EXHIBIT 1

ABBREVIATIONS AND DEFINITIONS

Unless otherwise specified, wherever the following abbreviations or terms are used in the Agreement and the Technical Provisions, they have the meanings set forth below:

A-C	Alternating Current
AASHTO	American Association of State Highway and Transportation Officials
ACHP	Advisory Council on Historic Preservation
ADA	Americans with Disabilities Act
AFPs	ARIES Field Processors
AM	Acquisition Manager
AMRL	AASHTO Material Reference Laboratory
ANSI	American National Standards Institute
APWA	American Public Works Association
AREMA	American Railway Engineering and Maintenance of Way Association
ASTM	American Society of Testing and Materials
ATC	Alternative Technical Concept
ATIS	Advanced Traveler Information System
ATMS	Advanced Traffic Management System
ATS	Automatic Transfer Switch
ATVA	Accident and Terrorist Vulnerabilities Assessment
AVI	Automatic Vehicle Identification
AWS	American Welding Society
BA	Biological Assessment
BFO	Bloomington Field Office
BIS	Bypass Isolation Switch
BMP	Best Management Practice
BMV	Indiana Bureau of Motor Vehicles
BO	Biological Opinion
CADD	Computer Aided Drafting and Design
CB	Citizens' Band
CCTV	Closed Circuit Television
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*), as amended
CFD	Computational Fluid Dynamics
CFR	Code of Federal Regulations
CMMS	Computerized Maintenance Management System
CMP	Construction Monitoring Plan
CPESC	Certified Professional in Erosion and Sedimentation Control
CQCM	Construction Quality Control Manager

CQM	Construction Quality Manager
CQMP	Construction Quality Management Plan
CPI	Consumer Price Index
CPM	Critical Path Method
CSM	Context Sensitive Mitigation
CVISNP	Commercial Vehicle Information Systems Networks Program
CVO	Commercial Vehicle Operations
CWA	Clean Water Act
CWTS	Certified Worksite Traffic Supervisor
D&C	Design and Construction
DBE	Disadvantaged Business Enterprise
DDI	Diverging Diamond Interchange
DDO	Definitive Design of Operations
DMS	Dynamic Message Sign
DQM	Design Quality Manager
DQMP	Design Quality Management Plan
DSRC	Dedicated Short-Range Communications
DSS	Decent, Safe and Sanitary
ECM	Environmental Compliance Manager
ECMP	Environmental Compliance and Mitigation Plan
ECP	Erosion Control Plan
EDA	Earth Disturbance Area
EDMS	Electronic Document Management System
EIA	Electronic Industries Alliance
EMP	Environmental Management Plan
EMS	Environmental Management System
eNOI	Electronic Notice of Intent
eNOT	Electronic Notice of Termination
EP	Extraction Procedure
EPIC	Environmental Permits Issues and Commitments
ERP	Emergency Response Plan
ESA	Endangered Species Act of 1973, 16 U.S.C. §§1531 *et seq.* as amended and as it may be amended from time to time
ESCP	Erosion and Sediment Control Plan
ET	Eastern Time
ETL	Electronic Testing Laboratories
FAA	Federal Aviation Administration
FCC	Federal Communications Commission
FEIS	Final Environmental Impact Statement
FEMA	Federal Emergency Management Agency
FHWA	U.S. Federal Highway Administration

FSP	Field Sampling Plan
FTP	File Transfer Protocol
FWCA	Fish and Wildlife Coordination Act, 16 U.S.C. §§661 *et seq.*, as amended and as it may be amended from time to time
FWD	Falling Weight Deflectometer
GAAP	U.S. Generally Accepted Accounting Principles
GIS	Geographical Information System
GPS	Global Positioning System
HAR	Highway Advisory Radio
HEC	Hydraulic Engineering Circular
HMA	Hot Mix Asphalt
HMCP	Hazardous Materials Control Plan
HMHSP	Hazardous Materials Health and Safety Plan
HMMP	Hazardous Materials Management Plan
HPP	Historic Preservation Plan
HSPPD	"handling, storage, packaging, preservation and delivery"
IAC	Indiana Administrative Code
IC	Indiana Statute
IDM	Indiana Department of Transportation Design Manual
IES	Illuminating Engineering Society
IRI	International Roughness Index
ISPLS	Indiana Society of Professional Land Surveyors
IDEM	Indiana Department of Environmental Management
IDNR	Indiana Department of Natural Resources
IFA	Indiana Finance Authority
IHPAT	Indiana Historic Preservations Advisory Team
IHRS	Indiana Heritage Resource Survey
IMUTCD	Indiana Manual on Uniform Traffic Control Devices
INDOT	Indiana Department of Transportation
IPDC	Initial Project Debt Competition
IPDES	Indiana Pollutant Discharge Elimination System
IRI	International Roughness Index
IRR	Internal Rate of Return
IRS	Internal Revenue Service
ISA	Initial Site Assessment
ISO	International Organization for Standardization
ITS	Intelligent Transportation System
IVR	Interactive Voice Response
LC	Lucent Connector
LCS	Lane Control Signal
LED	Light-Emitting Diode

LIDAR	Laser Image Detection and Ranging
LOS	Level of Service
LRFD	Load and Resistance Factor Design (an AASHTO specification)
LRFR	Load and Resistance Factor Rating
LUS	Lane Use Signal
MACS	Mainline Automated Clearance System
MHHW	Mean Higher High Water
MLLW	Mean Lower Low Water
MOA	Memorandum of Agreement
MOMS	Maintenance On-line Management Subsystem
MOT	Maintenance of Traffic
MOU	Memorandum of Understanding
MOV	Metal Oxide Varistor
MP	Maintenance Plan
MPH	Miles Per Hour
MPO	Metropolitan Planning Organization
MS4	Municipal Separate Storm Sewer System
MSE	Mechanically Stabilized Earth
MSDS	Materials Safety Data Sheets
MTTR	Mean Time to Repair
MTBF	Mean Time Between Failure
MTTR	Mean Time to Repair
MUTCD	Indiana Manual on Uniform Traffic (Control) Devices or FHWA Manual on Uniform Traffic (Control) Devices, as further defined in Section 21 of the Technical Provisions.
N/A	Not Applicable
NAVD88	North American Vertical Datum of 1988
NBIS	National Bridge Inspection Standards
NCHRP	National Cooperative Highway Research Program
NDE	Nondestructive Examination
NEPA	National Environmental Policy Act, 42 U.S.C. § 4321 *et seq*., as amended and as it may be amended from time to time
NFIP	National Flood Insurance Program
NFPA	National Fire Protection Association
NHS	National Highway System
NOI	Notice of Intent submitted to USEPA
NORPASS	North America Preclearance and Safety System
NOT	Notice of Termination submitted to USEPA
NPDES	National Pollutant Discharge Elimination System
NRHP	National Register of Historic Places
NTCIP	National Transportation Communications for ITS Protocol

NTP	Notice to Proceed
O&M	Operation and Maintenance
OER	Office of Emergency Response
OHMP	Indiana Department of Natural Resources-Office of Habitat Management and Permitting
OIT	Operator Interface Terminal
OMMP	Operations and Maintenance Monitoring Plan
OMP	Operations and Maintenance Plan
OPMP	Indiana Department of Natural Resources Office of Project Management and Permitting
OSHA	Occupational Safety and Health Administration
OTDR	Optical Time-Domain Reflectometer
PA	Section 106 Programmatic Agreement
PABs	Private Activity Bonds
PABX	Private Automatic Branch Exchange
PC	Point of Curvature
PCB	Printed Circuit Board
PCC	Portland Cement Concrete
PCM	Preconstruction Manual
PDA	Pile Driving Analyzer
PDF	Portable Document Format
PE	Preliminary Engineering
PI	Point of Intersection
PIC	Public Information Coordinator
PIP	Public Involvement Plan
PIV	Post Indicator Valve
PLC	Programmable Logic Controller
PMIS	Pavement Management Information System
PML	Probable Maximum Loss
PMP	Project Management Plan
PPA	Public-Private Agreement between IFA and Developer for the Project, as it may be amended from time to time.
PS&E	Plans, Specifications, and Estimates
PT	Point of Tangency
PTZ	Pan-Tilt-Zoom
PVE	Passenger Vehicle Equivalent
QA	Quality Assurance
QAPP	Quality Assurance Program Plan
QC	Quality Control
QCP	Quality (Control) Checkpoints
QMP	Quality Management Plan

RCU	Remote Control Unit
RF	Radio Frequency
RFC	Released for Construction
RFP	Request for Proposals to Develop, Design, Construct, Finance, Operate and Maintain the Project, through a Public-Private Agreement, issued October 15, 2013, issued by IFA, as amended by addenda
RID	Reference Information Document
RIO	Remote Input/Output
RLM	Residual Life Methodology
RMS	Root Mean-Square
ROD	Record of Decision
ROW	Right of Way
ROW AM	Right of Way Acquisition Manager
ROWIS	Right of Way Information System
RPLS	Registered Professional Land Surveyor
RSS	Reinforced Soil Slope
RTM	Real Time Monitor
RWIS	Road Weather Information System
SAP	Sampling and Analysis Plan
SC	Subscriber Connector
SCADA	Supervisory Control and Data Acquisition
SCMP	Substantial Completion Milestone Payment
SCMPA	Substantial Completion Milestone Payment Adjustment
SCMPAC	Substantial Completion Milestone Payment Adjustment Cap
SF	Square Feet
SHP	Safety and Health Program
SHPO	State Historic Preservation Officer
SICP	Snow and Ice Control Plan
SIR	Self-insured retention
SPCP	Spill Prevention and Control Plan
SSHP	Site Safety and Health Plan
SSTR	Single Slope Traffic Railing
STIP	Statewide Transportation Improvement Program
SUE	Subsurface Utility Engineering
SWM	Storm Water Management
SWPPP	Storm Water Pollution Prevention Plan
TCLP	Toxicity Characteristic Leaching Procedure
TCP	Traffic Control Plan
TIA	Telecommunications Industry Association
TIP	Transportation Improvement Program
TMC	Traffic Management Center

TMP	Transportation Management Plan
TMS	Traffic Monitoring Stations
TOC	Traffic Operations Center
TOP	Traffic Operations Plan
TP	Technical Provisions
TTCP	Temporary Traffic Control Plan
TVSS	Transient Voltage Surge Suppressors
UCC	Uniform Commercial Code
UNRS	USDOT Number Recognition System
UPS	Uninterruptible Power Source
US	United States Highway
USACE	United States Army Corps of Engineers
USDOT	United States Department of Transportation
USEPA	United States Environmental Protection Agency
USFWS	United States Fish and Wildlife Service
USPAP	Uniform Standard of Professional Appraisal Practices
VBI	Voice Break-In
VWS	Virtual Weigh Station
WBS	Work Breakdown Structure
WEAP	Wave Equation Analysis of Pile Driving
WHPA	Wellhead Protection Area
WIM	Weigh in Motion

Abandonment means that Developer abandons all or a material part of the Project, which abandonment shall have occurred if (a) Developer demonstrates through statements, acts or omissions an intent not to continue, for any reason other than a Relief Event that materially interferes with ability to continue, to design, construct, operate or maintain all or a material part of the Project or (b) no significant Work (taking into account the Project Schedule, if applicable, and any Relief Event) on the Project or a material part thereof is performed for a continuous period of more than 45 days.

Access and Mobility Plan means the deliverable described at Table 20-1 of the Technical Provisions.

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

Activity has the meaning set forth in the Department's recurring SP CPM Schedule 108-C-215.

Actual Benchmark Insurance Policies has the meaning set forth in Section 17.1.9.2 of the Agreement.

Actual Insurance Policies has the meaning set forth in Section 17.1.9.4 of the Agreement.

Additional Properties means properties that are both (a) outside the boundaries for the Project Right of Way as set forth in the ROW Work Maps and (b) either (i) added to the Project Right of Way for permanent use for Project-related purposes or (ii) added for temporary use as Project Specific Locations.

Adjust means to perform a Utility Adjustment.

Adjustment means a Utility Adjustment.

Adjustment Standards means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities (comparable to those being Adjusted on account of the Project) constructed by the Utility Owner (or for the Utility Owner by its contractors), at its own expense. Unless the context requires otherwise, references in the PPA Documents to a Utility Owner's "applicable Adjustment Standards" refer to those that are applicable pursuant to Section 5.5.3 of the Agreement.

Advance Construction Projects means the design and construction of the SR 37 Clearing Contract and the bridge rehabilitation of the Walnut Street Bridge over existing SR 37.

Aesthetic Design Guidelines means Reference Information Documents that are so described and have been prepared by IFA in consultation with other advisory groups, agencies and the public that are appropriate for the project setting and are to be implemented and refined during final design through continuing consultations with these entities.

Aesthetics and Enhancement Implementation Plan means the plan that is to be prepared by Developer per Section 5.3.1 of the Technical Provisions that applies the Aesthetic Design Guidelines and incorporates context sensitive solutions for all project aesthetics and landscape work, and which is a deliverable described at Table 20-1 of the Technical Provisions.

Aesthetics and Landscaping Work has the meaning set forth in Section 5.1.1 of the Technical Provisions.

Aesthetics and Landscaping Work Amount has the meaning set forth in Section 5.10.3 of the Agreement.

Affiliate means:

(a) any Person in which an Equity Member holds, directly or indirectly, a Controlling Interest;

(b) any Person that, directly or indirectly, holds a Controlling Interest in an Equity Member; or

(c) any Person in which the Person referenced under clause (b) of this definition holds, directly, or indirectly, a Controlling Interest.

Affiliated means having the status of an Affiliate.

Age means the elapsed time since an Element was first constructed or installed or, if applicable, last reconstructed, rehabilitated, restored, renewed or replaced.

Agreement means that certain Public-Private Agreement, to which this Exhibit 1 (Abbreviations and Definitions) is attached, executed by IFA and Developer, including any and all Exhibits and amendments thereto.

Airspace means any and all real property, including the surface of the ground and submerged lands, within the vertical column extending above and below the surface boundaries or water surface, as applicable, of the Project Right of Way and not necessary or required for the Project or for developing, permitting, designing, financing, constructing, installing, equipping, operating, maintaining, repairing, reconstructing, restoring, rehabilitating, renewing or replacing the Project or Developer's timely fulfillment of its obligations under the PPA Documents.

Annual MAP Limit means the limit for the MAP in each year of the Term as set forth in Exhibit 9 to the Agreement.

Annual Non-Discriminatory O&M Change Deductible has the meaning set forth in Section 15.7.1.2 of the Agreement.

Arbitrator means the individual appointed to hear and resolve disputes between the parties as provided in Section 19.6 of the Agreement.

Authorized Representative has the meaning set forth in Section 25.6 of the Agreement.

Availability Payment means the amount earned in each given Fiscal Year commencing at the Operating Period by Developer as determined in accordance with Exhibit 10 (Payment Mechanism) to the Agreement.

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

Base Maximum Availability Payment has the meaning set forth in Attachment 1 to Exhibit 10 (Payment Mechanism) to the Agreement.

Baseline Asset Condition Report (BACR) means the report to be prepared by Developer recording the condition of each applicable Element in accordance with Section 18.1 of the Technical Provisions

Baseline Asset Condition Report Framework (BACRF) means the framework for the BACR shown in Attachment 18-3 to the Technical Provisions.

Baseline Inspection means an inspection undertaken in accordance with Section 18.1 of the Technical Provisions to determine the condition of each applicable Element.

Baseline Substantial Completion Date means the scheduled date for Substantial Completion set forth in Exhibit 2-B (Preliminary Project Baseline Schedule) and Exhibit 4 (Milestone Payment Amounts) to the Agreement (in no event later than XXX XX, 201X), as such deadline may be extended for Relief Events from time to time pursuant to the Agreement.

Best Management Practices (BMP) has the meaning set forth in *Storm Water Management For Construction Activities: Developing Pollution Prevention Plans and Best Management Practices* (EPA Document 832 R 92-005).

Betterment has, with respect to a given Utility being Adjusted, the meaning (if any) set forth in the Utility Agreement(s) applicable to the Utility; in all other cases, "Betterment" means any upgrading of the Utility in the course of such Utility Adjustment that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, efficiency or function of an Adjusted Utility over that which was provided by the existing Utility. Notwithstanding the foregoing, the following are not considered Betterments unless otherwise provided in the applicable Utility Agreement(s):

(a) Any upgrading which is required for accommodation of the Project;

(b) Replacement devices or materials that are of equivalent standards although not identical;

(c) Replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;

(d) Any upgrading required by applicable Law;

(e) Replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase);

(f) Any upgrading required by the Utility Owner's applicable Adjustment Standards; and

(g) Any discretionary decision by a Utility Owner that is contemplated within a particular standard described in clause (f) above.

With respect to any Replacement Utility Property Interest, "Betterment" has the meaning (if any) set forth in the applicable Utility Agreement(s). In all other cases, a Replacement Utility Property Interest shall be considered a Betterment, except to the extent that reinstallation of a Utility in the Replacement Utility Property Interest (i) is necessary in order to meet the requirements of the PPA Documents, or (ii) is called for by Developer in the interest of overall economy for the Project.

Blue Book means the Rental Rate Blue Book as published by EquipmentWatch®.

Books and Records means any and all documents, books, records, papers, or other information relating to the Project, including (a) all design and construction documents, and operations and maintenance documents (including but not limited to drawings, specifications, submittals, subcontracts, subconsultant agreements, purchase orders, invoices, schedules, meeting minutes, budgets, forecasts, change orders, (b) income statements, balance sheets, statements of cash flow and changes in financial position, details regarding operating income, expenses, capital expenditures and budgeted operating results relating to the Project, (c) all budgets, certificates, claims, contract agreements, correspondence, data (including test data), documents, expert analyses, facts, files, information, investigations, materials, notices, plans, projections, proposals, records, reports, requests, samples, schedules, settlements, statements, studies, surveys, tests, test results, traffic information (including volume counts, classification counts, origin and destination data, speed and travel time information and vehicle jurisdiction data) analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by Developer or any of its Representatives in connection with the Project and (d) with respect to all of the above, any Information that is stored electronically or on computer-related media, including in the Electronic Document Management System; provided however, that nothing in the Agreement shall require the disclosure by any Party of Books and Records that is protected by the attorney-client or other legal privilege based upon an opinion of counsel reasonably satisfactory to the other Party.

Breakage Costs means any prepayment premiums or penalties, make-whole payments or other prepayment amounts, including costs of early termination of interest rate and inflation rate hedging, swap, collar or cap arrangements, that Developer must pay, or that may be payable or credited to Developer, under any Funding Agreement or Security Document or otherwise as a result of the payment, redemption or acceleration of all or any portion of the principal amount of Project Debt prior to its scheduled payment date that are determined to be reasonable by the IFA at the time the IFA reviews and approves the Funding Agreements, excluding, however, any such amounts included in the principal amount of any Refinancing.

Business Day means any weekday (i.e., Monday through Friday) except for those weekdays on which banks are not required or authorized by applicable Law to be open in the State.

Business Opportunities has the meaning set forth in Sections 8.2.2 and 8.2.3 of the Agreement.

CADD Drafting Standards means the deliverable described at Table 20-1 of the Technical Provisions.

Category 1 Defect has the meaning set forth in Attachment 18-1 to the Technical Provisions.

Category 2 Defect has the meaning set forth in Attachment 18-1 to the Technical Provisions.

Certified Worksite Traffic Supervisor has the meaning set forth in Section 12.4.2 of the Technical Provisions.

Change in Adjustment Standards means any change in Adjustment Standards after the Setting Date that directly affects the design or construction of Utility Adjustments and is (a) necessary to conform to applicable Law or Change in Law or (b) adopted by the applicable Utility Owner after the Setting Date, excluding any such changes in Adjustment Standards known to Developer as of the Setting Date. A Change in Law that changes, adds to or replaces Adjustment Standards, as well as revisions to the Technical Provisions to conform to such Change in Law, shall be treated as a Change in Adjustment Standards rather than an IFA Change to the Technical Provisions.

Change in Law means

(a) the adoption of any Law of the State or any local government, or political subdivision of either the State or such local government, after the Setting Date, provided such new Law is materially inconsistent with the Laws of the State or such local government or political subdivision in effect on the Setting Date,

(b) any change in any Law of the State or any local government, or political subdivision of either the State or such local government, or in the interpretation or application thereof by any Governmental Entity after the Setting Date, provided such change is materially inconsistent with Laws of the State or such local government or political subdivision in effect on the Setting Date;

excluding, however,

(i) any such change in or new Law of the State that also constitutes or causes a Change in Adjustment Standards,

(ii) any change in or new Law of the State pending, passed or adopted but not yet effective as of the Setting Date,

(iii) any change in State labor Laws, and

(iv) any change in State tax Laws of general application except the adoption after the Setting Date of any Law not otherwise excluded that results in the levy of State *ad valorem* property taxes on the Developer's Interest (it being understood that any change in State tax laws shall not be deemed of general application if it is solely directed at and the effect of which is solely borne by Developer or private operators of transportation assets or transportation asset developers, in each case, in the State).

New or revised statutes or regulations of the United States or a federal agency, the State or a local government or political subdivision of either, enacted, promulgated or adopted after the

Setting Date that change, add to or replace applicable standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards and Project Standards, but excluding Adjustment Standards, relating to the D&C Work or O&M Work, as well as revisions to the Technical Provisions to conform to such new or revised statutes, shall be treated as a Change in Law (subject to the foregoing exclusions) rather than an IFA Change to the Technical Provisions.

Change of Control means any Equity Transfer, transfer of an interest, direct or indirect, in an Equity Member, or other assignment, sale, financing, grant of security interest, hypothecation, conveyance, transfer of interest or transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation, bankruptcy or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of Developer or a material aspect of its business. A change in possession of the power to direct or control or cause the direction or control of the management of an Equity Member may constitute a Change of Control of Developer if such Equity Member possesses, immediately prior to such Change of Control, the power to direct or control or cause the direction or control of the management of Developer. Notwithstanding the foregoing, the following shall not constitute a Change of Control:

(a) A change in possession of the power to direct or control the management of Developer or a material aspect of its business due solely to a bona fide transaction involving beneficial interests in the ultimate parent organization of an Equity Member, (but not if the Equity Member is the ultimate parent organization), provided, however, that this exception shall not apply if the transferee in such transaction is, at the time of the transaction, suspended or debarred, subject to an agreement for voluntary exclusion, or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or State department or agency;

(b) An upstream reorganization or transfer of direct or indirect interests in Developer so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of Developer;

(c) A transfer of interests between managed funds that are under common ownership or control, except a change in the management or control of a fund that manages or controls Developer;

(d) An Equity Transfer, where the transferring Equity Member and the transferee are under the same ultimate parent organization ownership, management and control before and after the transfer;

(e) A change in possession of the power to direct or control the management of Developer or a material aspect of its business due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, including such transactions involving an initial public offering;

(f) The exercise of minority veto or voting rights (whether provided by applicable Law, by Developer's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of Developer, provided that if such minority veto or voting rights are provided by

shareholder or similar agreements, IFA has received copies of such agreements; or

(g) The grant of Security Documents, in strict compliance with Section 13.3 of the Agreement, or the exercise of Lender remedies thereunder, including foreclosure.

Change Order means a written order issued by IFA to Developer delineating changes in Work within the general scope of the PPA Documents or in terms and conditions of the Technical Provisions (including changes in the standards applicable to the Work in accordance with Section 16.1.1 of the Agreement) and establishing, if appropriate, an adjustment to Developer's compensation or Project Schedule.

Change Request means a written request from Developer seeking to change the character, quantity, quality, description, scope or location of any part of the Work, or to modify or deviate from the PPA Documents.

Chief Executive Officer of Developer means the chief executive officer, president or other senior officer of Developer, or the governing body of Developer, in each case having authority to negotiate and resolve a Dispute with the Executive Director and bind Developer by his, her or its decision in regard to such Dispute.

Claim means (a) a demand by Developer, which is disputed by IFA, for a time extension under the PPA Documents, payment of money or damages from IFA to Developer, or for payment from IFA of a Compensation Amount or Termination Compensation, or (b) a demand by IFA, which is disputed by Developer, for payment of money or damages from Developer to IFA.

Claim Deductible means the following amounts, as applicable: (a) the first $40,000 of Extra Work Costs, subject to adjustment as provided in Section 15.6.2.3 of the Agreement; and (b) the amount equal to the Delay Costs for (i) the first three days of delay for Relief Events occurring before the Substantial Completion Date and (ii) the first seven days of delay for Relief Events occurring on and after the Substantial Completion Date.

Closure means that all or part of any traffic lanes, ramps, direct connectors or cross roads, shoulders or footways are closed or blocked, or that the use thereof is otherwise restricted, during the Operating Period.

Collateral Agent means the Institutional Lender listed or otherwise designated to act as trustee or agent on behalf of or at the direction of the other Lenders in the Security Documents, or the Institutional Lender designated to act as trustee or agent on behalf of or at the direction of the other Lenders in an intercreditor agreement or other document executed by all Lenders to whom Security Documents are outstanding at the time of execution of such document, a copy of which shall be delivered by Developer to IFA. In the event of any Project Debt issued and held by a single Lender, Collateral Agent means such Lender. The bond trustee for PABs, if an Institutional Lender, may also be the Collateral Agent.

Commercially Reasonable Insurance Rates means insurance premiums, except Excluded Premium Increases, up to but not exceeding 200% of the applicable Insurance Premium Benchmark Amount for all required Insurance Policies; provided that for the period before any Insurance Premium Benchmark Amount commences, commercially reasonable rates

are the greater of (a) rates that a reasonable and prudent risk manager for a Person seeking to insure comparable risks would conclude are justified by the risk protection afforded, and (b) the rates indicated for the period in question in the Financial Model and related Financial Modeling Data.

Commercially-Unreasonable Insurance Availability means either:

(a) Any Insurance Policy coverage required under Section 17.1 of the Agreement and Exhibit 18 (Insurance Coverage Requirements) to the Agreement is completely unavailable from insurers meeting the financial requirements set forth in Section 17.1.2.1; or

(b) Provision of all such Insurance Policy coverages has become unavailable at Commercially Reasonable Insurance Rates from insurers meeting the financial requirements set forth in Section 17.1.2.1.

Committed Investment means:

(a) Any form of direct investment of good and immediately available funds by Equity Members, including the purchase of equity shares in and/or the provision of Subordinate Debt to Developer; or

(b) An irrevocable written commitment to make the direct investment referenced in clause (a) of this definition, in good and immediately available funds, by a date which is no later than the Baseline Substantial Completion Date.

Communications Plan means Developer's plan for communications between IFA and Developer as set forth in Section 1.5.2.5 of the Technical Provisions.

Community Outreach Plan has the meaning set forth in Section 6.3 of the Technical Provisions, and which is a deliverable described at Table 20-1 of the Technical Provisions.

Comparable Facilities means highways and bridges, as applicable, that are substantially similar to the Project and associated facilities including frontage roads, as applicable. For purposes of this definition, determination of what highways or bridges are substantially similar to the Project shall be based on any one or more of similar age, design, engineering, construction, topographical features**,** operating systems and features, or other features or situations**,** and/or based on a geographical area in which highways or bridges have been or are susceptible to being affected by a common event (such as but not limited to flood or tornado). The absence or presence of tolling or tolling facilities shall not be a factor in determining whether a highway or bridge is substantially similar to the Project.

Compensation Amount means the amount, if any, owing to Developer under Article 15 of the Agreement on account of occurrence of a Relief Event.

Construction Closure means that all or part of any traffic lanes of the SR 37, its ramps, direct connectors, frontage roads or cross roads are closed or blocked, or that the use thereof is otherwise restricted for any reason during the Construction Period.

Construction Closure Adjustment means the amount assigned to each Construction Closure as set forth in Table 5 of Exhibit 10 of the Agreement.

Construction Documents means all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for construction of the Project and/or the Utility Adjustments included in the Construction Work, in accordance with the PPA Documents and the Special Provisions.

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

Construction Noncompliance Adjustment means the amount assigned to each Construction Noncompliance Event as set forth in Exhibit 10 (Payment Mechanism).

Construction Noncompliance Event means the failure to meet one of the minimum performance requirements before Substantial Completion as set forth in Table 12.2 of Exhibit 12 (Noncompliance Points System and Persistent Developer Default) within the applicable cure period (if any).

Construction Quality Management Plan or CQMP means the IFA-approved plan for quality assurance and quality control of the Construction Work, as set forth in Section 1.5.2.5 of the Technical Provisions, and which is a deliverable described at Table 20-1 of the Technical Provisions.

Construction Quality Manager has the meaning set forth in Section 4.8.1 of the Technical Provisions.

Construction Quality Control Manager or **CQCM** has the meaning set forth in Section 4.8.1 of the Technical Provisions. The Construction Quality Control Manager is a Key Personnel listed at Exhibit 2-H to the Agreement.

Construction Noncompliance Point means the points that may be assessed for certain breaches or failures to perform by Developer before Substantial Completion, as set forth in Table 12.2 of Exhibit 12 to the Agreement.

Construction Period means the period starting upon issuance of NTP2 and ending at 11:59 p.m. on date prior to the Substantial Completion Date.

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

Construction Work means all Work to build or construct, reconstruct, rehabilitate, make, form, manufacture, furnish, install, integrate, supply, deliver or equip the Project and/or the Utility Adjustments. Construction Work includes Aesthetics and Landscaping Work and Standard Landscaping and Aesthetics Treatment Work.

Consumer Price Index, or **CPI**, means the Consumer Price Index All items (BES Series ID: CUUR0000SA0), as published by the United States Department of Labor, Bureau of Labor Statistics, for which the base year is 1982-84 = 100, or if such publication ceases to be in existence, a comparable index selected by IFA and approved by Developer, acting reasonably. If such index is revised so that the base year differs from that set forth above, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau of Labor Statistics otherwise alters its

method of calculating such index, the Parties shall mutually determine appropriate adjustments in the affected index.

Continuing Disclosure Agreement has the meaning set forth in Section 13.2.4 of the Agreement.

Contract means any agreement, and any supplement or amendment thereto, by Developer with any other Person, Contractor or Supplier to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement, supplement or amendment at a lower tier, between a Contractor and its lower tier Contractor or a Supplier and its lower tier Supplier, at all tiers. The term "Contract" excludes Utility Agreements.

Contractor means any Person with whom Developer has entered into any Contract to perform any part of the Work or provide any materials, equipment, hardware or supplies for any part of the Work, on behalf of Developer, and any other Person with whom any Contractor has further subcontracted any part of the Work, at all tiers.

Controlling Interest means an interest held by a Person in another Person, when:

(a) such Person holds, directly or indirectly, beneficially or of record, a majority of the voting rights in such other Person; or

(b) such Person possesses, directly or indirectly, the power to cause the direction of the management of such other Person, whether through voting securities, by contract, family relationship or otherwise.

Controlling Work Item means the activity or work item on the Critical Path of the D&C Work having the least amount of Total Float.

Core Lender(s) has the meaning set forth in the RFP.

Critical Path means the longest chain(s), in terms of time, of logically connected activities on the Project Schedule ending with Final Acceptance. Any delay along a Critical Path will affect the calculated Substantial Completion Date or Final Acceptance Date.

Cure Period means:

(a) With respect to a Developer Default set forth in an IFA-Lender Notice that is curable by the payment of money to IFA, a period starting on the date of the receipt of such IFA-Lender Notice and ending 60 days after the later of (i) Lender's receipt of such IFA-Lender Notice or (ii) expiration of Developer's cure period (if any) under the Agreement;

(b) With respect to a Developer Default set forth in an IFA-Lender Notice other than Incurable Developer Defaults and those under clauses (a) above and (c) below, a period starting on the date of the receipt of such IFA-Lender Notice and ending 60 days after the later of (i) receipt of such IFA-Lender Notice or (ii) expiration of Developer's cure period (if any) under the Agreement;

(c) With respect to a Developer Default set forth in an IFA-Lender Notice, other than Incurable Developer Defaults, that by its nature is not capable of cure unless and until the Step-in Party, the Collateral Agent or a court receiver has possession and control of the Project, a period starting on the date of the receipt of such IFA-Lender Notice and ending 180 days after the later of (i) receipt of such IFA-Lender Notice or (ii) expiration of Developer's cure period (if any) under the Agreement; provided, however, that (A) during such cure period the Step-in Party cures all Developer Defaults which may be cured by the payment of money within the Cure Period under clause (a) above, (B) during such cure period the Step-in Party cures all Developer Defaults governed by clause (b) above within the Cure Period available under clause (b) above, and (C) within the later of (1) five days after expiration of Developer's cure period, if any, and (2) 30 days after the Collateral Agent receives such IFA-Lender Notice, the Step-in Party initiates and thereafter pursues with good faith, diligence and continuity lawful processes and steps to obtain possession and control of the Project.

With respect to clause (c) above, if the Collateral Agent or another Step-in Party (i) shall have succeeded to the Developer's Interest and obtained possession in accordance with the terms of Article 21 to the Agreement, (ii) shall have delivered to IFA within 15 days after obtaining possession and control a Substitute Accession Agreement, and (iii) shall have thereafter diligently and with continuity cured all Developer Defaults which are capable of being cured through possession, then the Collateral Agent or other Step-in Party shall have time after it obtains possession as may be necessary with exercise of good faith, diligence and continuity to cure such Developer Default or perform such condition, in any event not to exceed 120 days after the date it obtains possession, and the Cure Period shall be extended accordingly; provided that in no event shall the Term be extended beyond the expiration of the Term.

Notwithstanding the foregoing, neither a Notice nor opportunity to cure shall be required for a Developer Default under Sections 19.1.1.3(a), 19.1.1.16 or 19.1.1.17 of the Agreement. In no case, however, shall a Cure Period extend beyond the expiration of the Term.

Day or **day** means calendar day unless otherwise expressly specified.

D&C Work means the Design Work and Construction Work, including those obligations of Developer pertaining to design and construction set forth in the Technical Provisions.

DB Substantial Completion means satisfaction of all the conditions as set forth in Section 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 Section 5.8.2 of the Agreement.

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

DBE Goal means the goal for percent of work to be performed by certified DBEs that is established by IFA and specified in Section 7.10.2 of the Agreement.

DBE Performance Plan means Developer's plan for meeting the DBE Goal. The preliminary DBE Performance Plan is Exhibit 2-L (Developer's Preliminary DBE Performance Plan) to the Agreement.

DBE Special Provisions means IFA's special provisions for the IFA Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26, which special provisions are set forth in Exhibit 7 (IFA's Disadvantaged Business Enterprise (DBE) Special Provisions) to the Agreement.

Deductible Relief Event means the Relief Events referenced in clauses (g) (but only as to performance or failure to perform work by a Governmental Entity), (j), (m) (but only as to releases by a third party), (n), (o), (q) and (u) of the definition of Relief Event.

Default means an Event of Default as defined in the Funding Agreement for any senior Project Debt or any event or circumstance specified in such Funding Agreement that would (with the expiration of a grace period, the giving of notice, the lapse of time, the making of any determination under the Funding Agreement or any combination of any of the foregoing) be an Event of Default.

Default Termination Event means each of the Developer Defaults listed in Section 20.3.1 of the Agreement.

Defect means a defect, whether by design, construction, installation, damage or wear, affecting the condition, use, functionality or operation of any Element of the Project, which would cause or have the potential to cause one or more of the following:

(a) A hazard, nuisance or other risk to public or worker health or safety, including the health and safety of Users;

(b) A structural deterioration of the affected Element or any other part of the Project;

(c) Damage to a third party or a third party's property or equipment;

(d) Damage to the Environment;

(e) Failure of the affected Element or any other part of the Project to meet a Performance Requirement or any other requirement of the PPA Documents; or

(f) Failure of an Element to meet the Target for a measurement record as set forth in the columns headed "Target" and "Measurement Record" in the Performance and Measurement Table.

Deferral of Compensation means the election of IFA to pay Extra Work Costs or Delay Costs through any one of the following or a combination thereof:

(a) Extension of the Term;

(b) Adjustment of the Availability Payment; or

(c) Periodic payments over the Term.

Delay Costs means Developer's additional costs that result to Controlling Work items from a Relief Event Delay, which are limited to (a) direct costs for the actual idle labor and equipment, (b) the indirect costs and expenses thereof excluding cost of funds (whether debt or equity) and excluding Lender charges, damages and penalties, and (c) profit thereon, all as

calculated pursuant to Exhibit 16 (Extra Work Costs and Delay Costs Specifications) to the Agreement; provided that for delays to non-Controlling Work Items incident to a Relief Event Delay, the term Delay Costs does not include any indirect costs, expenses or profit thereon; provided, further, that, in the event of a Relief Event Delay resulting from concurrent IFA-Caused Delay(s) and delays for which Developer is responsible under the PPA Documents, Developer shall not be entitled to Delay Costs to the extent the Developer is responsible for the delay. Delay Costs do not include any costs that Developer can or could reasonably mitigate.

Department has the meaning set forth in Recital M of the Agreement.

Department MOUs has the meaning set forth in Recital M of the Agreement.

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

Design-Build Contract means that certain agreement between Developer and the Design-Build Contractor of even date herewith for the design and construction of the Project and the related Utility Adjustments included in the Construction Work.

Design-Build Contractor means _____ a _____.

Design Documents means all drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records and submittals necessary for, or related to, the design of the Project and/or the Utility Adjustments included in the Design Work and/or the Construction Work. Design Documents include the Final Design Documents.

Design 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.

Design Quality Management Plan or DQMP means the IFA-approved plan for quality assurance and quality control of the Design Work, as set forth in Section 1.5.2.5 of the Technical Provisions, and which is a deliverable described at Table 20-1 of the Technical Provisions.

Design Quality Manager or **DQM** has the meaning set forth in Section 3.2.6 of the Technical Provisions. The Design Quality Assurance Manager is a Key Personnel listed at Exhibit 2-H to the Agreement.

Design Requirements means all requirements in respect of the Design Work and the Design Documents, including IFA-approved Deviations, in each case as set forth in Sections 5.2.1 and 5.2.4 of the Agreement.

Design Review means any of the reviews of the Design Documents by IFA or its representatives, as described in Section 3.9 of the Technical Provisions.

Design Review Plan and Schedule has the meaning set forth in Section 3.7 of the Technical Provisions, and which is a deliverable described at Table 20-1 of the Technical Provisions.

Design Unit means any logical grouping of component(s) of the Project design assembled into a single package for the purposes of design.

Design Work means all Work of design, engineering or architecture for the Project, Project Right of Way acquisition or Utility Adjustments.

Design Workshop has the meaning set forth in Section 3.16 of the Technical Provisions.

Designer means the design consulting firm(s) with primary responsibility for the design of the Work.

Developer means XXX a _____, together with its permitted successors and assigns.

Developer Default has the meaning set forth in Section 19.1.1 of the Agreement.

Developer-Related Entities means (a) Developer, (b) Developer's Equity Members, (c) Contractors (including Suppliers), (d) any other Persons (except IFA and the Department) performing any of the Work, (e) any other Persons except IFA and the Department) for whom Developer may be legally or contractually responsible, and (f) the employees, agents, officers, directors, representatives, consultants, successors and assign of any of the foregoing.

Developer Release(s) of Hazardous Material means (a) Release(s) of Hazardous Material attributable to the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any Developer-Related Entity, provided that the removal of Hazardous Materials by Developer or a Developer-Related Entity in accordance with the requirements of the Agreement shall not be a "Developer Release of Hazardous Material"; (b) Release(s) of Hazardous Materials arranged to be brought onto the Site or elsewhere by any Developer-Related Entity; regardless of cause, or (c) use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any Developer-Related Entity in violation of the requirements of the PPA Documents or any applicable Law or Governmental Approval.

Developer Utility Agreement has the meaning set forth in Section 15.1.5 of the Technical Provisions.

Developer's Interest means all right, title and interest of Developer in, to, under or derived from the Agreement and the other PPA Documents, including Developer's right, title and interest in and to the Project Right of Entry, Principal Project Documents, Project Management Plan, Contracts, Submittals, Claims and Intellectual Property.

Developer's Schematic Design means the schematic design for the Project submitted by Developer and set forth in Exhibit 2-A (Developer's Schematic Design) to the Agreement.

Deviation means any proposed or actual change, deviation, modification, alteration or exception from the Technical Provisions.

Direct Agreement means the agreement in the form attached as Exhibit 20 to the Agreement by and among IFA, Developer, and the Lender (or if there is more than one Lender, the Collateral Agent on behalf of the Lenders) respecting certain of Lenders' rights under the

PPA Documents. Direct Agreement(s) shall follow the "Form of Direct Agreement" provided as Exhibit 20 to the Agreement in all material respects.

Directive Letter means the letter described in Section 16.3 of the Agreement.

Disadvantaged Business Enterprise or **DBE** has the meaning set forth in Exhibit 7 (IFA's Disadvantaged Business Enterprise (DBE) Special Provisions) to the Agreement.

Discriminatory O&M Change means (a) materially more onerous application to Developer or the Project of alterations or changes (including additions) to the Technical Provisions and Safety Standards relating to the O&M Work than the application thereof to other comparable Department projects, or (b) selective application of alterations or changes (including additions) to the Technical Provisions and Safety Standards relating to the O&M Work to Developer or the Project and not to other comparable the Department projects. Notwithstanding the foregoing, such application in response to any negligence, willful misconduct, or breach of applicable Law, Governmental Approval or contract by Developer or any Developer-Related Entity shall not be Discriminatory O&M Changes. A Discriminatory O&M Change is an IFA Change.

Dispute means any Claim, dispute, disagreement or controversy between IFA and Developer concerning their respective rights and obligations under the PPA Documents, including concerning any alleged breach or failure to perform and remedies.

Disputed Amounts has the meaning set forth in Section 10.3 of the Agreement.

Dispute Resolution Procedures means the procedures for resolving Disputes set forth in Section 19.6 of the Agreement, including the Informal Resolution Procedures.

Distribution means:

Whether in cash or in kind, and both made and projected to be made:

(a) Any:

(i) Dividend or other distribution in respect to share or other capital;

(ii) Payment or other distributions in reduction of capital, redemption or purchase of shares or any other reorganization or variation to share capital;

(iii) Payments (whether of principal, interest, Breakage Costs or otherwise) on Subordinate Debt;

(iv) Payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it is neither in the ordinary course of business nor on reasonable commercial terms; and

(v) Receipt of any other benefit which is not received in the ordinary course of business and not on reasonable commercial terms, or

(b) The early release of any contingent funding liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain.

Such dividends, distributions payments or other benefits include proceeds of any Refinancing.

Early Termination Date means the effective date of termination of the Agreement for any reason prior to the stated expiration of the Term.

Effective Date means the date of the execution of the Agreement by IFA and Developer or such other date as shall be mutually agreed upon in writing by IFA and Developer.

Electrical Safety Observer means an individual competent to assist the individual person performing electrical work, to rescue such individual person performing electrical work, and who has been certified in the last six months to provide cardiopulmonary resuscitation.

Electronic Document Management System means Developer's computerized system for Project document and records management established pursuant to Section 1.5.2.6 of the Technical Provisions.

Element means an individual component, system or subsystem of the Project or of a Utility Adjustment, and shall include at a minimum a breakdown into the items described in the Performance and Measurement Criteria, further subdivided by Performance Sections where appropriate.

Element Category means each of the main headings in the column entitled "Element" in the Performance and Measurement Criteria.

Eligible Investments means any one or more of the following instruments or securities:

(a) Direct obligations of, and obligations fully and unconditionally guaranteed by, (i) the United States of America or (ii) any agency or instrumentality of the United States of America the obligations of which are backed by the full faith and credit of the United States of America;

(b) Demand or time deposits, federal funds or bankers' acceptances issued by any depository institution or trust company, provided that (i) any demand or time deposit or certificate of deposit is fully insured by the Federal Deposit Insurance Corporation or (ii) any commercial paper or the short-term deposit rating or the long-term unsecured debt obligations or deposits of such depository institution or trust company at the time of such investment or contractual commitment providing for such investment have been rated "A" or higher by a Rating Agency;

(c) Commercial paper (including both non-interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than one year after the date of issuance thereof) which has been rated "A" or higher by a Rating Agency at the time of such investment;

(d) Any money market funds, the investments of which consist of cash and obligations fully and unconditionally guaranteed by (i) the United States of America or (ii) any agency or instrumentality of the United States of America the

obligations of which are backed by the full faith and credit of the United States of America and which have been rated "A" or higher by a Rating Agency; and

(e) Other investments then customarily accepted by the State in similar circumstances;

provided, however, that no instrument or security shall be an Eligible Investment if such instrument or security evidences a right to receive only interest payments with respect to the obligations underlying such instrument or if such security provides for payment of both principal and interest with a yield to maturity in excess of 120% of the yield to maturity at par.

Emergency means any unforeseen event affecting the Project, whether directly or indirectly, which (a) causes or has the potential to cause disruption to the free flow of traffic on the Project or a threat to the safety of the public; (b) is an immediate or imminent threat to the long term integrity of any part of the infrastructure of the Project, to the Environment or to property adjacent to the Project; (c) is recognized by the Indiana Department of Public Safety as an emergency; or (d) is recognized or declared by the Governor of the State, the Federal Emergency Management Administration (FEMA), the U.S. Department of Homeland Security or other Governmental Entity with authority to declare an emergency.

Emergency Plan means Developer's plan for emergency prevention, response and services, as part of the PMP, and which is a deliverable described at Table 20-1 of the Technical Provisions.

Emergency Repair Work means any Work performed pursuant to Section 9.2 of the Agreement.

Emergency Services means law enforcement, fire, paramedic, ambulance service and other similar services from agencies with which Developer establishes protocols for incident response, safety and security procedures, as set forth in the Incident Management Plan and Emergency Plan.

Engineer has the meaning set forth in Section 101.20 of the Standard Specifications as modified by Section 21 of the Technical Provisions.

Engineer of Record has the meaning set forth in Section 3.2.5 of the Technical Provisions.

Environment means air, soils, submerged lands, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, biological resources, including endangered, threatened and sensitive species, natural systems, including ecosystems, and historic, archeological and paleontological resources.

Environmental Approvals means all Governmental Approvals arising from or required by any Environmental Law in connection with development of the Project as applicable to the Project and/or the Project, including the NEPA Documents.

Environmental Compliance and Mitigation Plan (ECMP) means Developer's plan, to be prepared under the CEPP described in the Project Management Plan, for performing all environmental mitigation measures set forth in the Environmental Approvals, including the NEPA Documents and similar Governmental Approvals for the Project or the Work, or set forth

in the PPA Documents, and for complying with all other conditions and requirements of the Environmental Approvals, and which is a deliverable described at Table 20-1 of the Technical Provisions.

Environmental Compliance Manager (ECM) means the individual retained or employed by Developer who has the authority and responsibility for monitoring, documenting and reporting environmental compliance for the Work as more particularly described in Section 7.3 of the Technical Provisions. The Environmental Compliance Manager is a Key Personnel listed at Exhibit 2-H to the Agreement.

Environmental Law means any Law applicable to the Project or the Work requiring consideration of environmental impacts or addressing, regulating or imposing liability, actions or standards of conduct that pertains to the Environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, and any lawful requirements and standards that pertain to the Environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, set forth in any permits, licenses, approvals, plans, rules, regulations ordinances or other Governmental Approvals adopted, or other criteria and guidelines promulgated, pursuant to Laws applicable to the Project or the Work, as such have been or are amended, modified, or supplemented from time to time (including any present and future amendments thereto and reauthorizations thereof) including those relating to:

(a) The manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, and transportation of Hazardous Materials;

(b) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;

(c) Releases of Hazardous Materials;

(d) Protection of wildlife, Threatened or Endangered Species, sensitive species, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, and natural resources;

(e) The operation and closure of underground storage tanks;

(f) and safety of employees and other persons; and

(g) Notification, documentation, and record keeping requirements relating to the foregoing.

Without limiting the above, the term “Environmental Laws” shall also include the following:

(i) The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*), as amended;

(ii) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*), as amended;

(iii) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*), as may be further amended;

(iv) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 *et seq.*), as amended;

(v) The Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), as amended;

(vi) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*);

(vii) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et seq*.), as amended;

(viii) The Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), as amended;

(ix) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*), as amended;

(x) The Oil Pollution Act (33 U.S.C. §§ 2701, *et. seq*.), as amended;

(xi) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 *et seq.*), as amended;

(xii) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 *et seq.*), as amended;

(xiii) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 *et seq.*), as amended;

(xiv) The Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*), as amended;

(xv) The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*), as amended;

(xvi) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 *et seq.*), as amended;

(xvii) The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*), as amended;

(xviii) The Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668 *et seq*.), as amended;

(xix) The Migratory Bird Treaty Act (16 U.S.C. §§ 703 *et seq*.), as amended;

(xx) Indiana Statutes, Title 46, Water, Air, Energy, and Environmental Conservation, as amended; and

(xxi) Section 4(f) of the U.S. Department of Transportation Act, 49 U.S.C. § 303(c), as amended).

Environmental Litigation means any lawsuit that is filed in a court of competent jurisdiction and seeks to overturn, set aside, enjoin, or otherwise inhibit the implementation of a federal, state, or local agency's approval of the Project based on the agency's alleged non-compliance with applicable Laws (including Environmental Laws), including but not limited to: the National Environmental Policy Act, 42 U.S.C. § 4231 *et seq.*; Section 4(f) of the Department of Transportation Act, 49 U.S.C. § 303(c); the National Historic Preservation Act, 16 U.S.C. §

470; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Clean Water Act, 33 U.S.C. § 1251 *et seq*.; and the Endangered Species Act, 16 U.S.C. § 1531 *et seq.;* and other federal, state, or local Laws.

Environmental Management System or **EMS** has the meaning set forth in Section 7.3 of the Technical Provisions.

Equity IRR means the nominal post-tax internal rate of return to the Committed Investment described in clause (a) of the definition of Committed Investment, over the full Term calculated, using the Financial Model, as the discount rate that, when applied to Committed Investment cash flows, gives a zero net present value. The Equity IRR initially is equal to the Original Equity IRR. For purposes of this definition:

(a) The phrase "post-tax" refers only to U.S. federal and state income tax liability of Developer or its Equity Members and specifically excludes (i) any foreign income tax and other tax of any kind, and (ii) any withholding tax, including any tax that Developer or an Equity Member is obligated to withhold on Distributions (whether actual or constructive) or other payments or allocations to Equity Members or holders of debt of or equity interests in an Equity Member under 26 U.S.C. §§ 1441 – 1446, notwithstanding 26 U.S.C. § 1461; and

(b) The phrase "cash flows" refers to Distributions described in clause (a) of the definition of Distributions, minus Committed Investment described in clause (a) of the definition of Committed Investment.

Equity Member means any Person with a direct equity interest in Developer.

Equity Transfer means any assignment, mortgage, encumbrance, conveyance, sale, or other transfer of equity interest in Developer.

Erosion and Sediment Control Manager has the meaning set forth in Section 8.3.2 of the Technical Provisions.

Erosion and Sediment Control Plan means 327 IAC 15-5--the Erosion and Sediment Control chapter of the Indiana Design Manual.

Erosion Control Supervisor has the meaning set forth in Section 8.3.2 of the Technical Provisions.

Escalated Benchmark Insurance Premiums has the meaning set forth in Section 17.1.9.7 of the Agreement.

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

Event Day has the meaning set forth in Exhibit 10.

Excluded Premium Increases has the meaning set forth in Section 17.1.9.1 of the Agreement.

Exempt Refinancing means:

(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 XXX XX, XXX.

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 has the meaning set forth at Section 15.1.2 of the Technical Provisions.

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 October 2013 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 [_____].

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 [*insert the date that is 12 months after the Baseline Substantial Completion Date*], 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 and/or 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 11.2.2 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 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 _____ percent (_____%).

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. 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;

(t) 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.cim 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 "Project Technical Provisions," executed by the Parties concurrently with the Agreement, 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.

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.

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.

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.

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.