

- (a) Any Refinancing that was fully and specifically identified and taken into account in the Financial Model and calculation of the Original Equity IRR;
- (b) Amendments, modifications, supplements or consents to Funding Agreements and Security Documents, excluding extensions and renewals, and the exercise by a Lender of rights, waivers, consents and similar actions, in the ordinary course of day-to-day loan administration and supervision that do not, individually or in the aggregate, provide a financial benefit to Developer;
- (c) Any changes in taxation or Developer's accounting treatment or policies; and
- (d) Any of the following acts by a Lender of senior lien priority Project Debt:
 - (i) The syndication of any of such Lender's rights and interests in the senior Funding Agreements;
 - (ii) The grant by such Lender of any rights of participation, or the disposition by such Lender of any of its rights or interests, in respect of the senior Funding Agreements in favor of any other Lender of senior lien Project Debt or any other investor; or
 - (iii) The grant by such Lender of any other form of benefit or interest in either the senior Funding Agreements or the revenues or assets of Developer, whether by way of security or otherwise, in favor of any other Lender of senior lien Project Debt or any investor.

Existing Structures means any existing bridge structure within the Project ROW that the Technical Provisions identify to be rehabilitated or widened, where portions of the existing structure are to remain in place, including the bridge rehabilitation of the Walnut Street Bridge over existing SR 37.

Existing Utility Property Interest means any right, title or interest in real property (e.g., a fee or an easement) claimed by a Utility Owner as the source of its right to maintain an existing Utility in such real property, which is compensable in eminent domain.

Extra Work means any Work in the nature of additional work, altered work or deleted work which is directly attributable to occurrence of a Relief Event and absent the Relief Event would not be required by the PPA Documents. The term "Extra Work" does not include Relief Event Delay.

Extra Work Costs means the incremental increase in the following costs of Developer directly attributable to Extra Work, which shall be calculated pursuant to Exhibit 16 (Extra Work Costs and Delay Costs Specifications) to the Agreement:

- (a) Labor and burden costs;
- (b) Material and supply costs;
- (c) Equipment costs;

- (d) Indirect costs and expenses excluding cost of funds (whether debt or equity) and excluding Lender charges, damages and penalties; and
- (e) Profit.

Federal Requirements means the provisions required to be part of federal-aid construction contracts, including the provisions set forth in Exhibit 22 (Federal Requirements) to the Agreement.

Final Acceptance means all the events and satisfaction of all the conditions set forth in Section 5.8.5 of the Agreement have occurred, as and when confirmed by IFA's issuance of a certificate in accordance with the procedures and within the time frame established in Section 5.8.5 of the Agreement.

Final Acceptance Date means the date that Final Acceptance has been achieved.

Final Acceptance Deadline means the deadline for achieving Final Acceptance, as set forth in the Project Schedule, as such deadline may be extended for Relief Events from time to time pursuant to the Agreement.

Final CPM Schedule means the deliverable described in Section 1.5.2.1.4 and at Table 20-1 of the Technical Provisions.

Final Design means, depending on the context: (a) the Final Design Documents, which is a deliverable described at Table 20-1 of the Technical Provisions, (b) the design concepts set forth in the Final Design Documents or (c) the process of development of the Final Design Documents, in either case.

Final Design Documents means the complete final construction drawings, including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams, specifications, reports, studies, calculations, electronic files, records and submittals, necessary or related to construction and maintenance of the Project or any portion thereof and any Utility/ies included in the Design Work or the Construction Work.

Final Engineer's Report means the Tier 2 Section 5 Bloomington to Martinsville, IN Final Engineer's Report dated August 2013 and contained in the Reference Information Documents at GN 01.01.

Final Environmental Impact Statement (FEIS) means the certain "I-69 Evansville to Indianapolis, Indiana, Tier 2 Final Environmental Impact Statement/Record of Decision Section 5: Bloomington to Martinsville" signed by the Federal Highway Administration on August 7, 2013.

Financial Close means the satisfaction or waiver of all conditions precedent set forth in Section 13.7.5 of the Agreement to the first utilization under the Initial Funding Agreements relating to the long-term financing of the Initial Project Debt.

Financial Close Deadline means the deadline for achieving Financial Close, which shall be either: (a) the date scheduled for Financial Close as set forth in the Notice from Developer to IFA as provided in Section 13.7.2 of the Agreement, or (b) the date scheduled for Financial Close as set forth in the Notice from IFA to Developer extending the date for Financial

Close as provided in Section 13.7.2 of the Agreement, or (c) 120 days after issuance of the IPDC Commencement Notice by IFA as provided in Section 13.7.2 of the Agreement.

Financial Close Security means the bond or letter of credit in the amount of \$15,000,000 provided by Developer to IFA under Section 6.6 of Volume I of the RFP (Instructions to Proposers).

Financial Director is the Key Personnel listed at Exhibit 2-H to the Agreement.

Financial Escrow has the meaning set forth in Section 23.6.2 of the Agreement.

Financial Model means the financial computer model, including the Financial Model Formulas and the related output, assumptions and information used by or incorporated in each of the Financial Model Formulas, that is:

- (a) Represented by material contained on computer disks and printouts held as of the Effective Date in the escrow established under Section 23.6 of the Agreement and copies of which are held by IFA and Developer;
- (b) Used as of the Effective Date, with inputs of the interest rates under the Initial Project Debt, to produce the financial forecasts, projections and calculations with respect to revenues, expenses, the repayment of Project Debt and Distributions to initial Equity Members that result in achievement of the Equity IRR;
- (c) The basis on which Developer and IFA entered into the Agreement;
- (d) Subject to an updated audit and opinion by an independent model auditor within two Business Days after the Effective Date, as provided in Section 12.2 of the Agreement; and
- (e) As modified pursuant to the Financial Model Updates as provided in Section 12.1 of the Agreement.

Financial Model Formulas means the mathematical formulas that Developer and IFA have agreed upon as of the Effective Date, as the same may be changed by mutual written agreement of the Parties, for projecting Equity IRR, which mathematical formulas are used as part of the Financial Model and each Financial Model Update, but without the data and information used by or incorporated in the Financial Model or Financial Model Update.

Financial Model Update or Update means any update to the Financial Model prepared pursuant to Section 12.1 of the Agreement.

Financial Modeling Data means all back-up information in any media or format regarding the basis for Developer's assumptions, estimates, projections and calculations in its Proposal, in the Financial Model and in Financial Model Updates of revenues, pricing, costs, expenses, repayment of Project Debt, Distributions and internal rate of return, including:

- (a) Appendix D-2 of the Proposal (Detailed Costing Form);
- (b) The data book submitted with the Proposal, fully describing all assumptions underlying the estimates, projections and calculations in the Financial Model,

revisions thereto pursuant to Section 12.1.1, and updates to such data book related to the Financial Model and Financial Model Updates;

- (c) The step-by-step instructions on the procedure to run and to optimize the Financial Model Formulas, the Financial Model and Financial Model Updates;
- (d) Copies of all offers, and all data and information within this definition, received from all Contractors (at all tiers) identified in the Proposal and any other potential Contractors that provided data and information used as the basis for Appendix D-2 of the Proposal, as revised pursuant to Section 14.3.1;
- (e) Copies of all offers, and all data and information within this definition, received from all Contractors (at all tiers) related to any Relief Event;
- (f) All other supporting data, technical memoranda, calculations, formulas, unit and materials prices (if applicable) and such other cost, charge, fee, financing, equity return and revenue information used by Developer in the creation and derivation of its Proposal or the revisions pursuant to Section 12.1.1 of the Agreement, or of the Financial Model, or any Financial Model Update, or related to any Relief Event or Change Order.

Financial Plan means Developer's plan for financing the Project, which plan is set forth in Exhibit 2-C (Financial Plan) to the Agreement.

Fiscal Year means the consecutive 12-month period starting on July 1 and ending on June 30.

Flood Event means a "flood" (as defined by the Federal Emergency Management Agency) where flood waters at the Site reach two (2) or more acres of normally dry land measured, at or in excess of: (a) for the period commencing on the Effective Date up to and including the earlier of (i) the Substantial Completion Date and (ii) early termination of the Agreement, the one percent annual recurrence interval flood event (or its equivalent, successor measurement); or (b) for the period commencing the day subsequent to the Substantial Completion Date up to and including the end of the Term, the one percent annual recurrence interval flood event (or its equivalent, successor measurement), for each water crossing of the Project.

Force Account Estimate means an itemized estimate prepared by the railroad for the prescribed work to be done by the railroad to accommodate the Project. Prescribed work is paid for on the basis of actual costs and appropriate additives.

Force Majeure Event means the occurrence of any of the following events that is (i) beyond the reasonable control of Developer, (ii) not attributable to the negligence, willful misconduct, or breach of applicable Law or contract by any Developer-Related Entity, and (iii) actually, demonstrably, materially and adversely affects performance of Developer's obligations (other than payment obligations) in accordance with the terms of the PPA Documents to a material extent, provided that such events (or the effects of such events) are not caused, and could not have been avoided by the exercise of caution, due diligence, or reasonable efforts, by Developer or any Developer-Related Entity: (a) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Project or the Site, in each case occurring within the State; (b) any act of

terrorism, riot, insurrection, civil commotion or sabotage that causes direct physical damage to, or otherwise directly causes interruption to construction or direct losses during operation of, the Project or the Site; (c) strikes not specific to Developer, embargoes, acts or omissions of a port or transportation authority, unavailability or shortages of materials, wars, and currently-listed events that occur outside of the State that, in each case, directly causes interruption to construction or direct losses during operation of the Project; (d) nuclear explosion that causes direct physical damage to the Project or the Site, or radioactive contamination of the Project or the Site; (e) Flood Event, fire, explosion, gradual inundation caused by natural events (other than an event that is the subject of Karst Feature Treatment Work), a tornado with an enhanced Fujita Score Rating of EF2, sinkhole caused by natural events, or landslide caused by natural events, in each case directly impacting the physical improvements of the Project or performance of Work at the Site; (f) any governor-declared Emergency within the limits of the Project Right of Way, except one consisting of or arising out of traffic accidents and (g) a Seismic Event.

Forward Looking Termination for Convenience Amount means the amount calculated in accordance with Exhibit 21 (Terms for Termination Compensation) to the Agreement.

Funding Agreement means:

- (a) Any loan agreement, funding agreement, account maintenance or control agreement, insurance or reimbursement agreement, intercreditor agreement, subordination agreement, trust indenture, agreement from any Equity Member in favor of any Lender, hedging agreement, interest rate swap agreement, guaranty, indemnity agreement, agreement between any Contractor and any Lender, or other agreement by, with or in favor of any Lender pertaining to Project Debt (including any Refinancing), other than Security Documents;
- (b) Any note, bond or other negotiable or non-negotiable instrument evidencing the indebtedness of Developer for Project Debt (including any Refinancing); and
- (c) Any amendment, supplement, variation or waiver of any of the foregoing agreements or instruments.

General Assembly means the General Assembly of the State of Indiana.

General Inspection means an inspection to identify Defects and assess asset condition, as more particularly set forth in Section 18.5.3 of the Technical Provisions.

Geotechnical Data Report means the report dated November 15, 2013 included among the Reference Information Documents.

Good Industry Practice means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced professional designer, engineer, constructor, operator or maintenance provider seeking in good faith to comply with its contractual obligations, complying with all applicable Laws and Governmental Approvals, using accepted design and construction standards and criteria normally used on similar projects in Indiana, and engaged in the same type of undertaking in the United States under similar circumstances and conditions, including environmental conditions.

Governmental Approval means any registration, permit, license, consent, concession, grant, franchise, authorization, waiver, variance or other approval, guidance, protocol, mitigation agreement, or memoranda of agreement/understanding, and any amendment or modification of any of them provided or issued by Governmental Entities including State, local, or federal regulatory agencies, agents, or employees, which authorize or pertain to the Project or the Work.

Governmental Entity means any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than IFA.

Guarantor means any Person that is the obligor under any guaranty in favor of IFA required under the Agreement, including any guaranty of the Design-Build Contract or any O&M Contract.

Handback Plan means the plan by that name described in Section 19.1 of the Technical Provisions, and which is a deliverable described at Table 20-1 of the Technical Provisions.

Handback Requirements means the terms, conditions, requirements and procedures governing the condition in which Developer is to deliver the Project and the related Project Right of Way to IFA upon expiration or earlier termination of the Agreement, as set forth in Section 19 of the Technical Provisions.

Handback Requirements Letter of Credit means a letter of credit delivered to IFA in lieu of the Handback Requirements Reserve Account, in accordance with Sections 6.13.5 and 17.3 of the Agreement.

Handback Requirements Reserve Account has the meaning set forth in Section 6.13.1 of the Agreement.

Hazardous Environmental Condition means the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or into the ground, ground water, or surface water of the property. The term includes hazardous substances or petroleum products even under conditions in compliance with laws.

Hazardous Materials means any element, chemical, compound, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed, classified or otherwise regulated in any way under any Environmental Law, or any other such substances or conditions (including mold and other mycotoxins or fungi) which may create any unsafe or hazardous condition or pose any threat to human health and safety. For the avoidance of doubt, unexploded ordnance is not considered a Hazardous Material, although substances contained in or leaking from unexploded ordnance may be within this definition of Hazardous Material. "Hazardous Materials" includes the following:

- (a) Hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances or related materials, whether solid, liquid, or gas, including substances defined as or included in the definition of "hazardous substance", "hazardous waste", "hazardous material", "extremely hazardous waste", "acutely hazardous waste", "radioactive waste", "radioactive materials",

"bio-hazardous waste", "pollutant", "toxic pollutant", "contaminant", "restricted hazardous waste", "infectious waste", "toxic substance", "toxic waste", "toxic material", or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "TCLP toxicity" or "EP toxicity" or words of similar import under any applicable Environmental Laws);

- (b) Any petroleum, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof or other petroleum derived substance; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto;
- (c) Any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;
- (d) Any flammable substances or explosives;
- (e) Any radioactive materials;
- (f) Any asbestos or asbestos-containing materials;
- (g) Any lead and lead-based paint;
- (h) Any radon or radon gas;
- (i) Any methane gas or similar gaseous materials;
- (j) Any urea formaldehyde foam insulation;
- (k) Electrical equipment which contains any oil or dielectric fluid containing regulated levels of polychlorinated biphenyls;
- (l) Pesticides;
- (m) Any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety of the owners, operators, Users or any Persons in the vicinity of the Project or to the indoor or outdoor Environment; and
- (n) Soil, or surface water or ground water, contaminated with Hazardous Materials as defined above.

Hazardous Materials Management means procedures, practices and activities to address and comply with Environmental Laws and Environmental Approvals with respect to Hazardous Materials and Hazardous Environmental Conditions encountered, impacted, disturbed, released, caused by or occurring in connection with the Project, Project Right of Way or the Work, as well as investigation, characterization and remediation of such Hazardous Materials and Hazardous Environmental Conditions. Hazardous Materials Management may include sampling, handling, stock-piling, storing, backfilling in place, asphalt batching, recycling,

dewatering, treating, cleaning up, excavating, removing, remediating, transporting and/or disposing off-site of Hazardous Materials and otherwise managing Hazardous Environmental Conditions, whichever approach is effective, most cost-efficient and authorized under applicable Law.

Hazardous Materials Management Plan (HMMP) means Developer's plan for Hazardous Materials Management both within and outside the Project Right of Way during construction of the Project and Utility Adjustments included in the Construction Work, and during operation of O&M Limits, as more particularly set forth in Section 7.9.1 of the Technical Provisions, and which is a deliverable described at Table 20-1 of the Technical Provisions.

Historic Preservation Plans means studies that have been prepared by IFA pursuant to the Section 106 Memorandum of Agreement that include contextual descriptions of various historic districts or properties and recommended mitigation measures.

Holiday means New Years Day, Martin Luther King Day, Memorial Day, 4th of July, Labor Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day. In years when one of these days fall on a weekend, that particular Holiday will be the observed Holiday.

Hourly Flow is the number of vehicles or other roadway users that pass over a given point or section of roadway within an hour.

Hydraulic Report means the deliverable described at Table 20-1 of the Technical Provisions.

IFA means the Indiana Finance Authority, its duly appointed designees, and any entity succeeding to the powers, authorities and responsibilities of IFA invoked by or under the PPA Documents.

IFA-Caused Delay means any of the following events, to the extent they result in a delay or interruption in performance of any material Developer obligation under the Agreement, and provided such events are beyond Developer's control and are not due to any act, omission, negligence, recklessness, willful misconduct, breach of contract, the requirements of the PPA Documents (including Developer's obligations set forth in Section 4.3.10 of the Agreement) or Law of any of the Developer-Related Entities, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Developer:

- (a) Failure of IFA:
 - (i) To issue NTP1 within 30 days after satisfaction of all of the conditions precedent to issuance of NTP1 as set forth in Section 5.3.1 of the Agreement, or
 - (ii) To issue NTP2 within 30 days after satisfaction of all of the conditions precedent to issuance of NTP2 as set forth in Section 5.6.1 of the Agreement; or
 - (iii) To issue the certificate of Substantial Completion within 5 days after DB Substantial Completion and satisfaction of all O&M Conditions Precedent as provided in Section 5.8.1;

- (b) IFA Changes;
- (c) Failure or inability of IFA to make available to Developer for construction:
 - (i) A Project Right of Way parcel other than Additional Properties by the applicable "Anticipated Date Available" set forth in Attachment 17-2 of the Technical Provisions; or
 - (ii) Any Additional Property that IFA is to acquire, within 365 days after IFA's receipt and approval of Developer's (x) written request, (y) information required under Section 17.1 of the Technical Provisions, and (z) drawing in accordance with Section 5.4.3 of the Agreement, subject, however, to (A) the exceptions and limitations set forth in Section 15.7.2 of the Agreement and (B) IFA's right to extension of such time period as necessary due to IFA's curtailment, suspension or cessation of acquisition activities as set forth in Section 5.4.6 of the Agreement;

provided that "make available" means that Developer shall have the right to enter the parcel for the purpose of commencing and completing construction in accordance with the PPA Documents as the result of IFA's having secured a temporary or final right of entry, permit or other agreement, or an order of possession, through settlement, negotiation, the eminent domain process or otherwise;

- (d) Failure or inability of IFA to make available to Developer for operations any of the property described in clauses (c)(i) and (ii) above by the Substantial Completion Date, subject, however, in the case of clause (c)(ii) above to the exception and right of extension described in such clause, and provided that "make available" means that Developer shall have the right to enter the parcel for the purposes and activities of Developer contemplated under the PPA Documents after the Substantial Completion Date, as the result of IFA's having secured a temporary or final right of entry, permit or other agreement, or an order of possession, through settlement, negotiation, the eminent domain process or otherwise;
- (e) Failure of IFA to provide responses to proposed schedules, plans, Design Documents, condemnation and acquisition packages, and other Submittals and matters submitted to IFA after the Effective Date for which response is required under the PPA Documents as an express prerequisite to Developer's right to proceed or act, within the time periods (if any) indicated in the PPA Documents, or if no time period is indicated, within a reasonable time, taking into consideration (i) the nature, importance and complexity of the Submittal or matter, (ii) the number of Submittals or such other items which are then pending for IFA's response, (iii) the completeness and accuracy of the Submittal or such other item, and (iv) Developer's performance and history of Nonconforming Work under the PPA Documents, following delivery of Notice from Developer requesting such action in accordance with the terms and requirements of the PPA Documents;
- (f) Suspension of Work orders issued by IFA pursuant to Section 19.2.8.3 of the Agreement, provided that:

- (i) Any suspension of Work arising from Force Majeure Events, litigation, or security threat rule, order or directive shall not be considered an IFA-Caused Delay (although it may qualify as a Relief Event under clause (j), (s) or (t), respectively of the definition of "Relief Event"), despite the fact that IFA may specifically direct Developer to suspend the Work; and
 - (ii) Any suspension of Work arising from presence or Release of Hazardous Materials, IFA's performance of data recovery respecting archeological, paleontological, historical or cultural resources, or IFA's actions related to endangered or threatened species shall not be considered an IFA-Caused Delay (although it may qualify as a Relief Event under clause (m), (n), (o) or (q), respectively, of the definition of "Relief Event"), despite the fact that IFA may specifically direct Developer to suspend the Work. Any proper suspension of Work pursuant to Section 19.2.8.1 of the Agreement shall not be considered an IFA-Caused Delay;
- (g) Uncovering of the Construction Work, so long as (i) Developer shall have given IFA prior notification (in accordance with the terms of the PPA Documents, but in no case less than five (5) Business Days' prior notification prior to covering the relevant portion of the Construction Work) of Developer's intent to cover such portion of the Construction Work, (ii) such portion has, in fact, been covered, (iii) the covering itself is not Defective and otherwise in accordance with the PPA Documents and (iv) upon uncovering, that portion of the Construction Work that had been covered is determined not to be Defective and is otherwise in accordance with the PPA Documents. For purposes of clarity:
 - (i) all costs and delays arising out of or relating to uncovering of the Construction Work is not, nor shall be deemed to be, an IFA-Caused Delay if such Construction Work was (1) covered without proper prior notification to IFA, (2) Defective or (3) contrary to the requirements in the PPA Documents;
 - (ii) Construction Work that becomes Defective by virtue of the uncovering, where such uncovering would otherwise be an IFA-Caused Delay shall itself be an IFA-Caused Delay, so long as Developer conducts the uncovering in accordance with Project Standards; and
 - (iii) Developer bears the burden of proof to establish that it had given, or caused to be given, and IFA received, or was deemed to receive, proper prior notification of the covering;
- (h) IFA's issuance of the notice to Developer extending the date for Financial Close as provided in Section 13.7.2 of the Agreement or an extension of the date for Financial Close due to a delay in the Effective Date as described in Section 13.7.2.1 of the Agreement, for the period commencing on the first day after the original date for Financial Close as set forth in the Developer FC Notice (or the date scheduled for Financial Close as set forth in the Proposal, if the date for Financial Close is extended due to a delay in the Effective Date, as described in Section 13.7.2.1 of the Agreement) until the date of Financial Close set forth in the IFA FC Notice (or, if the date for Financial Close is extended due to a delay in the Effective Date, as described in Section 13.7.2.1 of the Agreement, and IFA

does not issue an IFA FC Notice, the date set forth in the Developer FC Notice); and

- (i) Failure or inability on the part of IFA to obtain the IFA-Provided Approvals on the dates set forth in Attachment 7-1 of the Technical Provisions, except delay to the extent attributable to any of the differences described in Section 4.3.4 of the Agreement unless such differences are due to an IFA Change.

IFA Change means any of the following events:

- (a) Any change in the scope of the Work that IFA has directed Developer to perform through a Change Order as described in Section 16.1 of the Agreement or a Directive Letter pursuant to Section 16.3 of the Agreement;
- (b) Unless expressly provided otherwise in the PPA Documents, any change in the Technical Provisions or Safety Standards applicable to the Work pursuant to, and compliant with the conditions of, Section 5.2.5, that IFA has directed Developer to perform through a Change Order pursuant to Section 16.1 of the Agreement or a Directive Letter pursuant to Section 16.3 of the Agreement;
- (c) Reasonable or necessary change(s) to the Technical Provisions (that are neither Non-Discriminatory O&M Changes nor Discriminatory O&M Changes) to (i) correct (an) erroneous provision(s) of the Technical Provisions, (ii) remove a potentially unsafe condition prescribed by the Technical Provisions, or (iii) resolve a present or certain future inconsistency between the Technical Provisions and any of the PPA Documents, Good Industry Practice or applicable Law where, in each case, either (A) Developer neither knew nor, in the exercise of reasonable care, should have known that adopting change(s) to such provision(s) of the Technical Provisions was reasonable or necessary to render such Technical Provision(s) correct, safe and consistent with the PPA Documents, Good Industry Practice and applicable Law prior to commencing or continuing any D&C Work affected by the problematic provision(s), or (B) Developer knew of and reported the problematic provision(s) to IFA, pursuant to Developer's obligation under Section 5.2.5 of the Agreement, prior to Developer commencing or continuing any D&C Work affected by the problematic provision(s); and
- (d) Any other event that the PPA Documents expressly state shall be treated as an "IFA Change."

IFA Construction Oversight Manager has the meaning set forth in Figure 2-1 of the Technical Provisions.

IFA Default has the meaning set forth in Section 19.3.1 of the Agreement.

IFA Design Oversight Manager has the meaning set forth in Figure 2-1 of the Technical Provisions.

IFA-Lender Notice means a Notice by IFA to the Collateral Agent delivered promptly upon giving Notice to Developer of:

- (a) A Developer Default other than an Incurable Developer Default;
- (b) IFA's right to terminate, or IFA's election to terminate, the PPA under Sections 19.2 and 20.3 of the PPA;
- (c) IFA's exercise of any rights under Sections 19.2.3 (except under 19.2.3.5), 19.2.4 or 19.2.8.1 of the PPA; or
- (d) IFA's right to suspend its performance (including in connection with any insolvency or bankruptcy proceeding in relation to Developer) under the PPA.

in each case specifying:

- i. The unperformed obligations of Developer under the PPA that are the grounds for termination of the PPA, or for suspension of performance or for exercise of the other rights all as referred to in Sections 19.2.8.1, 19.2.3 (except 19.2.3.5), 19.2.4 and 19.2.1 of the PPA in detail sufficient to enable the Collateral Agent to assess the scope and amount of any liability of Developer resulting therefrom;
- ii. To the extent known to IFA, all amounts due and payable by Developer to IFA under the PPA on or before the date of such IFA Notice and which remain unpaid at such date and the nature of Developer's obligation to pay such amounts; and
- iii. The estimated amount of Developer's payment obligation to IFA that IFA reasonably foresees will arise during the applicable Cure Period,

which, IFA shall update upon the Collateral Agent's request, not more frequently than monthly.

IFA-Provided Approvals means the Governmental Approvals for the Project obtained or to be obtained by IFA as specifically listed and identified as such in Attachment 7-1 to the Technical Provisions.

IFA Quality Oversight Manager has the meaning set forth in Section 4.3.1 of the Technical Provisions.

IFA Quality Oversight Verification Reports means reports prepared by IFA documenting results of IFA quality verification activities as described in Section 4.3.1 of the Technical Provisions.

IFA Release(s) of Hazardous Material means, except as provided below, the introduction in, on or under the Project Right of Way of Hazardous Material directly by IFA, or by its contractors, subcontractors, agents or employees acting in such capacity (other than any Developer-Related Entity). IFA Release(s) of Hazardous Material excludes, however, (a) any Hazardous Materials so introduced that are in or part of construction or other materials, equipment and hardware incorporated into the Project and (b) any Known or Suspected Hazardous Materials.

IFA Utility Agreement means a Utility Agreement between a Utility Owner and IFA pertaining to a Type 1 Utility Adjustment.

IFA's Recoverable Costs means:

- (a) The costs of any assistance, action, activity or Work undertaken by IFA for which Developer is liable or is to reimburse IFA under the terms of the PPA Documents, including the charges of third party experts, consultants and contractors and reasonably allocated wages, salaries, compensation, benefits and overhead of IFA staff and employees performing such action, activity or Work; plus
- (b) Third-party costs IFA incurs to publicly procure any such third party experts, consultants or contractors; plus
- (c) Reasonable fees and costs of attorneys (including the reasonably allocable fees and costs of the Indiana Attorney General or IFA in-house counsel), financial advisors, engineers, architects, insurance brokers and advisors, investigators, traffic and revenue consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or Work, including in connection with investigating and defending claims by and resolving disputes with third party contractors; plus
- (d) Interest on all the foregoing sums, accruing as to each as of the date when such amount is due and owing to IFA in accordance with the PPA Documents, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the date due under the applicable terms of the PPA Documents (or if none, at the time incurred by IFA) and continuing until paid in full.

Incident means a localized disruption to the free flow of traffic or safety of Users on the Project.

Incident Management Plan means Developer's plan for detection and response to Incidents, as part of the PMP, and which is a deliverable described at Table 20-1 of the Technical Provisions.

Incurable Developer Default means a Developer Default under (a) Section 19.1.1.11, (b) Section 19.1.1.3(a), or (c) Section 19.1.1.16 or 19.1.1.17 of the Agreement.

Indemnified Parties means IFA, the Department, the State, and each of their respective successors, assigns, officeholders, officers, directors, commissioners, agents, representatives, agents, consultants and employees, in each case, as an indemnified party and not as a named insured under the PPA Documents.

Indiana Design Manual means the current INDOT Design Manual, which is posted on the INDOT website at http://www.in.gov/indot/design_manual/.

Indiana Historic Preservation Advisory Team means I-69 Section 5 Section 106 Consulting Parties, in coordination with INDOT, the State Historic Preservation Officer and members as identified in Chapters 5.13, 5.14 and 7 along with Appendix N of the FEIS.

Indiana University means Indiana University, Bloomington Indiana campus.

Informal Resolution Procedures has the meaning set forth in Section 19.6.3 of the Agreement.

Initial Funding Agreements means the Funding Agreements establishing the rights and obligations pertaining to the Initial Project Debt, as specifically identified in Exhibit 13 (List of Initial Funding Agreements and Initial Security Documents) to the Agreement.

Initial Project Debt means the Project Debt to originally finance the Project and Work, in the total face amount at each lien priority, and with the particular Lenders, set forth in Exhibit 13 (List of Initial Funding Agreements and Initial Security Documents) to the Agreement, which Project Debt is evidenced by the Initial Funding Agreements and secured by the Initial Security Documents.

Initial Security Documents means the Security Documents securing the Initial Project Debt, as specifically identified in Exhibit 13 (List of Initial Funding Agreements and Initial Security Documents) to the Agreement.

Initial Senior Project Debt means Initial Project Debt, other than Subordinate Debt, in the face amount of at least that set forth in the Financial Plan attached to the Agreement as Exhibit 2-C (Financial Plan) to the Agreement from one or more Institutional Lenders (or other Lenders if the Collateral Agent is an Institutional Lender), evidenced or to be evidenced by the applicable Initial Funding Agreements and secured by the applicable Initial Security Documents in favor of such Lender(s).

Institutional Lender means:

- (a) The United States of America, any state thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects;
- (b) Any (i) bank, trust company (whether acting individually or in a fiduciary capacity), savings and loan organization or insurance company organized and existing under the laws of the United States of America or any state thereof, (ii) foreign insurance company or bank qualified to do business as such, as applicable under the laws of the United States of America or any state thereof, or (iii) pension fund, foundation or university or college endowment fund (provided that an entity described in this clause (b) only qualifies as an Institutional Lender if it is subject to the jurisdiction of state and federal courts in the State in any actions);
- (c) Any "qualified institutional buyer" under Rule 144(a) under the U.S. Securities Act of 1933 or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms;
- (d) Any purchaser of debt securities the proceeds of which are used to finance the Project that are not publicly offered pursuant to the exception to registration provided in Section 4(2) of the U.S. Securities Act of 1933; or

- (e) Any other financial institution or entity designated by Developer and approved in writing by IFA (provided that such institution or entity, in its activity under the Agreement, is acceptable under then current guidelines and practices of IFA);

provided, however, that each such entity (other than entities described in clause (c) and clause (d) of this definition), or combination of such entities if the Institutional Lender is a combination of such entities, shall have individual or combined assets, as the case may be, of not less than \$1 billion. The foregoing dollar minimums shall automatically increase at the beginning of each calendar year by the percentage increase, if any, in the CPI during the immediately preceding calendar year, determined by comparing the CPI most recently published for the immediately preceding year with the CPI most recently published for the second preceding year.

Insurance Policies means all of the insurance policies Developer is required to carry pursuant to Section 17.1 and Exhibit 18 (Insurance Coverage Requirements) to the Agreement.

Insurance Premium Benchmark Amount has the meaning set forth in Section 17.1.9.8 of the Agreement.

Insurance Review Report has the meaning set forth in Section 17.1.9.2 of the Agreement.

Insured Parties means IFA, the Department, the State, and each of their respective successors, assigns, officeholders, officers, directors, commissioners, agents, representatives, agents, consultants and employees, in each case, as a named insured and not as an indemnified party under the PPA Documents.

Intellectual Property means all current and future legal and/or equitable rights and interests in know-how, patents (including applications), copyrights (including moral rights), trade marks (registered and unregistered), service marks, trade secrets, designs (registered and unregistered), utility models, circuit layouts, plant varieties, business and domain names, inventions, solutions embodied in technology, and other intellectual activity, and applications of or for any of the foregoing, subsisting in or relating to the Project, Project design data or Project traffic data. Intellectual Property includes traffic management algorithms, and software, source code and source code documentation used in connection with the Project (including software, source code and source code documentation used for management of traffic on the Project). Intellectual Property also includes the Financial Model Formulas, Financial Model and Financial Modeling Data. Intellectual Property is distinguished from physical construction and equipment itself and from drawings, plans, specifications, layouts, depictions, manuals and other documentation that disclose Intellectual Property.

Intellectual Property Escrow has the meaning set forth in Section 23.5.2 of the Agreement.

Intelligent Vehicle Highway System (IVHS) means smart vehicle and smart highway technologies to improve the safety, efficiency and environmental impact of highway facilities.

Interpretive Engineering Decision has the meaning set forth in Section 3.7.1 of the Agreement.

IPDC Commencement Notice has the meaning set forth in Section 13.7.2.2 of the Agreement.

Karst Agreement means the I-69 Section 5 Karst Agreement dated March 14, 2014, between the Indiana Department of Transportation (INDOT), the Indiana Department of Natural Resources (IDNR), the Indiana Department of Environmental Management (IDEM) and the U.S. Fish and Wildlife Service (USFWS) included as Attachment 7-2 to the Technical Provisions.

Karst Feature Treatment Work means the discovery of a karst feature, whether previously identified or unidentified, as referred to in the Karst Agreement, which (a) cannot be avoided, and (b) for which a proposed treatment measure is required to be implemented in accordance with the Karst Agreement.

Karst MOU means the October 1993 Karst Memorandum of Understanding included in Attachment 7-2 to the Technical Provisions.

Key Contract means any one of the following Contracts for Work Developer causes to be performed:

- (a) All Prime Contracts for construction, including the Design-Build Contract;
- (b) All Prime Contracts for design;
- (c) All O&M Contracts, including the Contract with the Lead Operations and Maintenance Contractor;
- (d) All Prime Contracts for project or program management services which individually or in the aggregate total in excess of \$25 million;
- (e) All other Prime Contracts with a single contractor (or a single contractor and its Affiliates), which individually or in the aggregate total in excess of \$50 million on a term (not annual) basis; and
- (f) Any contract, Prime Contract or Contract(s) between a Developer-Related Entity and the Lead Engineering Firm in respect of the Project.

The term "Key Contracts" shall mean all such Contracts in the aggregate or more than one of such Contracts.

Key Contractor means the Contractor under any Key Contract.

Key Personnel means those individuals appointed by Developer and approved by IFA from time to time to fill the "Key Personnel" positions identified in Section 1.5.1 of the Technical Provisions. The specific individuals appointed by Developer and approved by IFA to initially fill certain of the Key Personnel positions are identified in Exhibit 2-H (Equity Members, Contractors and Key Personnel Commitments) to the Agreement.

Known or Suspected Hazardous Materials means Hazardous Materials and Hazardous Environmental Conditions that are known or reasonably suspected to exist as of the Setting Date from information or analysis contained in or referenced in the Reference Information Documents, including any of the reports contained in the Reference Information Documents as of the Setting Date. Known or Suspected Hazardous Materials include Hazardous Materials and Hazardous Environmental Conditions arising in or from any of the

Hazardous Materials sites listed in the Final Environmental Impact Statement and Section 7.9 of the Technical Provisions.

Law or **Laws** means (a) any statute, law, code, regulation, ordinance, rule or common law, (b) any binding judgment (other than regarding a Claim or Dispute), (c) any binding judicial or administrative writ, order, judgment, injunction, award or decree (other than regarding a Claim or Dispute), (d) any written directive, guideline, policy requirement or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by IFA within the scope of its administration of the PPA Documents) or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Entity, in each case which is applicable to or has an impact on the Project or the Work, whether taking effect before or after the Effective Date, including Environmental Laws. "Laws," however, excludes Governmental Approvals.

Lead Engineer has the meaning set forth in Section 3.2.4 of the Technical Provisions. The Lead Engineer is Key Personnel listed at Exhibit 2-H to the Agreement.

Lead Engineering Firm means the AZTEC-TYPSA JV, a joint venture between AZTEC Engineering Group, Inc. and Técnica y Proyectos, S.A.

Lead Operations and Maintenance Contractor means the entity that will perform the O&M Work for Developer during the Operating Period. The Parties acknowledge that, as of the Effective Date, Developer shall self-perform the O&M Work, and if, as and when Developer shall not self-perform the O&M Work, the provisions of Section 6.2.1 of the Agreement shall apply.

Lead Underwriter has the meaning set forth in the RFP.

Lender means each of the holders and beneficiaries of Security Documents and their respective successors, assigns, participating parties, trustees and agents, including the Collateral Agent.

Lender Notice means a Notice from Collateral Agent to IFA, with a copy to Developer, delivered promptly upon the occurrence of any Default or Event of Default (whether or not an IFA-Lender Notice has been served relating to the same event), which Lender Notice shall specify the circumstances and nature of the Default or Event of Default to which the Lender Notice relates.

LIBOR means the offered rate per annum (rounded up to the next highest one one-thousandth of one percent (0.001%)) for deposits in U.S. dollars for a one-month period which appears on Reuters LIBOR01 (formerly known as the Telerate Page 3750) at approximately 11:00 A.M., London time, on the date of determination, or if such date is not a date on which dealings in U.S. dollars are transacted in the London interbank market, then on the next preceding day on which such dealings were transacted in such market. For purposes of this definition, "Reuters LIBOR01" means the display designated on page "LIBOR 01" on Reuters Service (or such other publication as may replace the LIBOR 01 page for Reuters Service, any successor service or services, as may be nominated by the British Bankers' Association (or successor institution) for purposes of displaying the London interbank rates offered for U.S. dollar deposits). All interest based on LIBOR shall be calculated on the bases of a 360-day year for the actual days elapsed.

Long Stop Date means October 31, 2017, as set forth in the Project Schedule, as such deadline may be extended for Relief Events from time to time pursuant to the Agreement.

Losses means any loss, damage, injury, liability, obligation, cost, response cost, expense (including attorneys', accountants' and expert witnesses' fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of the Agreement)), fee, charge, judgment, penalty, fine or Third Party Claims. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources.

Mainline means the main alignment of the Project roadway, which is continuous through the Project.

Maintenance-of-Traffic Manager has the meaning set forth in Section 12.3.2 of the Technical Provisions.

Maintenance Plan (MP) means Developer's plan for managing maintenance during the Operating Period, as more particularly described in Section 18.4.1 of the Technical Provisions, and which is a deliverable described at Table 20-1 of the Technical Provisions.

Maintenance Work Report has the meaning set forth in Section 18.4.1.3 of the Technical Provisions.

Mass Concrete Thermal Control Plan means the deliverable described at Table 20-1 of the Technical Provisions.

Maximum Availability Payment or **MAP** means the maximum Availability Payment that Developer can earn in a given Fiscal Year from and after the Substantial Completion Date, as calculated in accordance with Exhibit 10 (Payment Mechanism) to the Agreement, and as may be further adjusted in accordance with the PPA Documents.

Milestone means each of the milestones set forth at Exhibit 4 (Milestone Payment Amounts) to the Agreement.

Milestone Agreement has the meaning set forth in Section 10.1.1.1 of the Agreement.

Milestone Payment means the payment(s) identified in Section 10.1.1 of the Agreement.

Milestone Payment Amount means the amount of the Milestone Payment(s) identified in Section 10.1.1, calculated pursuant to Section 4 of Exhibit 10 (Payment Mechanism), subject to adjustment as provided in Section 10.1.3 and Exhibit 10.

Monthly Disbursement means the amount, if any, paid by IFA to Developer in accordance with Section 10.2.3 of the Agreement, and equal to (a) 95% of the MAP (for the subject year) divided by 12 minus (b) the interest owed by Developer to IFA, if any, under the Agreement.

NEPA Documents means each document issued by FHWA in its final form pursuant to NEPA for the Project as it relates to the Project or issued by the Army Corps of Engineers in connection with the review of the 404 Permit for the Project, including the Final Environmental

Impact Statement, any record of decision entered in respect thereof, and all approved supplements and reevaluations pertaining to the Project as of the Effective Date.

NCE Cure Period or **Noncompliance Event Cure Period** means the cure period shown in the applicable column of the Noncompliance Points Tables in Exhibit 12 for a given Noncompliance Event.

New Agreements has the meaning set forth in Section 21.4.4.2 of the Agreement.

Noncompliance Event means any Developer breach or failure to meet the minimum performance requirements set forth in Attachment 1 of Exhibit 12 to the Agreement, as those requirements may be revised from time to time. Any given "Noncompliance Event" is either a Construction Noncompliance Event or an O&M Noncompliance Event.

Noncompliance Points means the points that may be assessed for certain breaches or failures to perform by Developer, as set forth in Attachment 1 of Exhibit 12 to the Agreement.

Nonconformance Report means a report issued by either IFA or Developer pursuant to the terms and conditions of the Quality Management Plan.

Nonconforming Work means Work that does not conform to (and does not exceed) the requirements of the PPA Documents, the Governmental Approvals, applicable Law, the Design Documents or the Construction Documents.

Non-Discriminatory O&M Change means any alteration or change (including addition) to provisions in the Technical Provisions and Safety Standards relating to the O&M Work of general application to Department transportation facilities, including revision to manuals, publications and guidelines, adoption of new manuals, publications and guidelines, changed, added or replacement standards, criteria, requirements, conditions, procedures and specifications, including Safety Standards, relating to O&M Work of general application to Department transportation facilities. A Non-Discriminatory O&M Change is an IFA Change.

Notice means a written notice, notification, correspondence, order or other communication given under the Agreement to a Party that complies with the prescriptions set forth in Section 25.11.

Notice of Determination has the meaning set forth in Section 11.2.3 of the Agreement.

Notice of Termination for Convenience means Notice issued by IFA to Developer terminating the Agreement for convenience.

Noxious Weed Control Plan means the deliverable described at Table 20-1 of the Technical Provisions.

NTP1 means a Notice issued by IFA to Developer authorizing Developer to proceed with the portions of the Work described in Section 5.3.1 of the Agreement.

NTP1 Conditions Deadline means the outside date set forth in the Project Schedule by which Developer is obligated under the Agreement to perform and complete the Work and obtain IFA's approval of such Work necessary to issuance of NTP1, as set forth in Section 5.3.1

of the Agreement, as such deadline may be extended for Relief Events from time to time pursuant to the Agreement.

NTP2 means a Notice issued by IFA to Developer authorizing Developer to proceed with the balance of the Work described in Section 5.6.1 of the Agreement.

NTP2 Conditions Deadline means the outside date set forth in the Project Schedule by which Developer is obligated under the Agreement to perform and complete the Work and obtain IFA's approval of such Work necessary to issuance of NTP2, as set forth in Section 5.6.1 of the Agreement, as such deadline may be extended for Relief Events from time to time pursuant to the Agreement.

Nutrient Management Plan means the deliverable described at Table 20-1 of the Technical Provisions.

O&M After Construction means the O&M Work for all elements of the Project according to Section 18 of the Technical Provisions. O&M After Construction encompasses all O&M Work during the Operating Period.

O&M Conditions Precedent means the conditions set forth in Section 5.8.4 of the Agreement.

O&M Contract means any Contract between Developer or an Affiliate and a third party (i.e. a Person other than IFA) for management, direction, supervision or performance of the O&M Work or any portion thereof. There may be more than one O&M Contract concurrently in effect.

O&M Contractor means the Contractor under any O&M Contract. There may be more than one O&M Contractor concurrently performing O&M Work.

O&M During Construction means the O&M Work for all elements of the Project according to Section 18 of the Technical Provisions. O&M During Construction encompasses all O&M Work during the Construction Period.

O&M Limits means the Construction Period O&M Limits or the Operating Period O&M Limits as applicable.

O&M Noncompliance Event means the failure to meet one of the minimum performance requirements during the Operating Period in Table 12.3 of Attachment 1 of Exhibit 12 within the applicable cure period (if any).

O&M Period Noncompliance Point means the points that may be assessed for certain breaches or failures to perform by Developer during the Operating Period, as set forth in Table 12.3 of Attachment 1 of Exhibit 12.

O&M Quality Plan has the meaning set forth in Section 18.1.8 of the Technical Provisions, and which is a deliverable described at Table 20-1 of the Technical Provisions.

O&M Records means all data in connection with the O&M Work, including (a) all inspection and inventory records, whether generated by Developer or a third party, (b) any communication to and/or from IFA or a third party, and (c) any information system (as may be

introduced or amended by IFA from time to time) in connection with the O&M Work that IFA requires Developer to use, implement or operate.

O&M Safety Plan has the meaning set forth in Section 18.1.7 of the Technical Provisions, and which is a deliverable described at Table 20-1 of the Technical Provisions.

O&M Work means any and all operation, management, administration, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement, including Planned Maintenance, Rehabilitation Work and Handback Requirements Work. O&M Work conducted prior to commencement of the Operating Period is "O&M During Construction;" O&M Work conducted on and after commencement of the Operating Period is "O&M After Construction."

Open Book Basis means allowing IFA to review all underlying assumptions, data, documents and information associated with the Financial Model, each Financial Model Update, pricing or compensation or adjustments thereto, costs of the Work, Extra Work Costs, Delay Costs, costs claims under Section 15.2 or 15.3 of the Agreement, schedule, composition of equipment spreads, equipment rates (including rental rates), labor rates and benefits, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, swap and hedge rates, insurance rates, bonding rates, letter of credit fees, overhead, profit, traffic volumes, and other items reasonably required by IFA to satisfy itself as to validity or reasonableness.

Operating Period means for the period starting on the Substantial Completion Date and ending at the end of the Term.

Operating Period O&M Limits means the areas in which the O&M After Construction is to be performed as identified in Section 18.1.4 of the Technical Provisions.

Operations and Maintenance Management Center or **OMMC** means the operations and maintenance management center to be provided by Developer as part of the Work and part of the Project, which will include office, storage and parking facilities, among other items in conformance with the PPA Documents.

Operations and Maintenance Manager is the Key Personnel listed at Exhibit 2-H to the Agreement.

Operations and Maintenance Plan (OMP) means Developer's plan for managing operations and maintenance during the Operating Period, as more particularly described in Section 18.1.1 of the Technical Provisions, and which is a deliverable described at Table 20-1 of the Technical Provisions.

Operations Report means the quarterly operations report Developer submits to IFA for the O&M Work as set forth in Section 18.2.2 of the Technical Provisions.

Original Equity IRR means the Equity IRR projected in the Financial Model, which is equal to [REDACTED]

Oversight means monitoring, inspecting, sampling, measuring, spot checking, attending, observing, testing, investigating and conducting any other oversight respecting any

part or aspect of the Project or the Work, including all the activities described in Section 3.4.1.2 of the Agreement.

Owner means IFA, for purposes of the Technical Provisions.

Owner Verification Tests means the material tests performed in accordance with the applicable IFA test method to verify the accuracy of the tests, inspections and audits performed by or on behalf of Developer pursuant to the approved Construction Quality Management Plan to ensure that only materials of specified quality or better are accepted and incorporated into the Project.

PABs means bonds, notes or other evidence of indebtedness issued by the PABs Issuer pursuant to the provisions of Internal Revenue Code Sections 142(a)(15) and (m) (which acronym stands for "private activity bonds").

PABs Issuer means IFA solely in its capacity of exercising its authority under Indiana Law to issue the PABs.

Party means Developer or IFA, as the context may require, and "**Parties**" means Developer and IFA, collectively.

Pavement Design Reports means the deliverable described at Section 10.3.2 of the Technical Provisions.

Payment Bond means one or more payment bonds in place as a condition to issuance of NTP2 and commencement of the D&C Work and the O&M During Construction, as more particularly set forth in Section 17.2.1 of the Agreement.

Performance and Measurement Criteria means Attachment 1 of Exhibit 12 to the Agreement.

Performance and Measurement Table means Attachment 18-1 to the Technical Provisions as may be modified in accordance with Section 18.3 of the Technical Provisions.

Performance Inspection means a detailed inspection of the Performance Sections undertaken by Developer during the Operating Period in accordance with the Technical Provisions to verify compliance with the Performance Requirements and the other requirements of the PPA Documents.

Performance Requirements means for each Element of the Project during the Operating Period, the requirements set forth in Performance and Measurement Criteria in the column headed "Failure to" or in succeeding Performance and Measurement Tables under such column, in Attachment 1 of Exhibit 12 to the Agreement.

Performance Section means a defined section of the Project for the purpose of audit, inspection and measurement. A Performance Section includes all travel lanes including Mainline lanes, shoulders and ramps of the roadway operating in one direction over a length of approximately 0.1 miles, together with all Elements of the Project and Related Transportation Facilities within the Project Right of Way associated with the relevant approximately 0.1 mile length of roadway.

Performance Security means one or more performance bonds or letters of credit in place as a condition to issuance of NTP2 and commencement of the D&C Work and the O&M During Construction, as more particularly set forth in Section 17.2.1 of the Agreement.

Permitted Closure means, subject to Section 15.10 of the Agreement, a Closure for any of the reasons described in items (a) to (h) below; provided that a Closure arising from a risk against which Developer is required to insure in accordance with Exhibit 18 to the Agreement is not a "Permitted Closure;" and provided further that, in each case, Developer is exercising commercially reasonable efforts to (i) respond to the cause of the Closure in accordance with applicable requirements of the PPA Documents; (ii) mitigate the impact of the Closure on the Project; (iii) reopen affected traffic lane(s) and ramp(s) as quickly as possible to traffic; and (iv) minimize the impact of Developer's activities on traffic flow in the affected area:

- (a) A Planned Maintenance Closure;
- (b) A Closure due to an Emergency that is not the result of the negligence, willful misconduct, or breach of applicable Law or contract by Developer or any Developer-Related Entity nor considered a Relief Event,
- (c) A Closure due to utility installation work during the Operating Period as provided in Section 6.1.4 of the Agreement
- (d) A Closure specified, caused or ordered by, and continuing only for so long as required by, IFA or any Governmental Entity (other than in its capacity as a Utility Owner), including Closures caused by a Relief Event described in clause (e) (Safety Compliance Order), (s) (temporary restraining order, etc.) or (t) (U.S. Department of Homeland Security directive, etc.) of the definition of Relief Event, except to the extent such Closure is the result of the negligence, willful misconduct, or breach of applicable Law or contract by Developer or any Developer-Related Entity;
- (e) A Closure as a result of a Relief Event described in clause (g) (disruption of work by IFA), (h) (IFA Business Opportunity in Airspace), (j) (Force Majeure Event), (k) (suspension or revocation of IFA-Provided Approvals or (n) (third-party spills of Hazardous Materials) of the definition of Relief Event, except to the extent otherwise provided in Section 15.10 as to clause (j) or (n);
- (f) A Closure necessary to accommodate future construction of Related Transportation Facilities constructed by others
- (g) Shoulder work of a nature too brief to require shoulder closure as per MUTCD, i.e., patrols, inspections, assistance to motorists, removal of debris; and
- (h) With respect to a Closure under the control of the Emergency Services and governed by item (b) above, the period of one hour, commencing at the time when the Emergency Services has returned operational control of all parts of the Project affected by the Closure back to Developer.

Permitted Construction Closure means a Construction Closure for any of the reasons described in items (a) to (f) below; provided that a Construction Closure arising from a risk against which Developer is required to insure in accordance with Exhibit 18 to the Agreement is

not a "Permitted Construction Closure" (to the extent proceeds are paid by such insurer) and provided further that, in each case, Developer is exercising commercially reasonable efforts to (i) respond to the cause of the Construction Closure in accordance with applicable requirements of the PPA Documents; (ii) mitigate the impact of the Construction Closure on the Project; (iii) reopen affected traffic lane(s) and ramp(s) as quickly as possible to traffic; and (iv) minimize the impact of Developer's activities on traffic flow in the affected area:

- (a) A Construction Closure that is compliant with the traffic control restrictions set forth in Section 12.4.7 of the Technical Provisions (Restrictions for Construction Work and O&M During Construction) and Section 12.4.8 of the Technical Provisions (Freeway/Ramp/Roadway Closures and Restrictions); has been properly scheduled and executed and in the case of a single lane daytime closure north of Sample Road, the queue length for either northbound or southbound traffic does not exceed the queue length restrictions set forth in Attachment 12-1 of the Technical Provisions (Queue Length Restrictions During Construction);
- (b) A Construction Closure due to an Emergency that is not the result of the negligence, willful misconduct, or breach of applicable Law or contract by Developer or any Developer-Related Entity nor considered a Relief Event,
- (c) A Construction Closure specified, caused or ordered by, and continuing only for so long as required by, IFA or any Governmental Entity (other than in its capacity as a Utility Owner), including Construction Closures caused by a Relief Event described in clause (e) (Safety Compliance Order), (s) (temporary restraining order, etc.) or (t) (U.S. Department of Homeland Security directive, etc.) of the definition of Relief Event, except to the extent such Construction Closure is the result of the negligence, willful misconduct, or breach of applicable Law or contract by Developer or any Developer-Related Entity;
- (d) A Closure as a result of a Relief Event described in clause (g) (disruption of work by IFA), (j) (Force Majeure Event), (k) (suspension or revocation of IFA-Provided Approvals) or (n) (third-party spills of Hazardous Materials) of the definition of Relief Event;
- (e) Shoulder work of a nature too brief to require shoulder closure as per MUTCD, i.e., patrols, inspections, assistance to motorists, removal of debris; and
- (f) With respect to a Construction Closure under the control of the Emergency Services and governed by item (b) above, the period of one hour, commencing at the time when the Emergency Services has returned operational control of all parts of the Project affected by the Construction Closure back to Developer.

Persistent Developer Default means:

- (a) Accumulation of assessed Noncompliance Points, including those assessed on account of breaches or failures that have been cured, at or above any of the trigger points set forth in Section 2.1 of Exhibit 12 (Noncompliance Points System and Persistent Developer Default) to the Agreement; or

- (b) Accumulation at or above any of the trigger points set forth in Section 2.2 of Exhibit 12 (Noncompliance Points System and Persistent Developer Default) to the Agreement of non-material breaches or failures to timely observe or perform or to cause to be observed or performed any covenant, agreement, obligation, term or condition required to be observed or performed by Developer under the PPA Documents and not otherwise the subject of a Notice declaring a Developer Default, including non-material breaches or failures to perform the Design Work, Construction Work or O&M Work in accordance with the PPA Documents.

For the purpose of clause (b) above, a breach or failure to perform shall be counted:

- (i) Only if it is the subject of a Notice from IFA to Developer, except that no Notice shall be required to count continuation of the breach or failure to perform beyond the applicable cure period as a new and separate breach or failure to perform, as described in Section 11.3.5 of the Agreement;
- (ii) Regardless of whether it is cured;
- (iii) Regardless of whether it is of the same or different type, nature or character as any other breach or failure to perform included in the count; and
- (iv) Regardless of whether it is the basis for assessment of Noncompliance Points.

Person means any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization or Governmental Entity, as well as IFA.

Planned Maintenance means O&M Work that has been properly scheduled and executed in accordance with Section 18.4 of the Technical Provisions and subject to the following additional restrictions:

- (a) Planned Maintenance shall not be permitted on Event Days;
- (b) Planned Maintenance shall be permitted only within Period B as defined on Table 3 in Exhibit 10;
- (c) Within any Segment, Work associated with Planned Maintenance shall be restricted to one direction of Mainline travel;
- (d) On I-69 Mainline Segments with 2 lanes in each direction at least one travel lane shall remain open and contraflow working shall not be permitted;
- (e) On I-69 Mainline Segments with 3 lanes in each direction at least two travel lanes shall remain open; and
- (f) Planned Maintenance shall not be permitted simultaneously on more than one cross road within a Segment.

Planned Maintenance Closure means a Closure that (a) is required solely for Planned Maintenance; (b) complies with all restrictions and conditions applicable to Planned

Maintenance; (c) occurs entirely within Unavailability Period B on Table 3 to Exhibit 10 to the Agreement; and (d) occurs on no more than 120 days (aggregated) within a calendar year.

Plans means (only where capitalized) the plans, profiles, typical cross sections, standard drawings, working drawings, and supplemental drawings or exact reproductions thereof which show the location, character, dimensions, and details of the work to be done.

Plant and Turf Establishment Certification Package has the meaning set forth in Section 5.7.1 of the Technical Provisions.

PPA Documents has the meaning set forth in Section 1.2 of the Agreement.

Preliminary Project Baseline Schedule means the high level, logic-based critical path schedule representing Developer's plan to complete performance of the Work beginning on the date of NTP1 and concluding with Final Acceptance, as set forth in Exhibit 2-B (Preliminary Project Baseline Schedule) to the Agreement.

Pre-Refinancing Data means all relevant data in relation to a proposed Refinancing other than a proposed Exempt Refinancing under clause (c) or (d) of the definition of Exempt Refinancing and calculation of the estimated Refinancing Gain, including:

- (a) Details of actual and projected timing and amounts of the investment of equity and Subordinate Debt from the Effective Date to the anticipated date of Refinancing, and of projected timing and amounts of the investment of equity and Subordinate Debt, if any, from the anticipated date of Refinancing to the end of the Term;
- (b) Information on the actual and projected cash flows of Developer from the Effective Date to the anticipated date of Refinancing, and of projected cash flows of Developer from the anticipated date of Refinancing to the end of the Term;
- (c) Details of the actual and projected timing and amounts of Distributions from the Effective Date to the anticipated date of Refinancing and of projected timing and amounts of Distributions from the anticipated date of Refinancing to the end of the Term;
- (d) A copy of the pre-Refinancing Financial Model as updated by Developer, which shall be identical to any presented to the proposed Refinancing Lender(s);
- (e) A copy of all term sheets or all other relevant documentation and information in relation to the terms of the proposed Refinancing;
- (f) A copy of the proposed post-Refinancing Financial Model as updated by Developer, which shall be identical to any presented to the proposed Refinancing Lender(s);
- (g) Information on all relevant assumptions, including tax assumptions and where appropriate back up data and tax opinions, for the projections in the pre-Refinancing and post-Refinancing Financial Models as updated by Developer;

- (h) A detailed calculation of the estimated Refinancing Gain and IFA's share thereof (if any) following the procedures set forth in Exhibit 14 (Calculation and Payment of Refinancing Gain) to the Agreement; and
- (i) All other information IFA may reasonably request in relation to the proposed Refinancing and related calculations and assumptions.

Prime Contract means a Contract between Developer and a Contractor.

Principal Project Documents means each Design-Build Contract, each O&M Contract, and the escrow agreements for the Intellectual Property Escrow(s) and Financial Escrow.

Progress Report has the meaning set forth in Section 1.5.2.1.3 of the Technical Provisions, and which is a deliverable described at Table 20-1 of the Technical Provisions.

Project means the I-69 Section 5 project, which is generally the upgrading of approximately 21 miles of existing State Route 37, a four-lane median divided highway, between Bloomington, IN and Martinsville, IN to an interstate highway, including four new interchanges and four new overpasses with varying degrees of improvements to the existing interchanges and overpass and the OMMC. The new interchanges are at the Fullerton Pike, Tapp Road/SR 45/2nd Street, Sample Road and Liberty Church Road, all of which are current intersections with SR 37. The new overpasses will be at Rockport Road, Vernal Pike, Kinser Pike and Chambers Pike.

Project Adjusted Costs means those costs and expenses that have actually been incurred by or on behalf of Developer directly in connection with the design, acquisition or construction of the Project, as well as in connection with Rehabilitation Work, less the Milestone Payment Amount actually paid by IFA. Notwithstanding the foregoing, Project Adjusted Costs do not include capitalized interest and other financing costs, professional and advisory fees, Developer overhead and administrative expenses, Redundancy Payments or demobilization costs.

Project Baseline Schedule means the logic-based critical path schedule for all Work through Final Acceptance, as more particularly described in Section 1.5.2.1.1 of the Technical Provisions, and which is a deliverable described at Table 20-1 of the Technical Provisions.

Project Debt means bona fide indebtedness (including subordinated indebtedness) for or in respect of funds borrowed (including bona fide indebtedness with respect to any financial insurance issued for funds borrowed) or for the value of goods or services rendered or received, the repayment of which has specified payment dates and is secured by one or more Security Documents. Project Debt includes principal, capitalized interest, accrued interest, customary and reasonable lender, financial insurer, agent and trustee fees, costs, expenses and premiums with respect thereto, payment obligations under interest rate and inflation rate hedging agreements or other derivative facilities with respect thereto, reimbursement obligations with respect thereto, lease financing obligations, and Breakage Costs. Project Debt excludes any indebtedness of Developer or any shareholder, member, partner or joint venture member of Developer that is secured by anything less than the entire Developer's Interest, such as indebtedness secured only by an assignment of economic interest in Developer or of rights to cash flow or dividends from Developer. Project Debt also excludes any increase in indebtedness to the extent resulting from an agreement or other arrangement Developer enters into or first becomes obligated to repay after it was aware (or should have been aware, using

reasonable due diligence) of the occurrence or prospective occurrence of an event of termination, including Developer's receipt of a Notice of Termination for Convenience and occurrence of an IFA default of the type entitling Developer to terminate the Agreement. In addition, no debt shall constitute Project Debt unless and until the Collateral Agent provides IFA with Notice thereof and the related Funding Agreements and Security Documents in accordance with Article 21 of the Agreement. Subject to the foregoing exclusions, Project Debt includes the PABs and obligations arising thereunder.

Project Debt Termination Amount means:

- (a) All amounts outstanding in respect of the Project Debt; plus
- (b) Without double counting in relation to such Project Debt, all Breakage Costs payable by Developer as a result of prepayment of the outstanding amounts of such Project Debt, subject to Developer and the Lenders mitigating all such costs to the extent reasonably possible; minus
- (c) To the extent it is a positive amount, the aggregate of all Breakage Costs payable by the Lenders to Developer as a result of prepayment of any outstanding Project Debt; minus
- (d) To the extent it is a positive amount, such amounts under clause (a) and (b) above that constitute or accumulate by reason of default rates of interest, late charges and penalties, including any such items added to principal.

Project Limits has the meaning set forth in Table 9-1 of the Technical Provisions, as the context requires.

Project Management Plan or **PMP** means the document, including approved changes, additions and revisions, prepared by Developer and approved by IFA describing quality assurance, quality control and other activities necessary to manage the development, design, construction, operation and maintenance of the Project, containing the IFA-approved component parts, plans and documentation described in Section 1.5.2.5 of the Technical Provisions, and which is a deliverable described at Attachment 1-1 of the Technical Provisions.

Project Manager means the individual designated by Developer and approved in writing by IFA in the position to take full responsibility for the prosecution of the Work and will act as a single point of contact on all matters on behalf of Developer as described in the approved Project Management Plan. The Project Manager is a Key Personnel listed at Exhibit 2-H to the Agreement.

Project Office has the meaning set forth in Section 1.5.3 of the Technical Provisions.

Project Right of Entry has the meaning set forth in Section 2.1.2 of the Agreement.

Project Right of Way or **Project ROW** means any real property (which term is inclusive of all estates and interests in real property), improvements and fixtures within the lines delineating the outside boundaries of the Project set forth in the ROW Work Maps contained in Attachment 17-1 to the Technical Provisions, as such boundaries may be adjusted from time to time in accordance with the PPA Documents (including adjustments for Additional Properties).

The term specifically includes all air space, surface rights and subsurface rights within the boundaries of the Project Right of Way.

Project Schedule means one or more, as applicable, of the logic-based critical path schedules (the Project Baseline Schedule, the Project Status Schedule and the Project recovery schedule) for all Work leading up to and including Substantial Completion and Final Acceptance, and for tracking the performance of such Work, as the same may be revised and updated from time to time in accordance with Section 1.5.2.1 of the Technical Provisions.

Project Schedule Deadline means one or more of the NTP1 Conditions Deadline, Financial Close Deadline, NTP2 Conditions Deadline, Baseline Substantial Completion Date, Final Acceptance Deadline and Long Stop Date, as the case may be.

Project Specific Locations means areas in which Developer proposes temporary Project-specific activities in connection with the Construction Work not within the Project Right of Way boundaries identified in the NEPA Documents, such as construction work sites, temporary work areas, lay down areas, staging areas, storage areas, stockpiling areas, earth work material borrow sites, equipment parking areas, and similar areas.

Project Standards has the meaning set forth in Section 21 of the Technical Provisions.

Project Status Schedule has the meaning set forth in Section 1.5.2.1.2 of the Technical Provisions.

Proposal means Developer's response to the RFP.

Proposal Due Date means January 21, 2014, the deadline for submission of the Proposal to IFA.

Proprietary Intellectual Property means Intellectual Property created, used, applied or reduced to practice in connection with the Project or the Work that derives commercial value from its protection as a trade secret under applicable Law or from its protection under patent law.

Protected Characteristics has the meaning set forth in Section 7.9.2 of the Agreement.

Protection in Place means any action taken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, exposing the Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. The term includes both temporary measures and permanent installations meeting the foregoing definition.

Protection Plan has the meaning set forth in Section 15.1.11 of the Technical Provisions, and which is a deliverable described at Table 20-1 of the Technical Provisions.

Public Finance Director has the meaning set forth in Recital H of the Agreement.

Public Information Coordinator is the Key Personnel listed at Exhibit 2-H to the Agreement.

Public Involvement Plan (PIP) has the meaning set forth in Section 6.1 of the Technical Provisions, and which is a deliverable described at Table 20-1 of the Technical Provisions.

Public Involvement Plan Manager means the person designated by IFA to oversee Developer's public information activities as more particularly described in Section 6.5.2 of the Technical Provisions.

Public Records Act means IC 5-14-3, as amended from time to time.

Punch List means an itemized list of Construction Work which remains to be completed after Substantial Completion has been achieved and before Final Acceptance, the existence, correction and completion of which will have no adverse effect on the normal and safe use and operation of the Project.

Quality Management Plan has the meaning set forth in Section 2.1 of the Technical Provisions, and which is the deliverable described at Table 20-1 of the Technical Provisions.

Quality Manager means the individual retained by Developer as the Key Personnel with the authority and responsibility for ensuring establishment and maintenance of, and compliance with, the Design Quality Management Plan and Construction Quality Management Plan. The Quality Manager is a Key Personnel listed at Exhibit 2-H to the Agreement.

Quality Oversight means IFA's activities with respect to quality, as described in Section 4.3.1 of the Technical Provisions.

Quarter means a time period comprised of three calendar months. Each Fiscal Year contains four Quarters: July – September; October – December; January – March; and April – June.

Quarterly Noncompliance Adjustment means an amount equal to the sum of the deductions for Noncompliance Events or cumulative Noncompliance Events as set forth in Attachment 1 of Exhibit 12 to the Agreement, incurred during a given Quarter and calculated as provided in Section 3.8 of Exhibit 10 (Payment Mechanism) to the Agreement.

Quarterly Other Payment Adjustment means the adjustment, positive or negative, to derive the Quarterly Payment Adjustment, calculated as provided in Section 3.9 of Exhibit 10 (Payment Mechanism) to the Agreement.

Quarterly Payment means the amount of the portion of Availability Payment payable by IFA to Developer for a given Quarter, calculated as provided in Exhibit 10 (Payment Mechanism).

Quarterly Payment Adjustment means the adjustment, positive or negative, to derive the amount of the Quarterly Payment, calculated as provided in Section 3 of Exhibit 10 (Payment Mechanism) to the Agreement.

Quarterly Unavailability Adjustment means an amount equal to the sum of the adjustments for each Unavailability Event incurred during a given Quarter, calculated as provided in Section 3.4 of Exhibit 10 (Payment Mechanism) to the Agreement.

Railroad Agreement means the agreements described at Section 15.6 of the Technical Provisions.

Railroad Force Account Work means work performed by, or on behalf of, any railroad arising out of or relating to the Project. This work may involve: flagging for train operations, work involving road crossing surfaces, track adjustments, installation of warning devices, relocation of existing warning devices, installation or extension of drainage structures under tracks, wire line adjustments, and other related work.

Rating Agency means any of Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc., Moody's Investors Service, Inc., or Fitch Investors Service, Inc.

Reach has the meaning set forth in Section 5.3.1 of Attachment 13-1 to the Geotechnical Baseline Report.

Reasonable Accuracy means with respect to the description or identification of a Utility in the Utility Information:

- (a) The Utility's actual centerline location is located at or less than five (5) feet distant from the horizontal centerline location indicated therefor in the Utility Information (without regard to vertical location);
- (b) The Utility Information does not show the Utility as abandoned (i.e., nonexistent except "on paper", or existent but no longer active) when in fact the Utility exists and is active;
- (c) The Utility Information shows non-existent or inactive Utilities as abandoned; or
- (d) The Utility has an actual nominal diameter (excluding casings and any other appurtenances) greater than 12 inches, and its actual nominal diameter is either greater than or less than the diameter shown in the Utility Information by 25% or less of the diameter shown in the Utility Information

Any other inaccuracies in the Utility Information (e.g., as to type of material or encasement status) shall have no impact on "reasonable accuracy" of its identification and shall not result in a determination that the Utility was not identified with "reasonable accuracy." If there is any discrepancy between any of the components of the Utility Information, only the most accurate information shall be relevant for purposes of determination of "reasonable accuracy."

Reasonable Investigation means the following activities by appropriate, qualified professionals prior to the Setting Date:

- (a) Visit and visual, non-intrusive inspection of the Site and adjacent locations, except areas to which access rights have not been made available by the Setting Date;
- (b) Review and analysis of all Reference Information Documents;
- (c) Review and analysis of IFA-Provided Approvals available prior to the Setting Date;

- (d) Reasonable inquiry with Utility Owners, including request for and review of Utility plans provided by Utility Owners;
- (e) Review and analysis of material Laws applicable to the Project or the Work as of the Setting Date; and
- (f) Other activities sufficient to familiarize Developer with surface and subsurface conditions, including the presence of Utilities, Hazardous Materials, archeological, paleontological and cultural resources, and Threatened or Endangered Species, affecting the Site or surrounding locations;

except that none of the foregoing activities includes conducting field studies, geotechnical investigations, or original research of private records not contained or referenced in the Reference Information Documents or Technical Provisions.

Record Drawings means construction drawings and related documentation revised to show significant changes made to the Project during the construction process or during the Operating Period; usually based on marked-up Final Design Documents furnished by Developer; also known as as-built plans. The Record Drawings is a deliverable described at Table 20-1 of the Technical Provisions.

Recurring Special Provision means a special provision that is issued by the Department's Standards Committee for particular situations that is applicable, in accordance with Section 105.04 of the Department's Standard Specifications, and may be included in a contract on a case-by-case basis.

Redundancy Payments means the payment of all wages earned, accrued unused vacation time, and any other payments required by Law or required by the employer's employment agreement with the employees.

Reference Design means the design contained in the Reference Information Documents at RD 09.08.

Reference Information Documents means the collection of information, data, documents and other materials that IFA has made available to Developer in connection with the Project or the Work (including those contained in the RFP documents) for general or reference information only and without any warranty as to their accuracy, completeness or fitness for any particular purpose. The Reference Information Documents are not PPA Documents. Prior to the Effective Date, IFA made available to Developer a non-exclusive list of Reference Information Documents.

Refinancing means:

- (a) Any amendment, variation, novation, extension, renewal, supplement, refunding, defeasance or replacement of any Project Debt, Funding Agreement or Security Document (other than any Subordinate Debt and Subordinated Security Documents);
- (b) The issuance by Developer of any indebtedness in addition to the Initial Project Debt, secured or unsecured;

- (c) The disposition of any rights or interests in, or the creation of any rights of participation in respect of, Project Debt, Funding Agreements and Security Documents or the creation or granting by Developer or any Lender of any other form of benefit or interest in either Project Debt, Funding Agreements and Security Documents or the Developer's Interest whether by way of security or otherwise; or
- (d) Any other arrangement put in place by Developer or another Person which has an effect similar to any of clauses (a) through (c) above.

Refinancing Data means all relevant data in relation to a Refinancing other than an Exempt Refinancing under clause (c) or (d) of the definition of Exempt Refinancing and calculation of the Refinancing Gain, including:

- (a) Details of actual timing and amounts of the investment of equity and Subordinate Debt from the Effective Date to the date of Refinancing, and of projected timing and amounts of the investment of equity and Subordinate Debt, if any, from the date of Refinancing to the end of the Term;
- (b) Information on the actual cash flows of Developer from the Effective Date to the date of Refinancing, and of projected cash flows of Developer from the date of Refinancing to the end of the Term;
- (c) Details of the actual timing and amounts of Distributions from the Effective Date to the date of Refinancing and of projected timing and amounts of Distributions from the date of Refinancing to the end of the Term;
- (d) A copy of the final pre-Refinancing Financial Model as updated by Developer, which shall be identical to any presented to the Refinancing Lender(s);
- (e) A copy of the final post-Refinancing Financial Model as updated by Developer, which shall be identical to any presented to the Refinancing Lender(s);
- (f) Information on all relevant assumptions, including tax assumptions and where appropriate back up data and tax opinions (if any), for the projections in the pre-Refinancing and post-Refinancing Financial Models as updated by Developer;
- (g) A detailed calculation of the Refinancing Gain and IFA's share thereof (if any) following the procedures set forth in Exhibit 14 (Calculation and Payment of Refinancing Gain) to the Agreement; and
- (h) All other information IFA may reasonably request in relation to the Refinancing and related calculations and assumptions.

Refinancing Gain means the amount calculated as provided in Exhibit 14 (Calculation and Payment of Refinancing Gain) to the Agreement.

Registered Professional Engineer means a person who is duly licensed and registered by the State to engage in the practice of engineering in the State where the work is being performed.

Registered Professional Land Surveyor means a person registered by the State to practice the profession of land, boundary, or property surveying or other similar professional practices in the State where the work is being performed.

Regulations has the meaning set forth in Section 7.9.1 of the Agreement.

Rehabilitation Work means maintenance, repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element of the Project that is not normally included as an annually recurring cost in maintenance and repair budgets for transportation facilities of similar natures and in similar environments as the Project.

Rehabilitation Work Schedule means the schedule for Rehabilitation Work to be prepared and updated by Developer pursuant to Section 6.7 of the Agreement.

Related Transportation Facility(ies) means all existing and future bridges, highways, streets and roads, or other transportation facilities of any mode, including upgrades and expansions thereof, that are or will be connecting with or crossing under or over the Project.

Release of Hazardous Materials or **Release** means any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, surface water, groundwater, submerged lands or Environment, including any exacerbation of an existing release or condition of Hazardous Materials contamination.

Released-for-Construction means the certification that is issued by the Lead Engineer when formally issuing final design documents for construction as described in Section 3.9.3 of the Technical Provisions.

Released-for Construction Design means the deliverable described at Table 20-1 of the Technical Provisions.

Relief Event means any of the following events, subject to the requirements, limitations, deductibles and the duty to prevent and to mitigate consequences that are set forth in the Agreement for such events:

- (a) IFA failure to perform or observe any of its material covenants or obligations under the PPA Documents, including unreasonable failure to issue a certificate of Substantial Completion, Substantial Completion or Final Acceptance after Developer fully satisfies all applicable conditions and requirements for obtaining such a certificate (except where such failure is within another defined Relief Event);
- (b) IFA Change (other than a Discriminatory O&M Change and Non-Discriminatory O&M Change);
- (c) Discriminatory O&M Change;
- (d) Non-Discriminatory O&M Change;
- (e) Safety Compliance Orders;
- (f) IFA-Caused Delay;

- (g) (i) Performance of works by or (ii) failure to perform works required of, IFA, the Department or another Governmental Entity or their contractors (other than Developer) in the vicinity of the Project Right of Way, including the Advance Construction Projects in either case excluding any Utility Adjustment Work by a Utility Owner, and in either case that materially disrupts Developer's onsite Work;
- (h) Development, use or operation of a Business Opportunity in the Airspace by IFA, the Department or anyone (other than a Developer-Related Entity) legitimately claiming under or through IFA, the Department, the State, or any entity created by the State arising out of, or related to, the Project, to the extent set forth in Section 8.2.4 of the Agreement;
- (i) (i) IFA's lack of good and sufficient title to or right to enter and occupy any parcel in the Project Right of Way, including Additional Properties required due to IFA Changes but excluding all other Additional Properties, after conclusion of IFA's purported acquisition of the parcel or right of entry and occupancy through negotiation, settlement or condemnation proceeding in accordance with the schedule for acquisition of the parcels in the Project Right of Way as described in Attachment 17-2 of the Technical Provisions, to the extent it interferes with physical performance of Work, or (ii) the existence, at any time following issuance of NTP2, of any title reservation, condition, easement or encumbrance, of record or not of record, on any parcel in the Project Right of Way, including Additional Properties required due to IFA Changes but excluding all other Additional Properties, to the extent it interferes with physical performance of Work, except in both cases any title reservations, covenants, conditions, restrictions, easements or encumbrances (A) concerning Utilities, (B) described in Section 2.1.6 of the Agreement and either contained in the Reference Information Documents as they exist on the Setting Date or as may be particularly described in the Technical Provisions, or (C) caused, permitted or suffered by a Developer-Related Entity, and also excepting in all cases rights of access for Governmental Entities and Utility Owners as provided by Law other than a Change in Law;
- (j) Force Majeure Event;
- (k) The revocation or suspension of an IFA-Provided Approval by the relevant Governmental Entity (excluding revocations or suspensions arising out of, or relating to Developer's failure to comply with its obligations under the PPA Documents and/or its or IFA's delegated obligations under, or the terms and conditions of, the revoked or suspended IFA-Provided Approval), except delay to the extent attributable to any of the differences described in Section 4.3.4 of the Agreement unless such differences are due to an IFA Change;
- (l) Unreasonable and unjustified delay by a Utility Owner (i) with whom Developer has been unable to enter into a Developer Utility Agreement in connection with a Utility Adjustment or (ii) with whom Developer or IFA, as the case may be, has entered into a Developer Utility Agreement or IFA Utility Agreement, as the case may be, in connection with a Utility Adjustment and such delay by a Utility Owner is contrary to or in violation of the terms and provisions of the Developer Utility Agreement or IFA Utility Agreement, as the case may be, provided that, in either case (A) all of the "conditions to assistance" described in Section 5.5.7.2 of the

Agreement have been satisfied and (B) delay due to, among other things, the failure by any Developer-Related Entity to locate or design the Project or carry out the Work in accordance with the PPA Documents, the Adjustment Standards, the applicable IFA Utility Agreement, Developer Utility Agreement, the NEPA Documents, other Governmental Approval or applicable Law shall not be deemed to be an unreasonable and/or unjustified delay by a Utility Owner;

- (m) Discovery at, near or on the Project Right of Way, including Additional Properties required due to IFA Changes but excluding all other Additional Properties, of any Hazardous Materials (including IFA Release(s) of Hazardous Material), excluding Developer Releases of Hazardous Materials and Known or Suspected Hazardous Materials;
- (n) Any Release of Hazardous Material by a third party who is not acting in the capacity of a Developer-Related Entity which (i) occurs after the Setting Date, (ii) is required to be reported to a Governmental Entity and (iii) renders use of the roadway or construction area unsafe or potentially unsafe absent assessment, containment and/or remediation (such Relief Event to exclude any Release of Hazardous Material arising out of the normal use of the roadway that would typically be removed and disposed of during Routine Maintenance (as part of the O&M Work);
- (o) Discovery on or under the Project Right of Way, including Additional Properties required due to IFA Changes but excluding all other Additional Properties, of any archeological, paleontological or cultural resources, excluding any such resources known to Developer prior to Setting Date or that would become known to Developer by undertaking Reasonable Investigation;
- (p) Discovery of (i) actual subsurface or latent physical conditions at or within two (2) feet of the boring holes identified in the Geotechnical Data Report that differ materially from the conditions indicated at such boring holes, in the Geotechnical Data Report, (for avoidance of doubt, encountering conditions more than two (2) feet away from the actual boring holes that differ from conditions indicated at such boring data is not a Relief Event); or (ii) actual subsurface physical conditions within the Project Right of Way, including Additional Properties required due to IFA Changes but excluding any other Additional Properties, of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Agreement. In no event shall a discovery under either clause (i) or (ii) above be a Relief Event if (x) any such conditions were known to Developer prior to the Setting Date, or (y) could have been reasonably anticipated as potentially present by an experienced civil works contractor based on the information contained in the Reference Information Documents as of the Setting Date, or (z) that would have become known to Developer by undertaking Reasonable Investigation;
- (q) Discovery at, near or on the Project Right of Way, including Additional Properties required due to IFA Changes but excluding any other Additional Properties, of any Threatened or Endangered Species (regardless of whether the species is listed as threatened or endangered as of the Setting Date), excluding any such presence of the American Bald Eagle, the Indiana Bat or other species known to

Developer prior to the Setting Date or that would become known to Developer by undertaking Reasonable Investigation;

- (r) Change in Law or Change in Adjustment Standards, except a Change in Adjustment Standards that is consistent with the terms and limitations, if any, on changes in Adjustment Standards set forth in any Utility Memorandum of Agreement or Utility Agreement to which Developer is a party;
- (s) Issuance of a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of any portion of the Work, except if based on the wrongful act or omission of any Developer-Related Entity;
- (l) Issuance of a rule, order or directive from the U.S. Department of Homeland Security or comparable State agency regarding specific security threats to the Project or the region in which the Project is located or which the Project serves, to the extent such rule, order or directive requires specific changes in Developer's normal design, construction, operation or maintenance procedures in order to comply;
- (u) Discovery of Unknown Utilities that directly affects the Construction Work, including Construction Work on Additional Properties required due to IFA Changes but excluding Construction Work on any other Additional Properties, except, in each case, where the identification of a Utility in the Utility Information was Reasonably Accurate, was known to Developer as of the Setting Date, or that would become known to Developer by undertaking Reasonable Investigation;
- (v) Discovery of any hidden or undetected structural defect in any Existing Structure that directly affects the Construction Work, excluding any such defects known to Developer as of the Setting Date, or that would become known to Developer by undertaking Reasonable Investigation (which, in the case of this Relief Event clause (v) includes specifically review of all related Reference Information Documents provided by IFA prior to the Setting Date); or
- (w) Karst Feature Treatment Work.

Relief Event Delay means a delay to a Controlling Work Item caused by a Relief Event, after consumption of all Total Float available pursuant to Section 5.7.6 of the Agreement, due to a Relief Event; provided that such delay excludes delay due to loss, damage or destruction described in Section 15.7.9; provided, further, that any delay due to any Relief Event for which Developer's remedy under the PPA Documents excludes adjustment to the Project Schedule (including any Project Schedule Deadline) is not a "Relief Event Delay." For purposes of clarity, any delay arising out of or relating to Karst Feature Treatment Work is not a Relief Event Delay.

Relief Event Notice means the Notice required to be provided by Developer under Section 15.1.1 of the Agreement.

Relief Request has the meaning set forth in Section 15.1.2 of the Agreement.

Replacement Utility Property Interest means any permanent right, title or interest in real property outside of the Project ROW (e.g., a fee or an easement) which is acquired for a Utility being reinstalled in a new location as a part of the Utility Adjustment Work. The term specifically excludes any statutory right of occupancy or permit granted by a Governmental Entity for occupancy of its real property by a Utility.

Representative means, with respect to any Person, any director, officer, employee, official, lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, Contractor, other person from whom such Person is, at law, responsible or an other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its "representative."

Request for Change Proposal means a Notice issued by IFA to Developer setting forth a proposed IFA Change and requesting Developer's assessment of cost, financial, schedule, Performance Requirement and other impacts thereof, as set forth in Section 16.1.2 of the Agreement.

Required Minimum Insurance Policies has the meaning set forth in Section 17.1.9.13 of the Agreement.

Rescue Refinancing means any Refinancing that:

- (a) Occurs due to the failure or imminent failure of Developer to comply with any material financial obligation under any Funding Agreement or Security Document;
- (b) Results in the cure of such failure or imminent failure;
- (c) Does not result in an increase in the Equity IRR beyond the Original Equity IRR; and
- (d) Does not result in an actual or potential increase of the Project Debt Termination Amount by more than 10%.

Residual Life means, for an Element, the period remaining until the Element will next require reconstruction, rehabilitation, restoration, renewal or replacement. The Residual Life of an Element would be equal to its originally calculated Useful Life less its Age if (a) the Element has performed in service in the manner and with the levels of traffic and wear and tear originally expected by Developer as reflected in the Financial Model and (b) Developer has performed the Routine Maintenance of the Element, and as a result thereof the Element complies throughout its originally calculated Useful Life with each applicable Performance Requirement. The Residual Life of an Element would be different from its originally calculated Useful Life minus its Age if any of the foregoing conditions is not true.

Residual Life at Handback means the calculated duration that any Element will continue to comply with any applicable Performance Requirement or standard after the Termination Date and before Rehabilitation Work is required, determined through the application of the Residual Life Methodology and Residual Life Inspections and by assuming that the Element is subject to Routine Maintenance.

Residual Life Inspection means an inspection undertaken in accordance with the "Inspection Requirements" set forth in Section 18.5 of the Technical Provisions (including any testing undertaken by an independent testing organization), or for Elements not listed in Table 19-1 of the Technical Provisions, in accordance with Good Industry Practice, to determine the Residual Life of all Elements.

- (a) **First Inspection** means the first Residual Life Inspection as set forth in Section 19.3 of the Technical Provisions.
- (b) **Second Inspection** means the second Residual Life Inspection as set forth in Section 19.3 of the Technical Provisions.
- (c) **Final Inspection** means the final Residual Life Inspection as set forth in Section 19.3 of the Technical Provisions.

Residual Life Methodology (RLM) is the evaluation and calculation methodology by which the Residual Life of any Element will be calculated and contains the method by which any necessary Rehabilitation Work will be identified to ensure that each Element for which a minimum Residual Life at Handback is required under Section 19.2 of the Technical Provisions meets such requirement.

RFP or Request for Proposals has the meaning set forth in Recital E of the Agreement.

Routine Maintenance means maintenance activities that are scheduled in advance and occur on a regular basis, such as weekly, monthly, quarterly, semi-annually or annually which are normally included as an annually recurring cost in maintenance and repair budgets for transportation facilities (and associated equipment) of similar natures and in similar environmental conditions as the Project.

ROW Work Maps means and consists of right of way maps prepared for the Project and contained in Attachment 17-1 of the Technical Provisions, depicting within the boundary lines shown therein the land or property which IFA has made or will make available for the Project.

Safety Compliance means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement and changes in configuration or procedures respecting the Project to correct a specific safety condition or risk of the Project that IFA or a Governmental Entity has reasonably determined to exist by investigation or analysis.

Safety Compliance Order means a written order or directive from IFA to Developer to implement Safety Compliance. For purposes of clarity, a Safety Compliance Order may not be issued by IFA that effects a change to the Technical Provisions, Safety Standards or safety-related portions of the Work affected by a Change in Law.

Safety Manager is the Key Personnel listed at Exhibit 2-H to the Agreement.

Safety Plan means the safety plan for Developer's personnel and the general public that Developer is to prepare and implement in accordance with Section 6.5.5 of the Technical Provisions, and which is a deliverable described at Table 20-1 of the Technical Provisions.

Safety Standards means those provisions of the Technical Provisions that IFA indicates that it, the Department, FHWA or AASHTO considers to be important measures to protect public

safety, worker safety or the safety of property. As a matter of clarification, provisions of Technical Provisions primarily directed at durability of materials or equipment, where the durability is primarily a matter of life cycle cost rather than protecting public or worker safety, are not Safety Standards.

Section 106 Memorandum of Agreement means the multi-party agreement pursuant to 36 CFR Part 800 implementing Section 106 of the National Historic Preservation Act that is included in the RID, EV-0.04 First Amended MOA.

Security Document means any mortgage, deed of trust, pledge, lien, indenture, trust agreement, hypothecation, assignment, collateral assignment, financing statement under the Uniform Commercial Code of any jurisdiction, security instrument or other charge or encumbrance of any kind, including any lease in the nature of a security instrument, given to any Lender as security for Project Debt or Developer's obligations pertaining to Project Debt and encumbering the Developer's Interest.

Seismic Event means the trembling or shaking movement of the earth's surface that produces ground motions at the Site that, (a) if prior to Substantial Completion, directly impacts, and causes damage to, temporary or permanent works of the Project or (b) if following Substantial Completion, exceeds the Design Requirements and directly impacts and causes damage to the permanent works of the Project.

Senior Debt Termination Amount means:

- (a) All amounts outstanding at the Early Termination Date, including accrued unpaid interest as of such date, on Project Debt that (i) is secured by Funding Agreements and Security Documents satisfying the terms and conditions set forth in Section 13.3 of the Agreement, (ii) is not Subordinate Debt and (iii) is not an equity bridge loan. For purposes hereof, an equity bridge loan is a loan provided to Developer during the construction period of the Project for an amount of equity to be contributed by Equity Members or Affiliates, typically (but not necessarily) supported by one or more of a parent guaranty, recourse to the parent or letter of credit from another lending institution; plus
- (b) Without double counting in relation to such Project Debt, all Breakage Costs payable by Developer as a result of prepayment of the outstanding amounts of such Project Debt, subject to Developer and the Lenders mitigating all such costs to the extent reasonably possible; minus
- (c) To the extent it is a positive amount, the aggregate of:
 - (i) So much of the amounts under clauses (a) and (b) above that constitute or accumulate by reason of (A) accrued interest that Developer failed to pay when due, including any such interest that has been added to principal, or (B) default rates of interest, late charges and penalties, including any such items added to principal;
 - (ii) All amounts, refunds, and reimbursements, including costs of early termination of interest rate and inflation rate hedging, swap, collar or cap arrangements and other Breakage Costs, payable by the Lenders to

Developer as a result of prepayment of outstanding amounts of such Project Debt; and

- (iii) All other amounts received by the Lenders of such Project Debt on or after the Early Termination Date and before the date on which any compensation is payable by IFA to Developer as a result of insurance or enforcing any other rights they may have, to the extent such amounts reduce principal or accrued interest (or would have done so if not applied to default rates of interest, late charges or penalties).

The foregoing amount shall be determined without regard to any Refinancing that is excluded from Project Debt or that may occur between the date Notice of termination is delivered and the Early Termination Date.

Service Line means:

- (a) A Utility line, the function of which is to directly connect the improvements on an individual property to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system, or
- (b) Any cable or conduit that supplies an active feed from a Utility Owner's facilities to activate or energize IFA's or a local agency's lighting and electrical systems, traffic control systems, communications systems and/or irrigation systems.

Setting Date means the date that is 45 days before the Proposal Due Date.

Site means Project Right of Way and any temporary rights or interests that Developer may acquire in connection with the Project or the Utility Adjustments included in the Construction Work, including Project Specific Locations.

Snow and Ice Control Plan has the meaning set forth in Section 18.3.1.9.2 of the Technical Provisions, and which is a deliverable described at Table 20-1 of the Technical Provisions.

Special Provisions has the meaning set forth in Section 101.53 of the Standard Specifications.

Specialist Inspection means an inspection requiring specialist qualifications or equipment as specified in Section 18.5.4 of the Technical Provisions.

Spill Prevention Plan means the deliverable described at Table 20-1 of the Technical Provisions.

Stage 1 Design means pre-final design information as defined by Developer, and which is a deliverable described at Table 20-1 of the Technical Provisions.

Stage 2 Design means pre-final design information as defined by Developer that is more complete than Stage 1 Design but not fully complete, and which is a deliverable described at Table 20-1 of the Technical Provisions.

Standard Landscaping and Aesthetic Treatment Work has the meaning set forth in Section 5.1.2 of the Technical Provisions.

Standard Drawings means drawings published by the Department's Standards Committee at <http://www.in.gov/dot/div/contracts/standards/drawings/index.html> from time to time.

Standard Specifications means the Department's "Standard Specifications," included among the Project Standards set forth in the Table 21-1 to the Technical Provisions.

Starting Insurance Benchmarking Premiums has the meaning set forth in Section 17.1.9.6 of the Agreement.

State has the meaning set forth in Recital A of the Agreement.

State Budget Agency means the budget agency of the State of Indiana.

Step-in Notice means a Notice given by Collateral Agent at any time during the Cure Period in the case of the issuance of an IFA-Lender Notice or at any time following the receipt by IFA of a Lender Notice, in either case (a) upon the prior issuance of a Lender Notice or an IFA-Lender Notice, and (b) except for an Incurable Developer Default, in which the Collateral Agent nominates the Step-in Party.

Step-in Party means (a) the Collateral Agent, a Lender or any entity that is wholly owned by a Lender or group of Lenders; or (b) any Person approved by IFA as a Substituted Entity in accordance with Section 21.6 of the Agreement.

Step-out Notice means a Notice given, at any time, by a Step-in Party giving not less than 30 days' prior notice to IFA of such Step-in Party's intent to terminate its obligations to IFA under Article 21 to the Agreement respecting the event giving rise to the Step-in Notice, in which event such Step-in Party shall be released from all obligations under Article 21 to the Agreement respecting the event giving rise to the Step-in Notice, except for any obligation or liability of the Step-in Party arising on or before the effective date set forth in the Step-out Notice.

Submittal means any document, work product or other written or electronic end product or item required under the PPA Documents to be delivered or submitted to IFA. "Submittal" does not include Notices or correspondence.

Subordinate Debt means the bona fide indebtedness for funds borrowed that (a) is held by any Equity Member or an Affiliate, or by a purchaser or assignee of such indebtedness held at any previous time by any Equity Member or Affiliate, and (b) is inferior in priority of payment and security to all Project Debt held by Persons who are not Equity Members or Affiliates.

Subordinated Security Documents means any Security Documents securing Subordinate Debt.

Substantial Completion means (a) satisfaction of the criteria for completion of construction of the Project as set forth in Sections 5.8.1 and 5.8.2 of the Agreement, as and when confirmed by IFA's issuance of a certificate in accordance with the procedures and within the time frame established in Sections 5.8.1 and 5.8.2 of the Agreement after occurrence of all

the events and satisfaction of all the conditions therefor set forth in Section 5.8.2.1 of the Agreement, and (b) that all the O&M Conditions Precedent have been met as set forth in Section 5.8.4 of the Agreement, as and when confirmed by IFA's issuance of a certificate in accordance with the procedures and within the time frame established in Section 5.8.4.

Substantial Completion Date means the date that Substantial Completion has been achieved for the entire Project.

Substantial Completion Milestone Payment Adjustment means the amount determined in accordance with Sections 4.1 and 4.2 of Exhibit 10 (Payment Mechanism) to the Agreement.

Substantial Completion Milestone Payment Amount means the amount determined in accordance with Sections 4.1 and 4.2 of Exhibit 10 (Payment Mechanism) to the Agreement.

Substitute Accession Agreement means the agreement to be entered into by a Substituted Entity.

Substituted Entity means any person or entity selected by Lenders and approved by IFA in accordance with Section 21.8 of the Agreement to perform Developer's obligations and succeed to Developer's rights hereunder after any such Lender has acquired the Developer's Interest by foreclosure or other lawful means or has otherwise assumed possession and control of the Project.

Subsurface Utility Engineering (SUE) means an engineering process for accurately identifying the quality of subsurface utility information needed for highway and bridge plans, and for acquiring and managing that level of information during the development of a highway or bridge project, as more particularly described at the FHWA website <http://www.fhwa.dot.gov/programadmin/sueindex.htm> on the Setting Date.

Supplier means any Person not performing work at or on the Site which supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the Project to Developer or to any Contractor in connection with the performance of the Work. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Site shall not be deemed to be performing Work at the Site.

Surety means each properly licensed surety company, insurance company or other Person approved by IFA which has issued any of the Payment and Performance Bonds.

Sustainability Management Plan has the meaning set forth in Section 7.9 of the Technical Provisions.

Target means, for each Element of the Project, the target for the measurement record set forth in the column headed "Target" in the Performance and Measurement Table.

Taxes means federal, State, local or foreign income, margin, gross receipts, sales, use, excise, transfer, consumer, license, payroll, employment, severance, stamp, business, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986, as amended), customs, permit, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal

property, registration, value added, alternative or add-on minimum, estimated or other taxes, levies, imposts, duties, fees or charges imposed, levied, collected, withheld or assessed at any time, whether direct or indirect, relating to, or incurred in connection with, the Project, the performance of the Work, the Milestone Payment, Availability Payments, other compensation or act, business, status or transaction of Developer, including any interest, penalty or addition thereto, and including utility rates or rents, in all cases whether disputed or undisputed.

Technical Provisions means the "Technical Provisions, I-69 Section 5 Project" included as among the PPA Documents, constituting the document describing the scope of the Work and related standards, criteria requirements, conditions, procedures, specifications and other provisions for the Project and/or the Utility Adjustments, as such provisions may be changed, added to, deleted or replaced pursuant to the Agreement.

Temporary Traffic Control Plan means Developer's plan for temporary traffic control, which is a deliverable described in Section 12.3, and listed at Table 20-1, of the Technical Provisions.

Term has the meaning set forth in Section 2.1.7 of the Agreement.

Termination by Court Ruling means, except in the circumstances described in Section 5.3 or 5.4 of Exhibit 21 (Terms for Termination Compensation) to the Agreement, any of the following:

- (a) Issuance of a final, non-appealable order by a court of competent jurisdiction to the effect that the Agreement is void and/or unenforceable or impossible to perform in its entirety, except where void, unenforceable or impossible to perform by reason of Developer's acts, omissions, negligence, willful misconduct, fraud or breach of warranty or representation;
- (b) Issuance of a final, non-appealable order by a court of competent jurisdiction (i) permanently enjoining or prohibiting performance or completion of the Construction Work for a material portion of the Project, except where such injunction or prohibition is attributable to Developer's acts, omissions, negligence, willful misconduct, fraud, breach of an obligation under the PPA Documents or violation of Law or an applicable Governmental Approval, or (ii) requiring the Department, either individually or in concert with FHWA, to undertake additional or supplemental evaluations, studies or other work under NEPA that, in the Department's sole discretion, is impracticable in light of the purpose and intent of the Agreement;
- (c) Issuance of a final, non-appealable order by a court of competent jurisdiction upholding the binding effect on Developer or IFA of a Change in Law that causes impossibility of performance of a fundamental obligation by Developer or IFA under the PPA Documents or impossibility of exercising a fundamental right of Developer or IFA under the PPA Documents; or
- (d) Occurrence of the circumstances described in Section 25.13.2 of the Agreement.

Termination Compensation means each measure of compensation, if any, owing from IFA to Developer upon termination of the Agreement prior to the stated expiration of the Term, as set forth in Exhibit 21 (Terms for Termination Compensation) to the Agreement.

Termination Date means (a) the date of expiration of the Term or (b) if applicable, the Early Termination Date.

Termination for Convenience has the meaning set forth in Section 20.1.1 of the Agreement.

Third Party Claims means any and all claims, disputes, disagreements, causes of action, demands, suits, actions, judgments, investigations or proceedings brought by a Person that is not a Party with respect to damages, injuries, liabilities, obligations, losses, costs, penalties, fines or expenses (including attorneys' fees and expenses) sustained or incurred by such Person.

Threatened or Endangered Species means any species listed by the USFWS as threatened or endangered pursuant to the Endangered Species Act, as amended, 16 U.S.C. §§ 1531, *et seq.* or any species listed as threatened or endangered pursuant to the State endangered species act.

Total Float means the amount of time that any given activity or logically connected sequence of activities shown on the Project Schedule may be delayed before it will delay occurrence of either the Substantial Completion Date or the Final Acceptance Date. Such Total Float is generally identified as the difference between the early start date and late start date, or early completion date and late completion date, for each of the activities shown on the Project Schedule.

Total Project Capital Cost means the total capital cost for the Project set forth in Exhibit 2-I(2) (Capital Cost Table) to the Agreement. For purposes of Section 17.2 of the Agreement, the term "Total Project Capital Cost" includes costs associated with both D&C Work and O&M During Construction.

Traffic Management Center (TMC) means the Indiana Department of Transportation Traffic Management Center (in Indianapolis, Indiana), where information about the regional transportation network is collected and combined with other operational and control data to manage the regional transportation network and to produce traveler information.

Traffic Operations Plan means the deliverable described at Table 20-1 of the Technical Provisions.

Transportation Management Plan (TMP) means Developer's plan for traffic management, prepared under the Project Management Plan and approved by IFA, which is a deliverable described at Table 25-1 of the Technical Provisions.

Type 1 Utility Adjustment has the meaning set forth in Section 15.1.2 of the Technical Provisions.

Type 2 Utility Adjustment has the meaning set forth in Section 15.1.2 of the Technical Provisions.

Type 3 Utility Adjustment has the meaning set forth in Section 15.1.2 of the Technical Provisions.

Unavailability Adjustment has the meaning set forth in Section 3.4 of Exhibit 10 (Payment Mechanism) to the Agreement.

Unavailability Event means a Closure during the Operating Period that not a Permitted Closure.

Unavailability Type Factor has the meaning set forth in Section 3.5 of Exhibit 10 (Payment Mechanism) to the Agreement.

Uncured Noncompliance Points means Noncompliance Points assessed on account of breaches or failures that remain uncured. Uncured Noncompliance Points also includes Noncompliance Points assessed for breaches or failures identified by the assessment category "C" in Attachment 1 to Exhibit 12 (Noncompliance Points System and Persistent Developer Default) to the Agreement (no applicable cure period).

Unknown Utility means a Utility, other than a Service Line, where the Utility Information incorrectly indicates that the subject Utility does not exist anywhere within the boundary lines of the Project Right of Way or that is otherwise not identified with Reasonable Accuracy. If any discrepancy exists between the information provided by one component of the Utility Information and that provided by any other component of the Utility Information, only the more accurate information shall be relevant for purposes of this definition.

Uniform Act means the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, P.L. 91-646, as amended.

Use Agreement means that Master Use Agreement, by and between IFA and the Department, as amended from time to time.

Useful Life means, for an Element, the period following its first installation, or following its last reconstruction, rehabilitation, restoration, renewal or replacement, until the Element will next require reconstruction, rehabilitation, restoration, renewal or replacement.

User(s) means (a) the traveling public and any others who use the Project, whether by motorized or non-motorized vehicles or on foot, or (b) the registered owner of a vehicle traveling on the Project or any portion thereof.

Utilities Manager or **Utility Manager** has the meaning set forth in Section 15.2.1 of the Technical Provisions. The Utility Manager is a Key Personnel listed at Exhibit 2-H to the Agreement.

Utilities Milestone means either or both Utilities Milestone 1 or Utilities Milestone 2, as applicable, and as context may require.

Utilities Milestone 1 means the Milestone described as such in Exhibit 4 of the Agreement.

Utilities Milestone 2 means the Milestone described as such in Exhibit 4 of the Agreement.

Utilities Milestone Application means an application for a Milestone Payment in respect of a Utilities Milestone as described in Section 5.5.11 of the Agreement.

Utility or **utility** means and includes poles, plants, lines, trenches, bridges, tunnels, pipelines, and any other system for furnishing, producing, generating, transmitting, or distributing power, electricity, communications, telecommunications, water, gas, oil, petroleum products, coal or other mineral slurry, steam, heat, light, chemicals, air, sewage, drainage not connected with a highway drainage system, irrigation, or another substance. The term "Utility" or "utility" also includes a system for furnishing transportation of goods or persons by means of railway, tramway, cableway, conveyor, flume, canal, tunnel, pipeline, or a similar means. The term "Utility" or "utility" excludes (a) storm water facilities providing drainage for the Project ROW, (b) street lights and traffic signals, and (c) ITS and IVHS facilities. The necessary appurtenances to each Utility Owner Project shall be considered part of such Utility. Without limitation, any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line.

Utility Adjustment means each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate construction, operation, maintenance and/or use of the Project; provided, however, that the term "Utility Adjustment" shall not refer to any of the work associated with facilities owned by any railroad. For any Utility crossing the Project Right of Way, the Utility Adjustment Work for each crossing of the Project Right of Way by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project Right of Way, the Utility Adjustment Work for each continuous segment of that Utility located within the Project Right of Way shall be considered a separate Utility Adjustment.

Utility Adjustment Master Plan has the meaning set forth in Section 15.5.4 of the Technical Provisions, and which is a deliverable described at Table 20-1 of the Technical Provisions.

Utility Adjustment Plans means the plans, specifications, and cost estimates furnished for a particular Utility Adjustment.

Utility Adjustment Work means all efforts and costs necessary to accomplish the required Utility Adjustments, including all coordination, design, design review, permitting, construction, inspection, maintenance of records, relinquishment of Existing Utility Property Interests, preparation of Utility Joint Use Acknowledgements, and acquisition of Replacement Utility Property Interests, whether provided by Developer or by the Utility Owners. The term also includes any reimbursement of Utility Owners that is Developer's responsibility pursuant to Section 5.5 of the Agreement. Any Utility Adjustment Work furnished or performed by Developer is part of the Work; any Utility Adjustment Work furnished or performed by a Utility Owner is not part of the Work.

Utility Agreement(s) means either or both an IFA Utility Agreement or a Developer Utility Agreement, as context may require.

Utility Damage Report has the meaning set forth in Section 15.5.3 of the Technical Provisions.

Utility Enhancement means a Betterment or a Utility Owner Project, as referenced in Section 5.5.6 of the Agreement.

Utility Information means the information regarding Utilities included in the Reference Information Documents, together with any other information IFA provided to Developer 30 days prior to the Proposal Date with regard to identification of Utilities. The Utility Information includes survey information regarding existing utilities; utility maps included as an overlay on the survey; SUE maps depicting existing Utilities potentially impacted by the Project, and other as-built maps for existing Utilities. In the event of any conflict within the various components of the Utility Information, the more accurate information will prevail.

Utility Owner means the owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

Utility Owner Project means the design and construction by or at the direction of a Utility Owner (or by Developer) of a new Utility other than as part of a Utility Adjustment. Betterments are not Utility Owner Projects. Utility Owner Projects are entirely the financial obligation of the Utility Owner.

Vibration Monitoring Plan means the deliverable described at Table 20-1 of the Technical Provisions.

Warning Notice means a Notice that IFA delivers to Developer pursuant to Section 19.2.9 of the Agreement.

Wellhead Protection Area (WHPA) (has the meaning set forth in Section 7.5.1.1 of the Technical Provisions.

Wind Engineering Report means the deliverable described at Table 20-1 of the Technical Provisions.

Wind Study Report means the deliverable described at Table 20-1 of the Technical Provisions.

Work means the work required to be furnished and provided by Developer under the PPA Documents, including all administrative, design, engineering, real property acquisition and occupant relocation, construction, Aesthetics and Landscaping Work, Rehabilitation Work, Utility Adjustment, utility accommodation, support services, financing services, operations, maintenance and management services, except for those efforts which such PPA Documents expressly specify will be performed by Persons other than Developer-Related Entities.

Workforce Diversity and Small Business Performance Plan means Developer's plan for meeting the goals for on-the-job and other training in accordance with Exhibit 8 (Equal Employment Opportunity Trainees Special Provisions) to the Agreement. The Preliminary Diversity and Small Business Performance Plan is Exhibit 2-N (Developer's Preliminary Workforce Diversity and Small Business Performance Plan) to the Agreement.

EXHIBIT 2

DEVELOPER'S SCHEMATIC DESIGN OF PROJECT AND PROPOSAL COMMITMENTS

- 2-A Developer's Schematic Design
- 2-B Preliminary Project Baseline Schedule
- 2-C Financial Plan
- 2-D Proposal Commitments
- 2-E Preliminary Project Management Plan
- 2-F Preliminary Design-Build Plan
- 2-G Preliminary Operations and Maintenance Plan
- 2-H Equity Members, Contractors and Key Personnel Commitments
- 2-I Cost Tables
 - 2-I(1) Summary Cost Table
 - 2-I(2) Capital Cost Table
 - 2-I(3) Operating Cost Table
- 2-J Termination for Convenience Calculation Method
- 2-K Equal Employment Opportunity Certification
- 2-L Developer's Preliminary DBE Performance Plan
- 2-M DBE Certification
- 2-N Developer's Preliminary Workforce Diversity and Small Business Performance Plan
- 2-O Buy America Certification
- 2-P Use of Contract Funds for Lobbying Certification
- 2-Q Debarment and Suspension Certification
- 2-R Form of Drug-Free Workplace Certification
- 2-S Form of Financial Close Certificate
- 2-T Form of IFA Bring-Down Certificate

EXHIBIT 2-A

DEVELOPER'S SCHEMATIC DESIGN

[attached]

Part 1 – CDROM of Schematics

Part 2 – 2 Clarification Letters



January 31, 2014

Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, IN 46204
Attention: Ms. Silvia Perez

RE: I-69 Development Partners - Response Letter
I-69 Section 5 – Technical Proposal Clarifications #3

Dear Ms. Perez:

Per the IFA letter dated January 30, 2014, the I-69 Development Partners provides the following responses and information requested:

1. It is unclear in the Technical Proposal, due to the absence of dimensions, that new at-grade separation structures have the full horizontal clear zone required by Technical Provisions Section 9.3.2. Based on the level of detail and design in the Technical Proposal, IFA cannot yet determine whether Proposer's design and approach complies with the PPA Documents. Please confirm that Proposer intends to and will fully comply with the PPA Documents, including the requirements of the Technical Provisions to provide the full horizontal clear zone where required.

Proposer intends to and will fully comply with the PPA Documents, including the requirements of the Technical Provisions to provide the full horizontal clear zone where required. The Proposal design does fully comply with the PPA Documents, including the requirements of the Technical Provisions to provide the full horizontal clear zone where required.

Although in the proposal drawings these dimensions are not numerically specified, only represented at scale, the minimum clear zone requirements have been met per IDM (Indiana Design Manual) Project Standards as follows:

- I-69 Mainline: Clear zone requirement is based on Figure 49-2A of the IDM. For a design speed of 70mph and design ADT > 6000 the minimum clear zone requirement is 30'. The minimum clear zone has been provided throughout the project limits for all crossings.
- Collector/Distributor Roads: Clear zone requirement is based on Figure 49-2A of the IDM. For a design speed of 40mph and design ADT < 6000 the clear zone with 4:1 slopes is 16' (foreslope) and 14' (backslope). The clear zone requirement for CD roads has been met throughout the project limits.

In the detailed design drawings in case of award these dimensions will be shown.

2. In reviewing the Technical Proposal, IFA has noted aspects of the Technical Proposal that may not fully comply with the PPA Documents. By way of example only:

A. Page 84 states "Asset Management and O&M Records will be stored in the INDOT-supplied CMMS." O&M Records are to be stored in accordance with Section 18.4 of the Technical Provisions.

B. Page 81 Section 4.3.1.3.c "Pavement markings will be renewed at specified frequencies..." and other similar statements specify the frequency of replacement of certain Elements which may not be consistent with all of the circumstances under which and replacement work must occur. Elements are to be replaced based on the requirements set forth in the PPA Documents, in particular those in the Technical Provisions.

The above list is not an exhaustive list and the foregoing does not mean that the other aspects of the Technical Proposal have been found compliant or that any deviations from the requirements of the PPA Documents have been accepted or waived. Please confirm that Proposer intends to and will fully comply with all the requirements set forth in the PPA Documents, including with respect to operations and maintenance in particular.

We confirm that it is our intention and will fully comply with all the requirements set forth in the PPA Documents and the Technical Provisions, including with respect to operations and maintenance in particular. Please consider any possible omission/deviation from the requirements as a typo or an editing error.

Regarding our rehabilitation works we would like to clarify that all renewal frequencies set forth within our proposal, conform our preliminary Rehabilitation Work Schedule. We are confident this would be sufficient to fulfill the requirements of the PPA and the Technical Provisions. However, the schedule of rehabilitations will be adapted and reviewed to ensure compliance with all the requirements of the PPA and the Technical Provisions including but not limited to the Section 18, attachment 18-1 and Section 19 of the Technical Provisions.

3. Please clarify the number of snow plows to be provided and confirm that the snow plows will be available for use on the Project as necessary to meet the requirements of the PPA Documents. Table Figure 4.3-7 shows three plows. Figure 4.3-15 shows the need for four snow plows.

We have allowed for 3 snowplows and a track mounted crane which will be also used as a snowplow (attaching a plow to it) in case of Winter Event. This way, we arrive to the 4 snowplows that will be available for the Project as showed in Figure 4.3-15.

Besides, as stated on page 73 of the Preliminary Operations and Maintenance Plan: "*During winter season, I-69 DP will use its own in-house staff and equipment to plow and de-ice the roadway. These efforts will be supported, when necessary, by local subcontractors.*"



4. Please confirm that the 19 days listed on page 81 was inadvertent and that it should be 90 days before the end of the Term.

We confirm that it should be *no later than 90 days before the end of the Term* (as set forth in Section 19.3.3 of the Technical Provisions) and that is what we meant. Please consider 19 is a typo.

5. Please confirm that Figure 4.3-25 on page 82 of the Operations and Maintenance management approach is not intended to be a complete list. As an example, the management plan is not included.

We confirm that Figure 4.3-25 is a summary rather than a complete list, and we will comply with all the reporting requirements of the PPA and the Technical Provisions including deliverables set forth in Section 20 thereof.

6. Please confirm that the Technical Proposal's Construction Period O&M Limits comply with, and it is Proposer's intent to comply with, the PPA Documents, including Technical Provision Section 18.1.4.2.

We confirm that the Technical Proposal's Construction Period O&M Limits comply with, and it is Proposer's intent to comply with the PPA Documents, including Technical Provision Section 18.1.4.2.

7. Please confirm that the Technical Proposal's Operating O&M Limits comply with, and it is Proposer's intent to comply with, the PPA Documents, including Technical Provision Section 18.1.4.3.

We confirm that the Technical Proposal's Operating O&M Limits comply with, and it is Proposer's intent to comply with, the PPA Documents, including Technical Provision Section 18.1.4.3.

Thank you for the opportunity to clarify our Technical Proposal submittal. Should you have any questions or require additional information, please contact me at jrballesteros@isoluxinfrastructure.com or you can phone me at 011+34 628 15 34 92.

Very truly yours

A handwritten signature in dark ink, appearing to read "J. Ballesteros", written over a horizontal line.

By: José R. Ballesteros
Proposer Authorized Representative
I-69 Development Partners



February 4, 2014

Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, IN 46204
Attention: Ms. Silvia Perez

RE: I-69 Development Partners - Response Letter
I-69 Section 5 – Technical Proposal Clarifications #4

Dear Ms. Perez:

Per the IFA letter dated January 31, 2014, the I-69 Development Partners provides the following responses and information requested:

1. Project schedule calls for "Clearing" during the Summer Action Area restricted timeframes for certain project work. Please confirm that Proposer's clearing activities will not violate the environmental commitments set forth in Technical Provision Section 7.5.4.1.

Proposer confirms that our clearing activities will not violate the environmental commitments set forth in Technical Provision Section 7.5.4.1.

2. Project schedule calls for "Governmental Approvals" to be obtained by July 30th, 2014, but the anticipated approval date for the Section 401/404 permits is not until November 2014. Please confirm that the Proposer intends and will confine all work prior to issuance of the Section 401/404 permits to non-permitted areas.

Proposer confirms that we intend and will confine all work prior to issuance of the Section 401/404 permits to non-permitted areas.

3. Please confirm that the Proposer intends to and will reconstruct (a) the curve located at Acuff and Prow Roads and (b) the hammerhead turnaround at Acuff Road, all in accordance with Technical Provision Table 9-38.

Proposer confirms that we intend to and will reconstruct (a) the curve located at Acuff and Prow Roads and (b) the hammerhead turnaround at Acuff Road, all in accordance with Technical Provision Table 9-38.



4. Please confirm that Proposer intends to and will use in its design the design speeds set forth in Technical Provision Tables 9-2 through 9-36.

Proposer confirms that we intend to and will use in our design the design speeds set forth in the Technical Provision Tables 9-2 through 9-36.

5. Please confirm that Proposer intends to and will comply with the clearance requirements for maintenance of traffic set forth in Technical Provision Section 12.4.1.4a.

Proposer confirms that we intend to and will comply with the clearance requirements for maintenance of traffic set forth in Technical Provision Section 12.4.1.4a.

6. Please confirm that Proposer intends to and will comply with the five mile maximum for daytime lane closures and related conditions set forth in Technical Provision Section 12.4.8.

Proposer confirms that we intend to and will comply with the five mile maximum for daytime lane closures and related conditions set forth in Technical Provision Section 12.4.8.

7. The bridges on I-69 (NB and SB) at Griffy Creek in the Proposer's Technical Proposal do not appear to meet the live load inventory rating required by Technical Provision Sections 14 and 18. Please confirm Proposer intends to and will comply with the live load inventory rating and condition rating requirements set forth in Technical Provision Sections 14 and 18, for all structures, including the bridges I-69 (NB and SB) at Griffy Creek.

Proposer confirms that we intend to and will comply with the live load inventory rating and condition rating requirements set forth in Technical Provision Sections 14 and 18 for all structures, including the bridges I-69 (NB and SB) at Griffy Creek.

8. Proposer provided "Utility Relocation Schematics" that were not required by the ITP. IFA notes that there are multiple locations where the utilities are located within the limited access right of way with the intention to leave the utilities in place, which is not permitted by the PPA Documents, including the Technical Provisions. Proposer submitted ATCs requesting permission not to relocate (leave in place) these utilities. The ATCs were denied by IFA. Please confirm that Proposer intends to and will comply with the requirements of the PPA Documents, including the Technical Provisions, regarding utility relocations.

Proposer confirms that we intend to and will comply with the requirements of the PPA Documents, including the Technical Provisions, regarding utility relocations.



9. Page 55 of Volume 2 of the Technical Proposal identifies several utility features that "should be considered a betterment." Please confirm Proposer acknowledges it is responsible for confirming with utilities what constitutes a betterment to their facilities and that neither the utilities nor IFA are bound by Proposer's assumptions or determinations regarding betterments.

Proposer confirms and acknowledges that we are responsible for confirming with utilities what constitutes a betterment to their facilities and that neither the utilities nor IFA are bound by Proposer's assumptions or determinations regarding betterments.

10. The Technical Proposal does not appear to contain details regarding the Arlington Road overpass. Please confirm Proposer intends to and will comply with the requirements of the PPA Documents, including the Technical Provisions and in particular Technical Provision Section 9.3.2.3(criteria and grades for overpasses), in designing and constructing the Arlington Road overpass.

Proposer confirms that we intend to and will comply with the requirements of the PPA Documents, including the Technical Provisions and in particular Technical Provision Section 9.3.2.3 (criteria and grades for overpasses), in designing and constructing the Arlington Road overpass.

Thank you for the opportunity to clarify our Technical Proposal submittal. Should you have any questions or require additional information, please contact me at irballesteros@isoluxinfrastructure.com or you can phone me at 011+34 628 15 34 92.

Sincerely,
I-69 Development Partners

A handwritten signature in black ink, appearing to read "Jose R. Ballesteros", written over a horizontal line.

Jose R. Ballesteros
Proposer Authorized Representative

EXHIBIT 2-B

PRELIMINARY PROJECT BASELINE SCHEDULE

4.1.2 Preliminary Baseline Schedule

Design and Construction Baseline Schedule

The I-69 DP Team has developed a Preliminary Baseline Schedule through an iterative process. Alternative Work Breakdown Structures (WBS) were developed and reviewed to create a preliminary outline that would accurately reflect the entire project scope and provide a sensible and accurate tool for planning the project through completion.

The IFA has provided a detailed outline of requirements that will meet the expectations of all local stakeholders. Our schedule incorporates critical requirements to essentially provide a summary checklist for IFA and I-69 DP Team as we meet each of the requirements for obtaining Commencement of Design Work, NTP 1, Financial Close, NTP2, Commencement of Construction, Substantial Completion, and Final Acceptance. These significant deadlines are shown on *Figure 4.1-13* and listed on *Form N*.

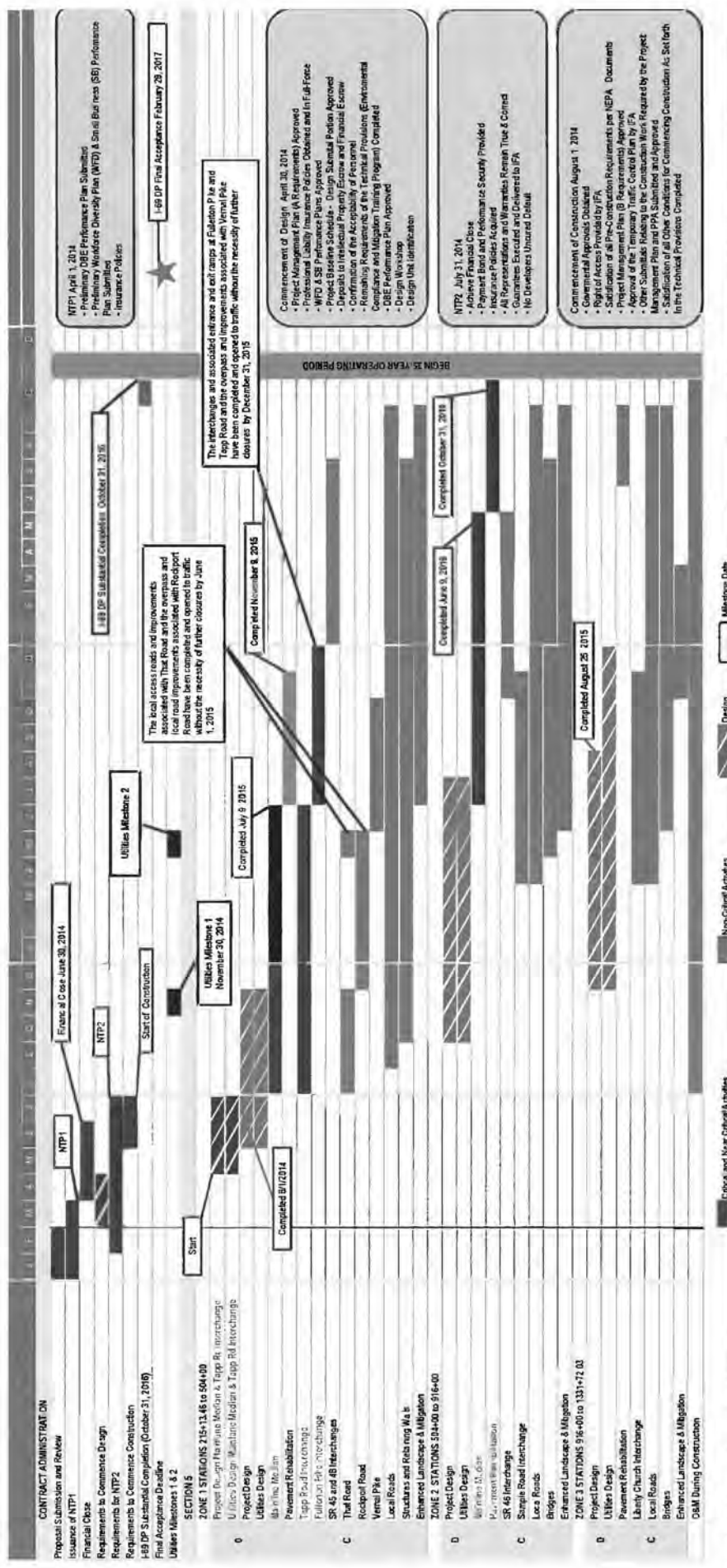


Figure 4.1-15: Summary Project Schedule

Design

The I-69 DP Team has hosted several Design Workshops to establish a set of Design Units that are critical and therefore will occur immediately following satisfaction of Conditions to Commencement of Design Work. This includes the following as early Release for Construction (RFC) packages:

- Utilities (especially those affecting That Road and Rockport Road and Bridge)
- Temporary erosion and sediment control
- That Road
- Rockport Road, Bridge and Walls

- Mainline widening from station 215+13.46 to 340+00

There is a key provision to be satisfied immediately following NTP1 which is included as part of our Design Review Plan and Project Management Plan (PMP). With the approval of the PMP and Design Work authorized to commence on April 30 2014, early design efforts will focus on performing the collection of engineering studies required to confirm the design criteria for the mainline median and bridge construction. The design schedule was developed using this philosophy, specifically for early release packages. I-69 DP Team has gone through an iterative process to leverage non-critical portions of the design schedule against the construction sequencing. This process will continue through the development of the final baseline schedule and our coordination efforts with IFA.

Construction

Starting construction on August 1, 2014 requires obtaining design approvals for the Temporary Traffic Control Plan, early Design Units for Maintenance of Traffic (MOT), Erosion Control Plans and the accompanying approvals for the environmental permit submittals.

Other significant requirements include approval of the Quality Plan for construction operations. Work on these items will begin at NTP 1 and we expect to have them submitted and approved before reaching the required design submittal approvals.

The I-69 DP Team is committed to the Milestones and/or Limitations of Work specified in the PPA documents including:

- Commencement of bridge construction, roadway construction, building demolition and utility relocation in the Bloomington area (Considered South of Sample Road Interchange). This shall be initiated in 2014 and continue until complete
- Local access roads and improvements associated with That Road will be completed by June 1, 2015
- Overpass and local road improvements associated with Rockport Road will be completed by June 1, 2015
- Interchanges and associated entrance and exit ramps at Fullerton Pike and Tapp Road will be completed by December 31, 2015
- Interchanges and associated entrance and exit ramps at Vernal Pike will be complete by December 31, 2015
- Practical non-working days according to the standard specifications.
- Restrictions on environmental conditions including:
 - No work within stream jurisdictional, from April 1 to June 30 affecting the foundation work of the structures on waterways
 - Indiana bat work restriction from April 1 until August 15 that affects the work of clearing the right of way and earthworks in general
- Optimization of production equipment to make a realistic schedule that exactly matches the availability of labor equipment, also trying to optimize the cost of the work.

All of these aspects have been merged into the schedule achieving a balanced program to achieve substantial completion of work on October 31, 2016 as stipulated by the IFA with the maximum guarantees of compliance.

Scheduled Activities

Based on the information discussed above we have assumed a five month window from the time that the IFA provides notification that the I-69 DP is the Preferred Proposer until the beginning of the construction. With this assumption, the start of construction will be August 1, 2014, and our deadline for substantial construction completion is October 31, 2016. The I-69 DP Team target milestone dates are provided in **Figure 4.1-15** in the following section. Detailed schedule discussion, along with the Primavera P6 Schedule, is provided in **Appendix H-2**.

Lag has been used as needed within the Contract Administration section of the Schedule to provide an appropriate depiction of the anticipated critical items and to account for a portion of the restrictions set forth within the PPA and Technical Proposal. Extensive lag use has been made within the O&M portion of the schedule to cycle recurring activities appropriately without the use of constraints.

Necessary lag use has been included within the construction portion of the schedule. In selected long duration earthwork, subgrade, and drainage activities, reasonable lag periods have been included to better reflect the parallel construction that occurs over large areas.

Critical construction areas also have minimal use of lag relationships to better reflect the overlap anticipated during actual construction and to ensure the appropriate items are identified as critical.

As a definition included in the Standard Specifications, Critical Path is defined as the longest path of activities which determines the scheduled completion date of the Project.

Critical Path Activities, from the beginning of the project to the substantial completion are:

- Mainline Median: Stations 215+13.46 to 504+00
- Tapp Road and Fullerton Pike Interchanges (Due to IFA Commitments)
- Mainline Median: Stations 504+00 to 916+00

- Pavement Rehabilitation: Station 504+00 to 916+00

Use of a five-day production week provides schedule float in case there are delays due to external circumstances that occur during the Project duration.



EXHIBIT 2-C
FINANCIAL PLAN
[attached]

1. SOURCES AND USES OF FUNDS

Sources of Funds	Total	Percent of total
Bank / Bond (Non-PAB)	-	0%
PABs	253,506	67%
Equity	44,750	12%
Interest earned on accounts	744	0%
Current Period Operational Revenue	-	0%
Milestone Payments	60,000	16%
Utilities Milestone Payments	20,000	5%
Total Sources of Funds	379,000	100%

Model reference
n/a
'Output - Summary'!P15
Output - Summary'!P16
'Output - Summary'!P17 + 'Output - Summary'!P18 + 'Output - Summary'!P19 + 'Output - Summary'!P20 + 'Output - Summary'!P21
n/a
'Output - Summary'!P13
'Output - Summary'!P14

Uses of Funds	Total	Percent of total
Project Development Costs	8,711	2%
Development and Capital Costs	325,740	86%
Contingencies	-	0%
Financing Costs	33,393	9%
Working Capital	-	0%
Reserves (Describe)	-	0%
Reserve 1 (DSRA)	7,101	2%
Reserve 2 (As Needed)	-	0%
Reserve 3 (As Needed)	-	0%
Reserve 4 (As Needed)	-	0%
Tax paid / (refunded)	300	0%
Serial Bond 1	3,755	1%
Total Uses of Funds	379,000	100%

Model reference
'Output - Summary'!P27
Output - Summary'!P28 + 'Output - Summary'!P29 + 'Output - Summary'!P30
Output - Summary'!P32 + 'Output - Summary'!P35 + 'Output - Summary'!P33
'Output - Summary'!P34
Output - Summary'!P31
'Output - Summary'!P37

2. EQUITY INVESTMENT ANALYSIS AND DESCRIPTION

Firm / consortium member	Equity investment			Model Reference
	AMOUNT (E)	% over total Equity	AMOUNT (D)	
Isolux Infrastructure Netherlands, B.V.	44,750	100%		'Output - Summary'!P16
TOTAL	44,750	100%	-	

3.1 KEY FINANCING DATA

Key financing Data		Model Reference
NPV of Project Cash Flows at 5%		Output - NPV!G47
Nominal post-SPV-tax project IRR		'Output-Reserves>Returns & Ratios'!G77
Real post-SPV-tax project IRR		'Output-Reserves>Returns & Ratios'!G78
Nominal pre-SPV-tax project IRR		'Output-Reserves>Returns & Ratios'!G74
Real pre-SPV-tax project IRR		'Output-Reserves>Returns & Ratios'!G75
Nominal post-SPV-tax equity IRR		'Output-Reserves>Returns & Ratios'!G87
Real post-SPV-tax equity IRR		'Output-Reserves>Returns & Ratios'!G86
Nominal pre-SPV-tax equity IRR		'Output-Reserves>Returns & Ratios'!G84
Real pre-SPV-tax equity IRR		'Output-Reserves>Returns & Ratios'!G83
Nominal debt IRR		'Output-Reserves>Returns & Ratios'!G93
Real debt IRR		'Output-Reserves>Returns & Ratios'!G92
Minimum DSCR		'Output-Reserves>Returns & Ratios'!G42
Average DSCR		'Output-Reserves>Returns & Ratios'!G43
Minimum PLCR		'Output-Reserves>Returns & Ratios'!G62
Average PLCR		'Output-Reserves>Returns & Ratios'!G63
Minimum LLCR		'Output-Reserves>Returns & Ratios'!G54
Average LLCR		'Output-Reserves>Returns & Ratios'!G55

Debt type		Base Rate
PABs - Serial Bond		0.34%
PABs - Term Bond 1		3.85%
PABs - Term Bond 2		4.07%
PABs - Term Bond 3		4.17%

Model Sensitivity Analysis
Change in interest Rate from pre-proposal submittal

Upward Movement					Downward Movement				
Year	50bps	100bps	150bps	200bps	50bps	100bps	150bps	200bps *	Model Reference
									Input - Operation!G10
2016									Revenue!\$J\$69:\$FM\$69
2017									Revenue!\$J\$69:\$FM\$69
2018									Revenue!\$J\$69:\$FM\$69
2019									Revenue!\$J\$69:\$FM\$69
2020									Revenue!\$J\$69:\$FM\$69
2021									Revenue!\$J\$69:\$FM\$69
2022									Revenue!\$J\$69:\$FM\$69
2023									Revenue!\$J\$69:\$FM\$69
2024									Revenue!\$J\$69:\$FM\$69
2025									Revenue!\$J\$69:\$FM\$69
2026									Revenue!\$J\$69:\$FM\$69
2027									Revenue!\$J\$69:\$FM\$69
2028									Revenue!\$J\$69:\$FM\$69
2029									Revenue!\$J\$69:\$FM\$69
2030									Revenue!\$J\$69:\$FM\$69
2031									Revenue!\$J\$69:\$FM\$69
2032									Revenue!\$J\$69:\$FM\$69
2033									Revenue!\$J\$69:\$FM\$69
2034									Revenue!\$J\$69:\$FM\$69

2035		Revenue!\$J\$69:\$FM\$69
2036		Revenue!\$J\$69:\$FM\$69
2037		Revenue!\$J\$69:\$FM\$69
2038		Revenue!\$J\$69:\$FM\$69
2039		Revenue!\$J\$69:\$FM\$69
2040		Revenue!\$J\$69:\$FM\$69
2041		Revenue!\$J\$69:\$FM\$69
2042		Revenue!\$J\$69:\$FM\$69
2043		Revenue!\$J\$69:\$FM\$69
2044		Revenue!\$J\$69:\$FM\$69
2045		Revenue!\$J\$69:\$FM\$69
2046		Revenue!\$J\$69:\$FM\$69
2047		Revenue!\$J\$69:\$FM\$69
2048		Revenue!\$J\$69:\$FM\$69
2049		Revenue!\$J\$69:\$FM\$69
2050		Revenue!\$J\$69:\$FM\$69
2051		Revenue!\$J\$69:\$FM\$69
2052		Revenue!\$J\$69:\$FM\$69

** The Serial Bond (total balance \$3,755,000) maturing in December 2016, has a total interest rate of just 1.55%. In the 200bps reduction scenario, the reduction applied to this bond has been just 1.55%.*

5. PROPOSAL DEVELOPMENT COSTS

Cost Item	Total	Model Reference
Proposer's Financial Advisor		'Input - Construction'!G103
Proposer's Development Fee		'Input - Construction'!G104
Proposer's Legal Advisor		'Input - Construction'!G105
Proposer's Project Company set-up costs		'Input - Construction'!G106
Proposer's Tax & Accounting Advisor		'Input - Construction'!G107
Proposer's Insurance Advisor		'Input - Construction'!G108
Proposer's Model Audit Costs		'Input - Construction'!G109
Finance- Legal Costs		'Input - Construction'!G110
Finance- Technical Advisor		'Input - Construction'!G111
Finance - Insurance Advisor		'Input - Construction'!G112
Finance - Credit Rating Costs		'Input - Construction'!G113
TOTAL		'Input - Construction'!G114

6. BENCHMARK RATES AND CREDIT SPREADS

Facility	Benchmark identification / description	Benchmark Rate (A%)	Credit Spread (credit Margin) (B%)	Total Interest Rate (A% + B%)	Assumed Ratings	Approximate Average Life of the Financing Instruments
Serial Bond	AAA General Obligation Municipal Market Data (MMD) 2 Year					
Term Bond 1	AAA General Obligation Municipal Market Data (MMD) 20 Year					
Term Bond 2	AAA General Obligation Municipal Market Data (MMD) 25 Year					
Term Bond 3	AAA General Obligation Municipal Market Data (MMD) 30 Year					

7. MAP ESCALATION

Percentage of MAP subject to fixed escalation of 2.5%

Proposer to insert percentage of MAP to be subject to fixed escalation of 2.5% as set forth in the equation set forth in Section 2.2 of Exhibit 10 of the Agreement

80.00%


Percentage of MAP subject to CPI escalation

Proposer to insert percentage of MAP to be subject to CPI escalation as set forth in the equation set forth in Section 2.2 of Exhibit 10 of the Agreement

20.00%

Proposer: I69 Development Partners

Date: January 21, 2014.

Signature: 

Title: Proposer Authorized Representative

EXHIBIT 2-D

PROPOSAL COMMITMENTS

No.	Technical Proposal Location	Proposal Commitment
1	Volume 2, Section 4.1, p. 10	<p>The duties of the Deputy Project Manager shall include oversight of the O&M During Construction.</p> <p>The Deputy Project Manager - Technical shall lead the transfer of the Project from Developer's Design-Build Contractor and Contractors to Developer to self-perform the O&M Work and then remain for a short duration as the Deputy Project Manager-Technical supporting the first steps of O&M After Construction.</p>
2	Volume 2, Section 4.3, p. 73	Developer shall equip the four snow plows (and replacements) used for O&M Work with surface patrol pavement temperature sensors that measure and record temperatures changes of the pavement surface.
3	Volume 2, Section 4.3, p. 73	Developer shall subscribe to a suitable weather reporting service to receive automatically alerts for weather events that may require winter maintenance.
4	Volume 2, Section 4.3, p. 73	Developer shall use its own in-house staff and equipment to plow and de-ice the roadway. Developer shall only support such plowing/de-icing efforts with Contractors.

No.	Technical Proposal Location	Proposal Commitment
5	Volume 2, Section 4.3, p. 74	<p>Developer's O&M Work personnel shall perform an annual winter maintenance exercise (that is, a practice drill) at the beginning of each winter season (no later than October 15 of each year). During such exercise, Developer's personnel will be trained in all, methods, risk, safety, environmental, practice operation of relevant O&M equipment, and review all other requirements pertaining to performance of the O&M Work.</p> <p>Developer shall include in all Contracts the obligation for Contractors performing O&M Work to participate in annual winter maintenance exercises to ensure proper training on performance of the relevant O&M Work. Developer shall maintain a roster of participants and description of such training as among the Books and Records.</p> <p>Developer shall require, in all Contracts for O&M Work, that Developer and Contractor shall prepare all O&M Work equipment used for winter maintenance for, or verify as operational and ready for, operations and maintenance activities during winter.</p>
6	Volume 2, Section 4.3, p. 66.	<p>Patrolling personnel or equipment located either at the Operations and Maintenance Management Center or on patrol shall respond to all Incidents as follows:</p> <p>Following first notification of the Incident attend the site of the Incident within 30 minutes for 90% of Incidents measured on a 1-year rolling basis.</p> <p>Developer shall, in addition to its other notice and notification obligations, immediately notify the INDOT Traffic Management Center (TMC) when an Incident occurs.</p>

No.	Technical Proposal Location	Proposal Commitment
7	Volume 2, Section 4.3, p. 66; see also Volume 1: A.3.1.L Executive Summary (page 8)	Developer shall patrol the entire roadway during both the Construction Period and Operating Period, 24 hours per day, every day of the year.
8	Volume 2, Section 4.3, p. 66.	Developer shall provide and use customized patrol vehicles dedicated to the Project.
9	Volume 2, Section 4.3, p. 66.	Developer shall create or subscribe to several sources of information to support its obligation to promptly detect and respond to Incidents, including (a) deploying O&M Work personnel on patrols, (b) establishment, dedication of personnel to and use of (i) a roadway customer contact phone number (manned during normal business hours) and (ii) toll-free phone number that affords a caller the ability to leave messages (to which Developer shall respond as appropriate), (c) monitoring weather forecasts, and (d) use of TrafficWise as a source of traffic conditions information.
10	Volume 2, Section 4.3, pp. 66 and 85.	Developer shall establish, dedicate personnel to and use a Project website, accessible by the public, and Developer shall make available for users Project information and the capability of registering comments regarding the Project.

No.	Technical Proposal Location	Proposal Commitment
11	Volume 2, Section 4.3, p. 68.	<p>Developer shall, during the Operating Period, regularly perform:</p> <ul style="list-style-type: none"> • safety audits to assess effectiveness of the safety procedures for the Project, • identify high accident locations that will be registered in the I-69 Maintenance Management System (MMS), • implement mitigation measures in response to suboptimal safety procedures and/or with respect to all such high accident locations, and • review the Good Industry Practices associated with Developer's safety procedures.
12	Volume 2, Section 4.3, p. 68.	Developer's equipment used for O&M During Construction and O&M After Construction shall include all of the items identified in Figure 4.3-7 of the Proposal (appended to this <u>Exhibit 2-D</u>).
13	Volume 2, Section 4.3, p. 84.	<p>Developer shall establish an Operations and Maintenance Management Center, consistent with the Technical Provisions and Developer's Proposal.</p> <p>Developer's O&M Work personnel, associated managers and relevant Key Personnel shall provide space in the Operations and Maintenance Management Center for IFA to collocate IFA personnel that IFA may identify from time to time.</p>
14	Volume 2, Section 4.3, p. 84.	Developer's Maintenance Supervisor shall brief Developer's O&M Work crews on a daily basis.

No.	Technical Proposal Location	Proposal Commitment
15	Volume 2, Section 4.3, p. 85.	Developer shall fully staff its planned O&M Work personnel no later than one month before the anticipated Substantial Completion Date.
16	Volume 2, Section 4.3, p. 78.	Developer shall ensure that its MMS is fully compatible and integrated with INDOT's Computerized Maintenance Management System database (CMMS).
17	Volume 2, Section 4.3, p. 78.	<p>Developer shall ensure that all collected information that IFA identifies as desired for transfer into INDOT's CMMS will automatically transfer from Developer's MMS into INDOT's CMMS on a daily basis. Notwithstanding daily transfer, Developer may collect all information for its MMS at the frequency and for durations in its plan for the Work. By means of example, Developer may internally report information on pothole-filling weekly, but once collected and reported, it shall be transmitted within 24 hours from Developer's MMS to INDOT's CMMS, if IFA has identified such information as desired.</p> <p>Developer's MMS shall include:</p> <ul style="list-style-type: none"> • Road Safety Module (i.e., road safety data set); • Pavement Expert Management Module; and • Routine Maintenance Module
18	Volume 2, Section 4.3, p. 90.	Developer will use the results of its formal tests together with observations, claims, and failures, and identify continuous improvement opportunities. Once identified these will be recorded in an actions list.

No.	Technical Proposal Location	Proposal Commitment
19	Volume 2, Section 4.3, p. 89.	Developer shall provide IFA user access to Developer's MMS. IFA shall have the right, but not the obligation, as a user of Developer's MMS, to review observations of "conforming" or "non-conforming" items as related to the requirements of the PPA Documents in Developer's MMS.
20	Volume 2, Section 4.2.1.3, p. 53 and Master Plan Roll Plots	Developer shall make all rock cuts so as to reflect the character of the limestone outcrops as they appear naturally, with associated rock cut/slope rounding commitments as indicated in Volume 2, Section 4.2.1.3 of Developer's Proposal and as depicted on all applicable Developer's proposed Master Plan Roll Plots provided with Developer's Proposal.
21	Volume 2, Master Plan Roll Plots	Developer shall protect all existing trees as indicated on applicable Developer's proposed Master Plan Roll Plots.
22	Volume 2, Master Plan Roll Plots	Developer shall plant all trees and shrubs as indicated on applicable Developer's proposed Master Plan Roll Plots.
23	Volume 2, p. 28; see Figure 4.3-21	Developer and IFA shall meet at least every 15 years to assess whether the Project requires an overlay of all or some pavement. If IFA determines, in its reasonable discretion, following such meeting that the Project requires such overlay of all or some pavement, then Developer shall overlay the identified portion(s) of the Project at least every 15 years in conformance with all Technical Provisions pertaining to overlay as improved in Figure 4.3-21.
24	Volume 2, p. 81	Developer shall replace, rather than eliminate or minimize, all expansion joints on existing bridges within the Project Limits and eliminate or minimize expansion joints when replacing bridge decks or major rehabilitations.

No.	Technical Proposal Location	Proposal Commitment
25	See generally Figure 4.2-15	Developer shall use precast concrete superstructure members on new structures erected within the Project Limits.
26	Volume 2, pp. 40, 56	Developer shall coordinate with all affected Utilities as to lane restrictions required for such Utility's work.
27	Volume 2, pp. 53	Developer shall hold and require all staff to attend a full day training course on Developer's key processes with respect to the Project.
28	Volume 2, p. 17	Developer shall hold internal briefings that include both design and construction personnel during any period in which Design Work or Construction Work is being performed, which, for purposes of clarity, may be during the Construction Period or the Operating Period.
29	Volume 2, p. 17	Developer will hold weekly meetings for Proposer's entire management group (including personnel managing Project Design Work) to discuss issues encountered and their resolution during any period in which Design Work or Construction Work is being performed, which, for purposes of clarity, may be during the Construction Period or the Operating Period.

No.	Technical Proposal Location	Proposal Commitment
30	Volume 2, p. 56	<p>Developer shall locate the following Key Personnel and other identified personnel at the Site at all times (or percentages of time, as applicable) Design Work is being performed, in all cases inclusive of the meetings and other activities described in <u>Section 3.9</u> of the Technical Provisions:</p> <ul style="list-style-type: none"> • Lead Engineer (100%) • Environmental Compliance Manager (100%) • Engineer of Record – Roadway (100%) • Engineer of Record – Structures (25%) • Utility Manager (50% so long as Andrew Baird supports at an additional 50% (which can be off-site) and acts as lead utilities coordinator until the 1st anniversary of the Effective Date; if not, then 100%) • Design Quality Manager (25%) • 1 Karst Specialist (75%) • Erosion and Sediment Control Manager (75% (during design); 100% (during construction)) • Maintenance of Traffic Manager (75% (during design); 100% (during construction)) • D&B Coordinator ((a) 50% during performance of Design Work, (b) 100% during design coordination meetings and (c) 100% for post-Design Work meetings with a design component according to Developer's meetings schedule at which meeting IFA requires the D&B Coordinator to be at the Site. Developer shall give no less than 5 Business Days' prior notice of such meetings to allow for IFA to make such determination.)

No.	Technical Proposal Location	Proposal Commitment
31	Volume 2, p. 22, pp. 29-30, p. 34	Developer shall establish its "Board of Directors" such that, among other duties, the Board of Directors shall (a) ensure the authority and independence of Developer's quality management personnel (including maintaining the Quality Manager's direct reporting to the Board of Directors, independent of the Project Manager); (b) ensure Developer's compliance with IFA requirements throughout the Term, (c) will review and update Developer's quality management system at planned intervals (as set forth in the approved QMP) to ensure appropriateness, adequacy, and efficiency of quality management functions and performance, (d) ensure the authority and independent of Developer's erosion and sediment control personnel (including maintaining the Erosion and Sediment Control Manager's direct reporting to the Board of Directors), (e) ensuring an independent safety suborganization within Developer's project management organization.
32	Volume 2, p. 29-30	Developer's Board of Directors shall review Developer's QMP at planned intervals (as set forth in the approved QMP) and submit results of such reviews promptly after their conclusion to IFA.
33	Volume 2, p. 32	Developer's QMP shall include procedures for procurement and purchasing of equipment, materials, supplies, and services; and training of personnel. Developer shall select Contractors and Suppliers for the Project based on such Contractors' or Suppliers' ability to provide materials and services that fulfill Developer's quality requirements.
34	Volume 2, p. 31	Developer shall cause Design-Build Contractor to obtain and maintain ISO 9001 certification through the Construction Period.

No.	Technical Proposal Location	Proposal Commitment
35	Volume 2, p. 60	Developer shall perform its design quality obligations in accordance with Figure 4.2-30 (appended to this <u>Exhibit 2-D</u>), which among other things defines internal design review processes connected to IFA/INDOT review and comment resolution.
36	Volume 2, p. 62	<p>Developer shall hold regular design reviews with Developer's construction personnel to, among other things, evaluate appropriate design, safety, environmental and technical standards are being incorporated into final design documents.</p> <p>Developer shall continue to employ design personnel to participate in design services during the Construction Period (e.g., field design changes, RFIs, participation in construction conferences/meetings, review of shop drawings, etc.)</p>

No.	Technical Proposal Location	Proposal Commitment
37	Volume 2, p. 62	<p>Developers shall perform QC checks on all "QA certifications" for materials for conformance the Technical Provisions upon delivery to the Site.</p> <p>Developer shall establish a construction engineering/inspection staff that, among other duties, shall test all such materials prior to placement and/or used in connection with the Project, only after such QC checks have been performed.</p> <p>Developer shall keep all documentation of such QC checks among the Books and Records at Developer's field office on the Site.</p> <p>Developer shall document all instances where materials and/or workmanship failing such QC checks (and otherwise not meeting the specified level of quality) as among the documentation of such QC checks. Such documentation shall include the nature of nonconformance, location, extent, and disposition.</p> <p>Nonconformances will be corrected as prescribed in the CQMP.</p>
38	Volume 2, p. 62	<p>Developer shall work cooperatively with IFA and with INDOT to address challenges to Developer's QC checks, verification testing and other inspections.</p> <p>Developer shall ensure that all material tests are completed at a frequency acceptable to IFA.</p> <p>Developer shall issue reports of all the foregoing as part of the QA records among the Books and Records.</p>

No.	Technical Proposal Location	Proposal Commitment
39	Volume 2, p. 89	<p>The Quality Manager shall review and submit all nonconformance documents on a daily basis.</p> <p>The Quality Manager shall affirmatively investigate to confirm or deny a nonconformance.</p> <p>The Quality Manager shall evaluate all confirmed instances of noncompliance for probability of reoccurrence.</p> <p>Developer shall formulate and implement preventive or corrective action plans for reoccurring nonconformances.</p>
40	Volume 2, p. 90	<p>Developer's O&M Work personnel will use results from formal O&M quality performance audits/tests/inspections, together with observations, claims, or reported failures to comply with contract requirements and identify continuous improvement opportunities.</p>
41	Volume 2: Section 4.1.6.b (page 33)	<p>Developer shall make a copy of the Project's Safety Plan available at every jobsite and post the Project's Safety Plan in Developer's field office or trailer.</p> <p>Developer shall remove any Project personnel (whether employed by Developer or any Key Contractor) from the Site that do not comply with the requirements of the Safety Plan.</p>
42	Volume 1: A.3.1.L Executive Summary (page 8)	<p>Developer shall provide portable message boards to alert motorists of relevant information.</p>

No.	Technical Proposal Location	Proposal Commitment
43	Volume 2: Figure 4.1-12	<p>Developer's weekly construction coordination meeting shall, in each case, address safety issues/matters among its agenda items.</p> <p>Developer shall convene a meeting of appropriate Developer and IFA personnel within 2 days after each Incident to review Developer's response, discuss lessons learned and, if required, change Developer's Incident response procedures.</p>
44	Volume 2, Figure 4.1-13	<p>Developer shall convene a quarterly "Traffic Incident Management Meeting" with IFA.</p> <p>Developer shall convene a monthly "Emergency Services" meeting with all applicable local emergency management services ("EMS") providers.</p>
45	Volume 2, p. 35	<p>Developer shall empower its Environmental Compliance Manager to "stop work" to maintain environmental compliance.</p> <p>Developer shall empower its Erosion and Sediment Control Manager to "stop or redirect work" to maintain Project erosion or sediment controls.</p>
46	Volume 2: 4.1 (page 11)	<p>Developer shall develop a Sustainability Management Plan with the defined/measurable goals set forth in the Technical Proposal.</p> <p>Developer shall report quarterly to IFA as to the progress and status of Project sustainability management.</p> <p>Developer shall update its Sustainability Management Plan no less than once every 5 years for the Term.</p>

No.	Technical Proposal Location	Proposal Commitment
47	Volume 2, p. 37	Developer shall convene weekly (up to the Substantial Completion Date) and monthly (on and after the Substantial Completion Date) "Risk Management meetings" and provide minutes of such meetings to IFA promptly thereafter.
48	Volume 2, p. 5	<p>Developer shall develop its P3 "project management system" ("P3PMS") documents based upon the "Guide to the Project Management Body of Knowledge" ("PMBOK"), published by the Project Management Institute ("PMI").</p> <p>Developer's key personnel, task leaders, Contractors and Suppliers shall comply with Developer's P3PMS.</p>
49	Volume 2, p. 5-8	Developer's P3PMS shall contain provisions covering all phases of Project management and the Work, including the transition from D&C Work to O&M Work.
50	Volume 2, p. 15-16	Developer shall continually interface with Project stakeholders (e.g., federal, state and local agencies, the Bloomington MPO, cities, counties, local police and fire departments).
51	Volume 2, p. 18	Developer shall utilize its own electronic document management system to store and share all Project information.
52	Volume 2, p. 18	In addition to electronic document management, Developer shall maintain all Project information in paper format, organized, coded and stored for ease of accessibility.
53	Volume 2, p. 18	Developer shall cause Design-Build Contractor to transfer all relevant Books and Records to Developer's O&M Work personnel sufficiently in advance of commencement of the O&M Work, to be self-performed by Developer.

No.	Technical Proposal Location	Proposal Commitment
54	Volume 2, p. 10	Developer shall appoint or employ a Design-Build Coordinator position, who, among other duties, shall act as the liaison between Developer's design and construction Work to ensure that designs are constructible and compliant with the PPA requirements.
55	Volume 2, p. 11	Developer shall employ at least 1 Karst Specialist and Developer's Erosion and Sediment Control Manager for the Term. Any Karst Specialists and the Erosion and Sediment Control Manager shall work directly for Developer's Operations and Maintenance Manager during the Operating Period.
56	Volume 2, p. 11	Developer shall retain the same person as Quality Manager during the Construction Period and continuing through the period ending 1 year following the Final Acceptance Date.
57	Volume 2, p. 11	Developer plans to hire people from within the region to fill key roles.
58	Volume 2, p. 15	Developer shall collocate its main Project office in the Bloomington, Indiana area and use such office as Developer's Project Office.

No.	Technical Proposal Location	Proposal Commitment
59	Volume 2, p. 80	<p>Developer will follow the "Pavement Rehabilitation Strategy" outlined in Figure 4.3-21 at the year intervals described therein (appended to this <u>Exhibit 2-D</u>), subject to the following:</p> <ul style="list-style-type: none"> • Developer and IFA shall meet at the intervals identified in Figure 4.3-21 to assess whether some or all of the Project requires pavement rehabilitation. • If IFA determines, in its reasonable discretion, following such meeting that some or all of the Project requires pavement rehabilitation, then Developer shall perform the pavement rehabilitation corresponding to the interval as set outlined in Figure 4.3-21 (which, for purposes of clarity, shall be the conforming section depths prescribed) and otherwise in conformance with all Technical Provisions pertaining to pavement rehabilitation.
60	Roll Plot ITP – Exhibit B 4.2.1.1d	Developer will follow pavement structural section design sheet 208118 drawing #PSS01 if, and only if, upon IFA's design review IFA determines such structural section design meets or exceeds applicable Technical Provisions.
61	Executive Summary, p. 1; Volume 2, p. 11	Developer shall submit the Project for Greenroads™ designation.
62	Technical Proposal Clarification Letter #3 Response, dated January 31, 2014	Developer shall depict all required dimensions (in its detailed design) and otherwise fully comply with the PPA Documents, including the requirements of the Technical Provisions (including, specifically, Indiana Design Manual Project Standards) to provide the full horizontal clear zone where required.

No.	Technical Proposal Location	Proposal Commitment
63	Technical Proposal Clarification Letter #3 Response, dated January 31, 2014	Developer shall fully comply with all the requirements set forth in the PPA Documents and the Technical Provisions, including with respect to operations and maintenance in particular
64	Technical Proposal Clarification Letter #3 Response, dated January 31, 2014	Developer shall provide 3 snowplows and a track mounted crane which will be also used as a snowplow (attaching a plow to it) in case of any winter event, as depicted in Figure 4.3-15 (appended to this <u>Exhibit 2-D</u>).
65	Technical Proposal Clarification Letter #3 Response, dated January 31, 2014	Developer shall perform Residual Life Inspections at least at 60 months, 18 months and 90 days prior to the end of the Term.
66	Technical Proposal Clarification Letter #3 Response, dated January 31, 2014	Developer shall comply with all the reporting requirements of the PPA and the Technical Provisions including deliverables set forth in Section 20 of the Technical Provisions.
67	Technical Proposal Clarification Letter #3 Response, dated January 31, 2014	Developer shall comply with the Technical Proposal's Construction Period O&M Limits, as set forth in the PPA Documents, including Technical Provision Section 18.1.4.2.
68	Technical Proposal Clarification Letter #3 Response, dated January 31, 2014	Developer shall comply with the Technical Proposal's Operating O&M Limits, as set forth in the PPA Documents, including Technical Provision Section 18.1.4.3.
69	Technical Proposal Clarification Letter #4 Response, dated February 4, 2014	Developer shall perform all clearing activities so as not to violate the environmental commitments set forth in Technical Provision Section 7.5.4.1.
70	Technical Proposal Clarification Letter #4 Response, dated February 4, 2014	Developer shall confine all Work prior to issuance of the Section 401/404 permits to non-permitted areas.

No.	Technical Proposal Location	Proposal Commitment
71	Technical Proposal Clarification Letter #4 Response, dated February 4, 2014	Developer shall reconstruct (a) the curve located at Acuff and Prow Roads and (b) the hammerhead turnaround at Acuff Road, all in accordance with Technical Provision Table 9-38.
72	Technical Proposal Clarification Letter #4 Response, dated February 4, 2014	Developer shall use in its design the design speeds set forth in the Technical Provision Tables 9-2 through 9-36.
73	Technical Proposal Clarification Letter #4 Response, dated February 4, 2014	Developer shall comply with the clearance requirements for maintenance of traffic set forth in Technical Provision Section 12.4.1.4a.
74	Technical Proposal Clarification Letter #4 Response, dated February 4, 2014	Developer shall comply with the five-mile maximum for daytime lane closures and related conditions set forth in Technical Provision Section 12.4.8.
75	Technical Proposal Clarification Letter #4 Response, dated February 4, 2014	Developer shall comply with the live load inventory rating and condition rating requirements set forth in Technical Provision Sections 14 and 18 for all structures, including the bridges 1-69 (north and southbound) at Griffy Creek.
76	Technical Proposal Clarification Letter #4 Response, dated February 4, 2014	Developer shall comply with all requirements of the PPA Documents, including the Technical Provisions, regarding utility relocations.
77	Technical Proposal Clarification Letter #4 Response, dated February 4, 2014	Developer shall confirm with all affected Utilities what constitutes a Betterment to the Utility's facilities.

No.	Technical Proposal Location	Proposal Commitment
78	Technical Proposal Clarification Letter #4 Response, dated February 4, 2014	Developer shall comply with the requirements of the PPA Documents, including the Technical Provisions and in particular Technical Provision Section 9.3.2.3 (criteria and grades for overpasses), in raising the bridge and in meeting the minimum clearance requirements and local road design requirements for the Arlington Road overpass.

Attachments to Exhibit 2-D

Proposal Commitment #12

O&M During Construction Equipment	O&M After Construction Equipment
4 Pickups	5 Pickups
2 Mid-size Cars	2 Mid-size Cars
2 Motorcycles	2 Motorcycles
1 Truck Mounted crane	2 Truck Mounted crane
1 Hydraulic Guardrail Installation Machine	1 Hydraulic Guardrail Installation Machine
3 Snowplows	3 Snowplows
2 Plows for Pickups	2 Plows for Pickups
4 Plow for Snowplows	4 Plow for Snowplows
2 De-icer Spreader and De-icer Tanks for Pickup	2 De-icer Spreader and De-icer Tanks for Pickup
	1 Man Lift
	1 Backhoe Loader
	1 Vibratory Roller
	2 Road Sweeper Cars

Figure 4.3-7: Specialized equipment for O&M

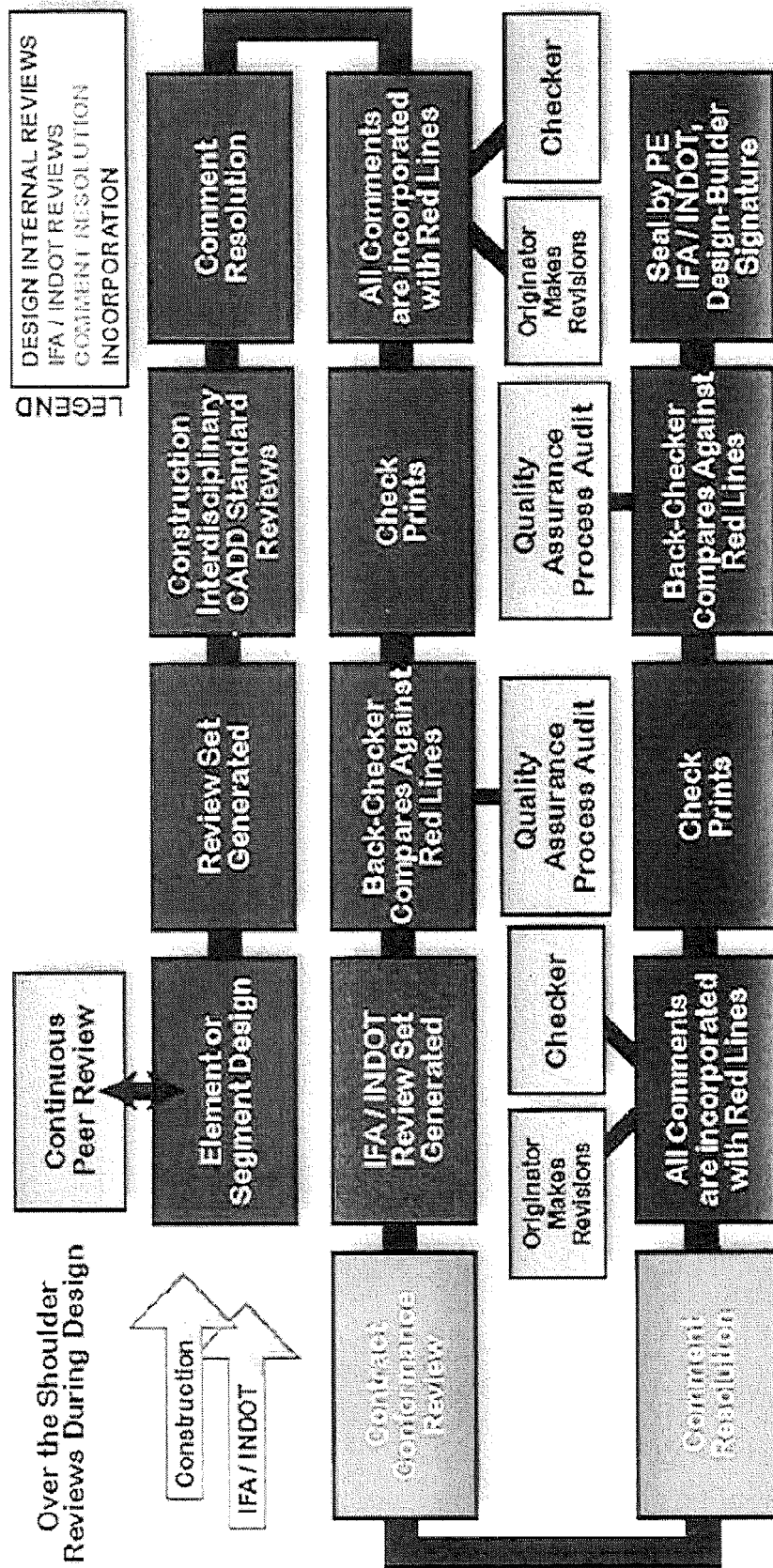


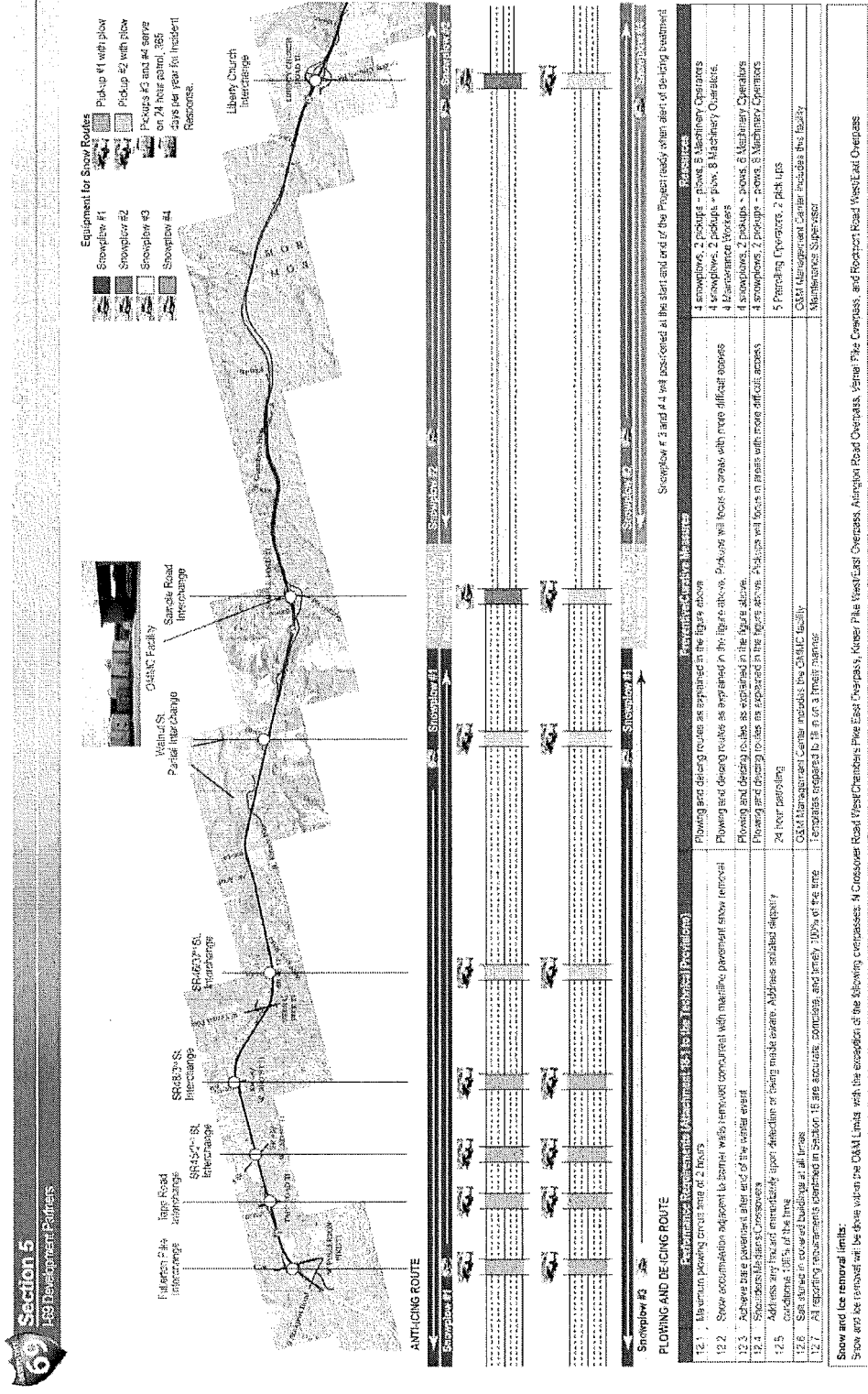
Figure 4.2-30: I-69 Design Quality Management Process

Proposal Commitment #59

Major Pavement Rehabilitations		Mainline	Ramps

Figure 4.3-21: Pavement Rehabilitation Strategy

Proposal Commitment #65



The following table lists Developer's alternative technical concepts (ATCs), which are described in further detail in the ATC submittals and clarifications, which Developer may incorporate into the Project. The Deviations set forth in the ATC submittals are approved by IFA subject to satisfaction of any conditions set forth in the letters from IFA to Developer. Such Deviations, subject to satisfaction of any listed "conditions," expressly supersede any conflicting provisions in the Technical Provisions. The ATCs, to the extent utilized by the Developer, shall otherwise meet all requirements of the Technical Provisions.

ATC No.	Brief Description	Date ATC Initially Submitted to IFA	Date(s) of Clarification(s) submitted to IFA re ATC	Date ATC Approval Letter
2	Eliminate CD Road Between Tapp Road and SR45/2nd Street Interchanges	October 24, 2013	November 21, 2013	December 3, 2013
9	Raise Arlington Road Bridge In-Lieu of Reconstructing Mainline Pavement	November 15, 2013	(n/a)	December 9, 2013
10	Retain Existing SR 45/2nd Street Interchange Configuration	November 21, 2013	November 27, 2013	December 9, 2013
18	Use of Weed Barrier and Gravel In-lieu of Seeding Adjacent to Cable Barrier to Increase Worker Safety and Minimize O&M	November 21, 2013	(n/a)	December 9, 2013
22	Placement of O&M Facility	November 20, 2013	(n/a)	December 9, 2013
23		November 15, 2013	(n/a)	December 10, 2013
12	Roundabouts at Liberty Church Road Interchange	November 21, 2013	November 27, 2013	December 9, 2013

EXHIBIT 2-E

PRELIMINARY PROJECT MANAGEMENT PLAN

[attached]

4.1 Preliminary Project Management Plan Management Philosophy



The I-69 DP Team will leverage the local knowledge of our Indiana-based team members with the international experience of Isolux, Corsan, and AZTEC-TYPSA to provide IFA/INDOT with the best value possible, while achieving and exceeding all IFA's goals.

We know how to provide a world-class, high-quality product and are committed to meeting all of the project elements through whole life asset management. The I-69 DP Team, as shown in **Figure 4.1-1** on the following page, provides a vertically integrated team through all stages of finance, design, construction and O&M.



As shown in **Figure 4.1-2**, we have developed a delivery team comprised of related companies which provides agile decision making and vertical integration that is second to none. Our organization aligns perfectly with our project management philosophy, where all team members work together as one single entity to provide the IFA, INDOT, stakeholders and the Citizens of Indiana with the best possible Project.

Employing this same organizational structure, Isolux has successfully managed eight DBFOM transportation projects throughout the world. We offer the following added value features that differentiates us from the competition:

- Our Engineering Team merges the global knowledge of TYPSA (ranked 92 out of the top 200 International Design Firms in 2012 by ENR), the US knowledge of their subsidiary, AZTEC

Engineering; and the local knowledge of our subconsultants:

- Burgess & Niple, Inc. (B&N)
- Professional Service Industry (PSI)
- Christopher B. Burke Engineering, LLC (CBBEL)
- Keramida Inc.
- VS Engineering Inc. (VS)
- Hardlines Design Company (HDC)
- Eco-Tech Consultants, Inc. (Eco-Tech)
- iTunnel, Inc.
- Local support services in non-technical areas
 - Barnes & Thornburg, LLP (legal)
 - The McCormick Group (Public Involvement)
- Local expertise from our contractors, who have worked extensively for INDOT:
 - Gradex, Inc.
 - Force Construction Company, Inc.
 - E&B Paving, Inc.

These firms will work under the leadership of Corsan, an International experienced Design-Build contractor and Isolux Infrastructure, an International experienced P3 developer

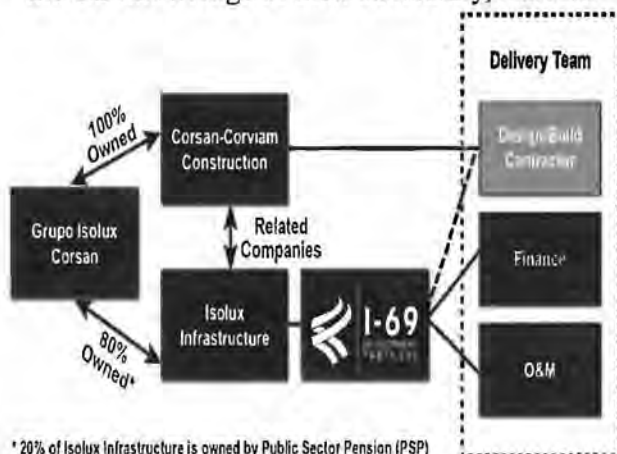
With the same organizational structure, Isolux has successfully managed eight DBFOM transportation projects around the world

4.1.1 Project Management Approach



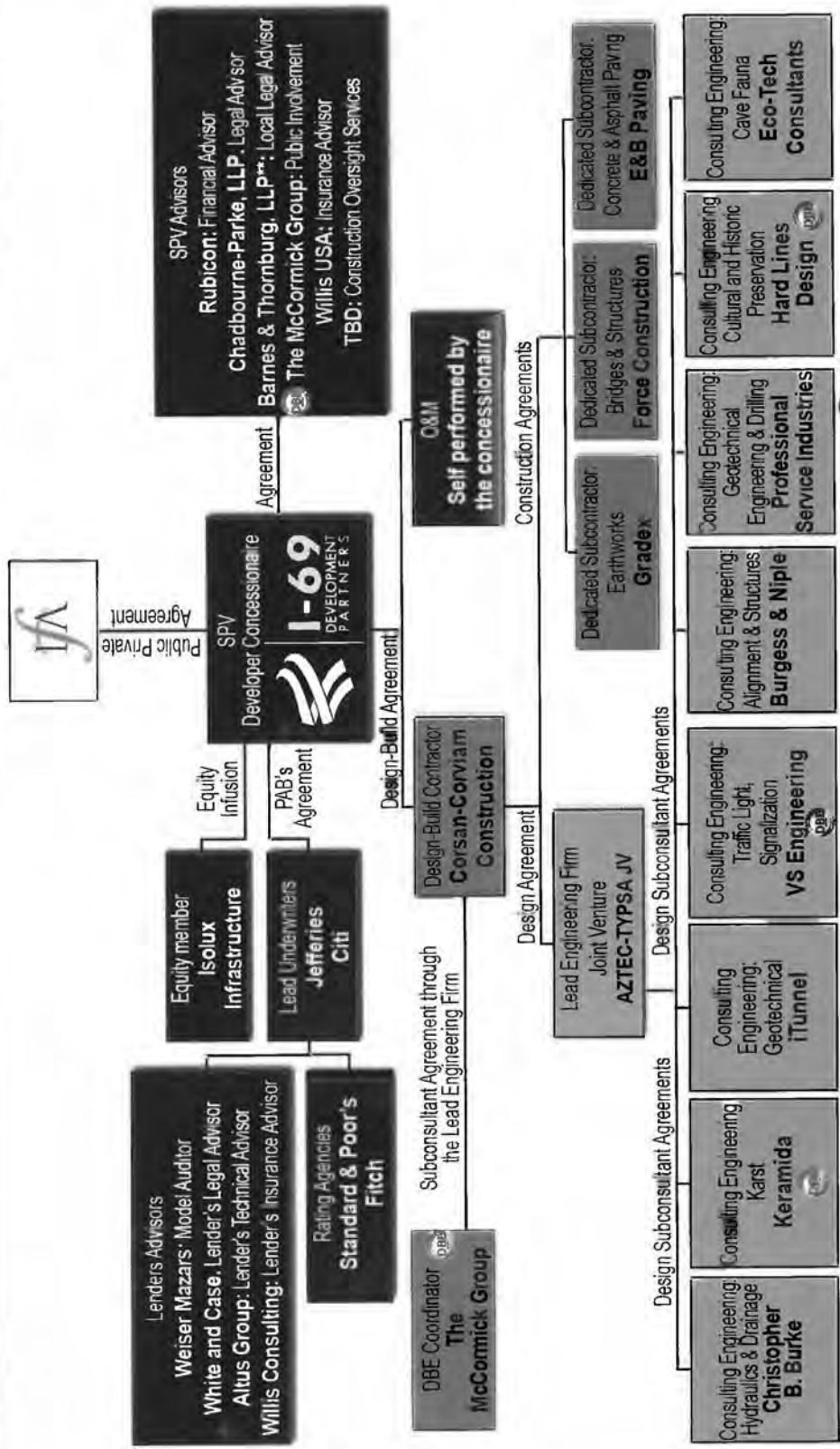
In order to fully fulfill the Project Management Plan (PMP) requirements, the I-69 DP Team will use our P3 Project Management System (P3PMS). The P3PMS is built on Isolux and Corsan's experience developing P3 and Design-Build projects for more than ten years, including more than 1,000 miles of DBFOM transportation projects and 3,400 miles of power transmission line P3 projects all over the world (USA, Brazil, Spain, Mexico and India). The P3PMS accomplishes the following goals:

- Provides the I-69 DP Team management approach, philosophies, systems, processes and procedures
- Integrates local and multinational companies into a unified team, incorporating their main strengths



* 20% of Isolux Infrastructure is owned by Public Sector Pension (PSP)

Figure 4.1-2: Related Companies Involved



*** If followed by IFA (as per section 19.3 of the ITP)
Barnes & Thornburg will also act as Bond Counsel.

Figure 4.1-1: The I-69 DP Team and Lines of Agreement

- Outlines the interfaces of the I-69 DP Team with IFA/INDOT, stakeholders and the community to establish clear lines of communication
- Dedicates the resources and organization to achieve all Project objectives
- Encourages DBE and workforce diversity and fosters involvement of the community
- Provides specific, interactive plans to facilitate the on-time delivery of the Project
- Provides for effective cost control for all phases of the Project

The P3PMS is a comprehensive document describing our managerial approach, strategy, safety and quality procedures to be used during the entire concession period, customized for the different activities under the PPA (such as Design-Build, O&M During Construction and O&M After Construction). It establishes the management approach and the organizational structure, including lines of responsibility, qualifications for Project personnel and the role of these personnel. It includes quality,

Global Management, Local Development
I-69 Development Partners' main goal is to put its global know how and expertise at the service of the IFA and the people of Indiana.



safety, and sustainable management plans, which when combined will deliver the Project efficiently, cost-effectively and safely with minimal impacts on road Users, local stakeholders and the environment, in line with IFA/INDOT goals. Our key personnel and task leaders will use the P3PMS to control delivery throughout the Project.

The basis of the I-69 DP Team's management philosophy is coordination. The core of the Team is formed by related companies: Isolux as the Equity Member, Corsan as the Design-Build Contractor, and the I-69 DP as the self-performing O&M entity. This provides integrated functionality and consistency to the Team, assures agility in the decision-making process and allows for close coordination within the Team. This relationship also allows clear lines of authority and responsibility and enables the Team to work as one single entity. The I-69 DP Team will use the P3PMS during the planning, delivery and monitoring of all activities to ensure the safe,



Figure 4.1-3: Our Project Management Plan effectively focuses and mitigates issues that affect complex sustainable, on-time and in-budget delivery of a high quality product.

The P3PMS provides the framework for the management approach in all Project stages. All employees, subcontractors and suppliers are required to comply with it. The inputs that enable the development and implementation of the P3PMS include stakeholder, client and I-69 DP requirements and expectations; as well as the Design-Build Contractor best practices and lessons learned. The main goal and final result is the full satisfaction of the IFA, the stakeholders and the Users.

P3PMS Structure: The P3PMS is based on the Guide to the Project Management Body of Knowledge ("PMBOK"), published by the Project Management Institute (PMI), certified by the American National Standards Institute (ANSI) and customized by Isolux and Corsan to DBFOM P3 transportation projects.

Under the P3PMS, the Delivery Process interacts with two other processes: the Control Process and the Support Process as described below and shown in Figure 4.1-4.

Delivery Process (Del. Pro.): This includes the core processes that will contribute directly to the achievement of IFA and INDOT satisfaction and the fulfillment of stakeholder objectives.

- **Del. Pro.1: Finance:** This is the process of obtaining the funding needed for the Project. The Concessionaire and its financial department will be the responsible party.
- **Del. Pro. 2: Design and Build:** Includes the design and construction of the Project. The Design-Build Team (DB Team) will be the responsible party.

