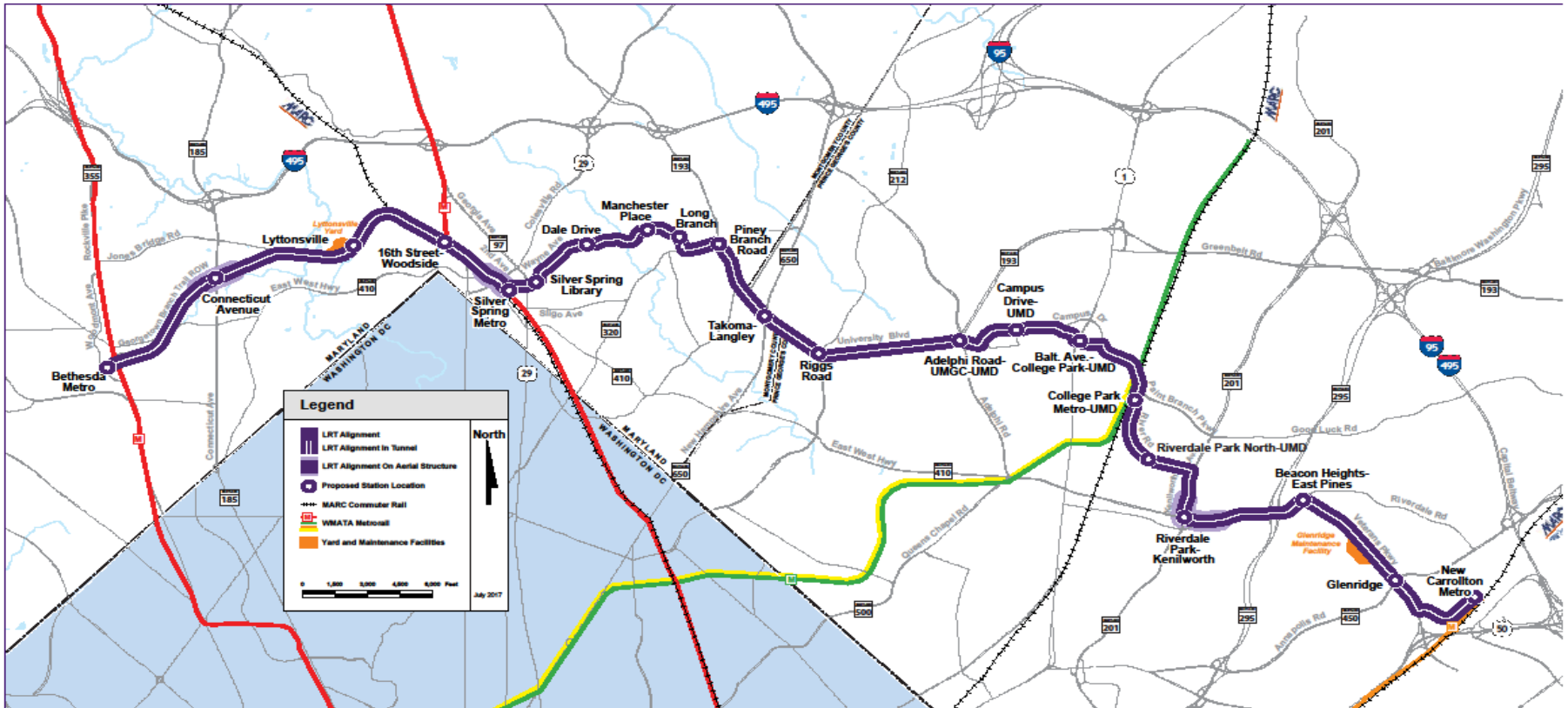
September 3 PowerPoint presentation by DLS

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Project Background

Purple Line Alignment

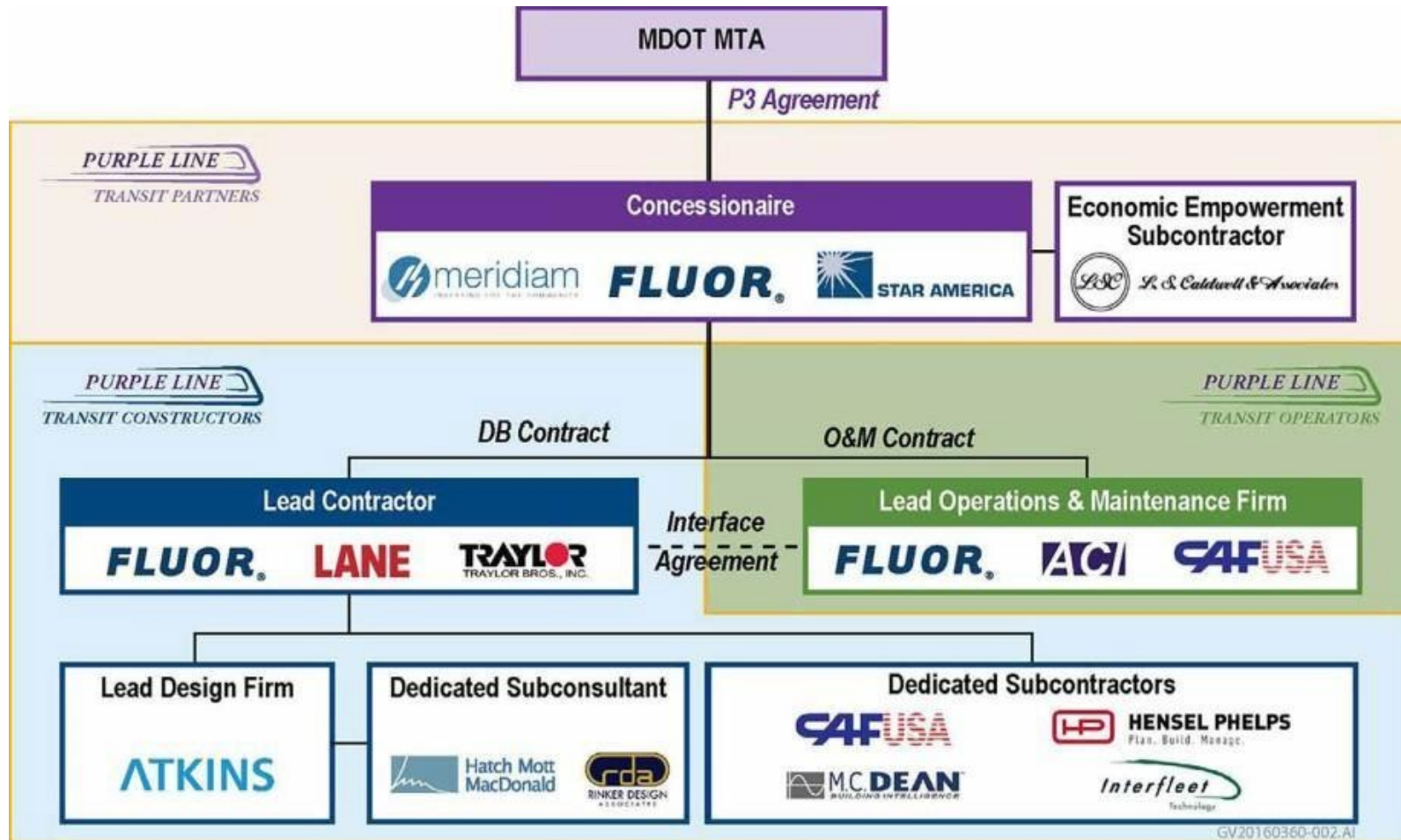


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Project Background

- Procurement
 - Availability Payment public-private partnership (P3)
 - Purple Line Transit Partners (PLTP) selected to be the concessionaire responsible for:
 - Finishing design of, financing, constructing, equipping (including light rail vehicles), operating, and maintaining the Purple Line Project
 - 36-year contract comprising 6 years of construction and 30 years of operations and maintenance

Project Background – P3 Structure



Project Background

Estimated Cost and Funding

- Planning, Design, and Construction: \$2.4 billion
- Sources
 - \$900 million: Federal Section 5309 New Starts
 - \$36 million: Federal Section 5307 Urbanized Area Formula Funds
 - \$450 million: State/Local
 - \$1,021 million: P3 Concessionaire (private equity, borrowed funds (including federal loan))

Notices to Terminate P3 Agreement

- May 1, 2020: Purple Line construction firms notified PLTP of intent to terminate design-build contract with PLTP.
- June 23, 2020: PLTP notified MDOT/MTA of intent to terminate P3 Agreement for Extended Delay

PLTP Stated Basis for Notice (Disputed by MDOT/MTA)

- Delay of 976 days increasing project cost by at least \$519.1 million related to:
 - Record of Decision vacated during litigation with project opponents
 - Right of way not provided timely
 - Changes to design criteria for portions of the project in and around CSX-owned property
 - New and changing requirements for environmental permits through the Maryland Department of the Environment

MDOT/MTA Response

- June 24, 2020: provided PLTP with Notice of Concessionaire Default
- August 10, 2020: received a temporary restraining order from the Circuit Court for Baltimore City enjoining PLTP from demobilizing until expiration of the order on September 14, 2020
- Seeking a preliminary injunction restraining and enjoining PLTP from abandoning the project unless and until it has established that an extended delay exists by and through its compliance with dispute resolution procedures set forth in the P3 Agreement

If the P3 Agreement Terminates

- Due to Extended Delay, MDOT/MTA would have to pay the concessionaire to cover
 - Project debt
 - Outstanding committed investment
 - Reasonable contract termination costs (e.g., demobilization)
- Due to Concessionaire Default, payments to concessionaire would not fully cover project debt nor committed investment and there would be no termination cost payments due to the concessionaire
- MDOT/MTA may take over project construction, operations, and maintenance responsibilities (lenders also have rights)