

19.2.5.2 Where this Agreement is not terminated, such damages include (a) costs IFA incurs to complete the Design Work and Construction Work in excess of the Milestone Payment Amount, and amounts due under Change Orders, not previously paid to Developer, (b) compensation and reimbursements due but unpaid to IFA under the PPA Documents, (c) costs to remedy any defective part of the Work, and (d) costs to rectify any breach or failure to perform by Developer and/or to bring the condition of the Project to that required by the PPA Documents.

19.2.5.3 Where this Agreement is terminated, such damages include the present value of (a) any compensation and reimbursements due but unpaid to IFA under the PPA Documents on or prior to the Early Termination Date, (b) actual and projected costs to remedy any defective part of the Work, (c) actual and projected costs to rectify any breach or failure to perform by Developer and/or to bring the condition of the Project to the standard it would have been in if Developer had complied with its obligations to carry out and complete the Work in accordance with the PPA Documents, (d) actual and projected costs to IFA to terminate, take over the Project, re-procure and replace Developer, (e) actual and projected delay costs, (f) actual and projected increases in costs to IFA to complete the Project if not completed as of the Early Termination Date, and (g) actual and projected increases in costs to IFA to operate and maintain the Project over the balance of the Term (as if termination had not occurred) following the Early Termination Date.

19.2.5.4 Damages owed IFA shall bear interest from and after the date any amount becomes due to IFA until paid at a floating rate equal to the LIBOR in effect from time to time plus four hundred (400) basis points or other rate specified therefor in this Agreement.

19.2.5.5 IFA may deduct and offset any damages owing to it under the PPA Documents from and against any amounts IFA may owe to Developer. Without limiting the foregoing:

a. The Milestone Payments are subject to deduction and offset for the amount of any damages attributable to any Developer Default that concerns the D&C Work and is the subject of a Notice delivered to Developer prior to the date for payment of the Milestone Payments; and

b. Except for damages liquidated by the Quarterly Payment Adjustments under Exhibit 10 (Payment Mechanism), the Availability Payments are subject to deduction and offset for the amount of any damages attributable to any Developer Default.

19.2.6 Remedial Plan Delivery and Implementation

19.2.6.1 Developer recognizes and acknowledges that a pattern or practice of continuing, repeated or numerous Noncompliance Events, whether such Noncompliance Events are cured or not, will undermine the confidence and trust essential to the success of the public-private arrangement under this Agreement and will have a material, cumulative adverse impact on the value of this Agreement to IFA. Developer acknowledges and agrees that measures for determining the existence of such a pattern or practice described in the definition of Persistent Developer Default are a fair and appropriate objective basis to conclude that such a pattern or practice will continue.

19.2.6.2 Upon the occurrence of a Persistent Developer Default (refer to the trigger points in Sections 2.1 and 2.2 of Exhibit 12 (Noncompliance Points System and

Persistent Developer Default), Developer shall, within forty-five (45) days after Notice of the Persistent Developer Default, be required to prepare and submit a remedial plan for IFA approval in its good faith discretion. The remedial plan shall set forth a schedule and specific actions to be taken by Developer to improve its performance and reduce (a) Developer's cumulative number of Noncompliance Points assessed under Section 11.3 and cumulative number of breaches and failures to perform to the point that such Persistent Developer Default will not continue and (b) the cumulative number of Uncured Noncompliance Points outstanding by at least fifty percent (50%). IFA may require that such actions include improving Developer's quality management practices, plans and procedures, revising and restating Management Plans, changing organizational and management structure, increasing monitoring and inspections, changing Key Personnel and other important personnel, replacement of Contractors, and delivering security to IFA.

19.2.6.3 If (a) Developer complies in all material respects with the schedule and specific elements of, and actions required under, the approved remedial plan, (b) as a result thereof Developer achieves the requirements set forth in Sections 19.2.6.2(a) and (b), and (c) as of the date it achieves such requirements there exist no other uncured Developer Defaults for which a Notice was given, then IFA shall reduce the number of cured Noncompliance Points that would otherwise then be counted toward Persistent Developer Default by twenty-five percent (25%). Such reduction shall be taken from the earliest assessed Noncompliance Points that would otherwise then be counted toward Persistent Developer Default.

19.2.6.4 Developer's failure to deliver to IFA the required remedial plan within such forty-five- (45)-day period shall constitute a material Developer Default, which may result in issuance of a Warning Notice triggering a five-day cure period. Failure to comply in any material respect with the schedule or specific elements of, or actions required under, the remedial plan shall constitute a material Developer Default which may result in issuance of a Warning Notice triggering a thirty- (30)-day cure period. Either such Warning Notice may trigger a Default Termination Event under Article 20 if such underlying Developer Default remains uncured after expiration of such five-day or 30-day cure period, as applicable.

19.2.7 Payment Bond and Performance Security

19.2.7.1 Subject to Sections 19.2.7.2 and 19.2.7.3, upon the occurrence of a Developer Default and expiration, without full and complete cure, of the applicable cure period, if any, under Section 19.1.2, without necessity for a Warning Notice, and without waiving or releasing Developer from any obligations, IFA shall be entitled to make demand upon and enforce any Payment Bond and bond provided as Performance Security, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security (including the Handback Requirements Reserve Account) available to IFA under this Agreement with respect to the Developer Default in question in any order in IFA's sole discretion. IFA will apply the proceeds of any such action to the satisfaction of Developer's obligations under this Agreement, including payment of amounts due IFA.

19.2.7.2 If IFA is an additional obligee under a Payment Bond or bond for Performance Security, or is a transferee beneficiary under any letter of credit, or is a guaranteed party (or has elected to become a guaranteed party pursuant to Section 17.4.1), then IFA shall forbear from exercising remedies as additional obligee or transferee beneficiary or guaranteed party, as applicable, as against any bond, letter of credit or guaranty against or under which Collateral Agent is actively pursuing remedies, in each case, only so long as (a) if there exists any executed Direct Agreement (i) Developer or the Collateral Agent as provided therein

commences the good faith, diligent exercise of remedies pursuant to the terms, and subject to the conditions, thereunder and (ii) Developer or the Collateral Agent thereafter continues such good faith, diligent exercise of remedies until the default is cured, or (b) if there exists no executed Direct Agreement, Developer or the Collateral Agent commences the good faith, diligent exercise of remedies within ten (10) days after IFA delivers Notice to Developer and the Collateral Agent of IFA's intent to make a claim under such Payment Bond or bond for Performance Security. The foregoing obligation of IFA to forbear shall not apply, however, where access to a bond, letter of credit, guaranty or other payment or performance security is to satisfy damages owing to IFA, in which case IFA shall be entitled to make demand, draw, enforce and collect regardless of whether the Developer Default is subsequently cured. For purposes of clarity, the foregoing obligation of IFA to forbear reaches all placed Payment Bond(s), Performance Security (bond(s) and letter(s) of credit) and guarantee(s), if any, so long as Developer or Collateral Agent is entitled to pursue and is/are actively pursuing remedies under any of the Payment Bond(s), Performance Security or guarantee(s), if any.

19.2.7.3 No prior Notice from IFA shall be required if it would preclude draw on the bond, letter of credit, guaranty or other payment or performance security before its expiration date; and in the case of an expiring letter of credit, the provisions of Section 17.3.1.3 shall apply.

19.2.7.4 For the avoidance of doubt, Payment Bonds and Performance Security provided by or on behalf of a Design-Build Contractor or other prime Contractor pursuant to Section 17.2 to secure its obligations will not be available with respect to a Developer Default (although it will be available for a corresponding breach, if any, by the Design-Build Contractor or other prime Contractor).

19.2.8 Suspension of Work

19.2.8.1 IFA shall have the right and authority, without obligation or liability, to suspend, in whole or in part, the Work by written order to Developer, due to any of the following, regardless of whether a Developer Default has been declared or any cure period (other than the cure period provided below) has not yet lapsed:

a. Failure to perform the Work in compliance with, or other breach of, the PPA Documents where such failure is not substantially cured within fifteen (15) days after IFA delivers Notice thereof to Developer, except Noncompliance Events where no Persistent Developer Default exists ;

b. Failure to comply with any Law or Governmental Approval (including failure to implement protective measures for Threatened or Endangered Species, failure to handle, preserve and protect archeological, paleontological, cultural or historic resources, or failure to handle Hazardous Materials, in accordance with applicable Laws and Governmental Approvals);

c. Performance of Design Work prior to issuance of NTP1, or if NTP1 has been issued, performance of Design Work prior to all conditions precedent to commencement of Design Work being met (as prescribed under Section 5.3.2), or performance of Construction Work prior to issuance of NTP2;

d. Discovery of Nonconforming Work or of any activity that is proceeding or about to proceed that would constitute or cause Nonconforming Work where the

Nonconforming Work or activity is not substantially cured within fifteen (15) days after IFA delivers Notice thereof to Developer or within such fifteen (15) days Developer provides and submits to IFA a plan for cure such plan to be diligently executed and completed no later than one hundred twenty (120) days after submission of such plan to IFA, unless Developer demonstrates to IFA's reasonable satisfaction that full and complete cure of the Nonconforming Work, and verification of such cure, will remain practicable despite continuation of Work without suspension;

e. Developer has failed to (i) pay in full when due sums owing any Contractor for services, materials or equipment, except only for retainage provided in the relevant Contract and amounts in dispute, or (ii) deliver any certificate, release or certified payroll required under Section 17.2.2.2 where such failure is not substantially cured within fifteen (15) days after IFA delivers Notice thereof to Developer;

f. Failure to provide proof of required insurance coverage as set forth in Section 17.1.2.4 (which suspension is also available in the case of such failure following a written request rather than Notice of Developer Default, as set forth in Section 17.1.2.4);

g. Failure to deliver or maintain Payment Bonds and Performance Security;

h. The existence of conditions unsafe for workers, other Project personnel or the general public, including failures to comply with Safety Standards or perform Safety Compliance as set forth in Section 19.2.3 (and in any such case the order of suspension may be issued without awaiting any cure period); and

i. Failure to carry out and comply with Directive Letters or Safety Compliance Orders where the Nonconforming Work or activity is not substantially cured within fifteen (15) days after IFA delivers Notice thereof to Developer or within such fifteen (15) days Developer provides and submits to IFA a plan for cure, such plan to be diligently executed no later than one hundred twenty (120) after submission of such plan to IFA.

19.2.8.2 In addition to the protections from liability under Section 19.2.3.5, IFA shall have no liability to Developer, and Developer shall have no right to Extra Work Costs, Delay Costs, time extension, extension of Project Schedule Deadlines, compensation for losses due to delays in commencement of Availability Payments or for additional interest costs due to delayed receipt of the Milestone Payment, or other relief, due to any suspension under Section 19.2.8.1.

19.2.8.3 IFA shall have the right and authority to suspend, in whole or in part, the Work for reasons other than those set forth in Section 19.2.8.1. If IFA purports to order suspension of Work under Section 19.2.8.1 but it is finally determined under the Dispute Resolution Procedures that there exist no grounds under Section 19.2.8.1 for such suspension, then it shall be deemed a suspension under this Section 19.2.8.3. If IFA orders (or is deemed to order) suspension of Work under this Section 19.2.8.3 and such suspension is an IFA-Caused Delay, then Developer shall be entitled to submit a Claim for Extra Work Costs, Delay Costs, compensation for losses due to delays in commencement of Availability Payments and for additional interest costs due to delayed receipt of the Milestone Payment, Project Schedule Deadline extensions and performance relief to the extent permitted under Article 15.

19.2.8.4 Developer shall promptly comply with any such written suspension order, even if Developer disputes the grounds for suspension. Developer shall promptly recommence the Work upon receipt of Notice from IFA directing Developer to resume work. IFA will lift the suspension order promptly after Developer fully cures and corrects the applicable breach or failure to perform or any other reason for the suspension order ceases to apply.

19.2.9 Warning Notices

19.2.9.1 Without prejudice to any other right or remedy available to IFA, IFA may deliver a Notice (a "Warning Notice") to Developer, with a copy to the Collateral Agent, stating explicitly that it is a "Warning Notice" of a material Developer Default and stating in reasonable detail the matter or matters giving rise to the Notice and, if applicable, amounts due from Developer, and reminding Developer of the implications of such Notice, whenever there occurs a Developer Default.

19.2.9.2 The issuance of a Warning Notice may trigger a Default Termination Event as provided in Section 20.3.1.

19.2.9.3 IFA may issue a Warning Notice at the same time it delivers a Notice of Developer Default, and a Notice of Developer Default may be issued as a Warning Notice. In either such case, the cure period available to Developer, if any, shall be as set forth in Section 19.1.2. If IFA issues a Warning Notice for any Developer Default after it issues a Notice of such Developer Default, then the remaining cure period available to Developer, if any, for such Developer Default before IFA may terminate this Agreement on account of such Developer Default shall be extended by the time period between the date the Notice of such Developer Default was issued and the date the Warning Notice is issued. However, this shall not affect the time when IFA may exercise any other remedy respecting such Developer Default.

19.2.10 Other Rights and Remedies

Subject to Sections 19.2.12 and 20.9, IFA shall also be entitled to exercise any other rights and remedies available under this Agreement, or available at Law or in equity.

19.2.11 Cumulative, Non-Exclusive Remedies

Subject to Sections 18.4, 19.2.12 and 20.9, and subject to the stipulated remedial measures for the breaches and failures to perform for which Noncompliance Points may be assessed, each right and remedy of IFA hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at Law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by IFA of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by IFA of any or all other such rights or remedies.

19.2.12 Limitation on Consequential Damages

19.2.12.1 Notwithstanding any other provision of the PPA Documents and except as set forth in Section 19.2.12.2, to the extent permitted by applicable Law, Developer shall not be liable for punitive damages or special, indirect or incidental consequential damages, whether arising out of breach by Developer of this Agreement or any other PPA Document, tort (including negligence) or any other theory of liability, and IFA releases Developer from any such liability.

19.2.12.2 The foregoing limitation on Developer's liability for consequential damages shall not apply to or limit any right of recovery IFA may have respecting the following:

a. Losses (including defense costs) to the extent (i) covered by the proceeds of insurance required to be carried pursuant to Section 17.1, (ii) covered by the proceeds of insurance actually carried by or insuring Developer under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to Section 17.1, or (iii) Developer is deemed to have self-insured the Loss pursuant to Section 17.1.4.4;

b. Losses arising out of or relating to fraud, criminal conduct, intentional misconduct (which does not include any intentional Developer Default), recklessness, bad faith or gross negligence on the part of any Developer-Related Entity;

c. Developer's indemnities set forth in Sections 5.9.10 and 17.5 (only to the extent any such indemnities relate to claims, causes of action or Losses asserted by or awarded to third parties);

d. Developer's obligation to pay liquidated damages in accordance with the PPA Documents, including by way of the Quarterly Payment Adjustments;

e. Losses arising out of or relating to Developer Releases of Hazardous Materials;

f. Amounts Developer may owe or be obligated to reimburse to IFA under the express provisions of the PPA Documents, including, subject to any agreed scope of work and budget, IFA's Recoverable Costs;

g. Interest, late charges, fees, transaction fees and charges, penalties and similar charges that the PPA Documents expressly state are due from Developer to IFA; and

h. Any credits, deductions or offsets that the PPA Documents expressly provide to IFA against amounts owing Developer.

19.2.12.3 All insurance policies purchased shall be endorsed to provide coverage as if no limitation on Developer's liability for consequential damages exists.

19.2.13 Other Limitation on IFA's Remedies

IFA's remedies for certain breaches of warranties are limited as provided in Section 18.4.

19.3 Default by IFA; Cure Periods

19.3.1 IFA Default

IFA shall be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions (each an "IFA Default"):

19.3.1.1 IFA fails to make any payment due Developer under this

Agreement when due, provided that such payment is not subject to a Dispute;

19.3.1.2 Subject to Section 18.4, any representation or warranty made by IFA under Section 18.2 is false, misleading or inaccurate in any material respect when made or omits material information when made;

19.3.1.3 IFA fails to observe or perform any other covenant, agreement, term or condition required to be observed or performed by IFA under this Agreement; or

19.3.1.4 IFA, the Department or any other Governmental Entity confiscates, condemns or appropriates any material part of the Developer's Interest, excluding a Termination for Convenience or any other exercise of a right of termination set forth in this Agreement.

19.3.2 Cure Periods

IFA shall have the following cure periods with respect to the following IFA Defaults:

19.3.2.1 Respecting an IFA Default under Section 19.3.1.1, a period of forty-five (45) days after Developer delivers to IFA Notice of the IFA Default; and

19.3.2.2 Respecting an IFA Default under Section 19.3.1.2, 19.3.1.3 or 19.3.1.4, a period of ninety (90) days after Developer delivers to IFA Notice of the IFA Default; provided that (a) if the IFA Default is of such a nature that the cure cannot with diligence be completed within such time period and IFA has commenced meaningful steps to cure immediately after receiving the default Notice, IFA shall have such additional period of time, up to a maximum cure period of one hundred eighty (180) days, as is reasonably necessary to diligently effect cure, and (b) as to Section 19.3.1.2, cure will be regarded as complete when the adverse effects of the breach are cured.

19.4 Developer Remedies for IFA Default

19.4.1 Termination

Subject to Section 20.9, Developer will have the right to terminate this Agreement and recover termination damages as more particularly set forth in, and subject to the terms and conditions of, Section 20.4.

19.4.2 Damages and Other Remedies

Developer shall have and may exercise the following remedies upon the occurrence of an IFA Default and expiration, without cure, of the applicable cure period.

19.4.2.1 If Developer does not terminate this Agreement, then, subject to Section 19.4.4, Developer may treat the IFA Default as a Relief Event on the terms and conditions set forth in Article 15;

19.4.2.2 If the IFA Default is a failure to pay when due any undisputed portion of the Milestone Payment Amount under Section 10.1 or any undisputed portion of a progress payment owing under a Change Order and IFA fails to cure such IFA Default within forty-five (45) days after receiving from Developer Notice thereof, Developer shall be entitled to

suspend Design Work and Construction Work and O&M During Construction, subject to the following terms and conditions:

- a. Developer shall be responsible for safely securing and monitoring the Site and all materials and equipment;
- b. Developer shall continue to provide traffic management in accordance with the Transportation Management Plan and Temporary Traffic Control Plan;
- c. The right to suspend Work does not include the right to suspend or cancel Insurance Policies or any Payment Bond and Performance Security;
- d. The suspension of Work shall cease, and Developer shall resume performance of the Work, within ten (10) days after the default is cured; and
- e. Promptly after IFA receives the Developer Notice described in this Section 19.4.2.2, IFA and Developer shall coordinate to effect a smooth, uninterrupted transition of the O&M During Construction from Developer and its Contractors to IFA or its designated contractor. The Parties shall carry out the relevant provisions of the transition plan required under Technical Provisions Section 18.1.5 for the orderly transition of O&M During Construction to IFA. IFA shall use diligent efforts to complete such transition and assume performance of the O&M During Construction not later than 30 days after receipt of such written notice.

19.4.2.3 Subject to Section 19.4.4 and except as specifically provided otherwise in this Agreement (including the first paragraph of Article 15 and Section 20.9), Developer also shall be entitled to exercise any other remedies available under this Agreement or at Law or in equity, including offset rights to the extent and only to the extent available under Section 19.4.3.

19.4.2.4 Subject to Section 19.4.4 and except as specifically provided otherwise in this Agreement (including the first paragraph of Article 15 and Section 20.9), each right and remedy of Developer hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at Law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Developer of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by Developer of any or all other such rights or remedies.

19.4.3 Offset Rights

19.4.3.1 Developer may deduct and offset any Claim amount owing to it, provided such Claim amount is undisputed or has been fully and finally liquidated through Dispute Resolution Procedures or otherwise, from and against any amounts Developer may owe to IFA.

19.4.3.2 Except as specifically set forth in this Section, Developer shall have no rights of offset or deduction, whether available at Law or in equity, and Developer hereby irrevocably waives and releases any such rights.

19.4.4 Limitations on Remedies

19.4.4.1 Notwithstanding any other provision of the PPA Documents and except as forth in Section 19.4.4.2, to the extent permitted by applicable Law, IFA shall not be liable for punitive damages or special, indirect or incidental consequential damages, whether arising out of breach of this Agreement, tort (including negligence) or any other theory of liability, and Developer releases IFA from any such liability.

19.4.4.2 The foregoing limitation on IFA's liability for consequential damages shall not apply to or limit any right of recovery Developer may have respecting the following:

- a. Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional IFA Default), recklessness, bad faith or gross negligence on the part of IFA;
- b. IFA's liabilities set forth in Section 5.9.6.3;
- c. Losses arising out of IFA Release(s) of Hazardous Materials;
- d. Any amounts IFA may owe or be obligated to reimburse under the express provisions of this Agreement for Relief Events or events of termination;
- e. Amounts IFA may owe or be obligated to reimburse to Developer under the express provisions of the PPA Documents;
- f. Interest and charges that the PPA Documents expressly state are due from IFA to Developer; and
- g. Any credits, deductions or offsets that the PPA Documents expressly provide to Developer against amounts owing IFA.

19.4.4.3 The measure of compensation available to Developer as set forth in this Agreement for an event of termination shall constitute the sole and exclusive monetary relief and damages available to Developer from IFA arising out of or relating to such event; and Developer irrevocably waives and releases any right to any other or additional damages or compensation from IFA. No award of compensation or damages shall be duplicative.

19.4.4.4 Developer shall have no right to seek, and irrevocably waives and relinquishes any right to, non-monetary relief against IFA, except (a) for any sustainable action for relief in the nature of that formerly available in *mandamus*, (b) for any sustainable action to stop, restrain or enjoin use, reproduction, duplication, modification, adaptation or disclosure of Proprietary Intellectual Property in violation of the licenses granted under Section 23.4, or to specifically enforce IFA's duty of confidentiality under Section 23.4.6, (c) for declaratory relief pursuant to the Dispute Resolution Procedures declaring the rights and obligations of the Parties under the PPA Documents, or (d) declaratory relief pursuant to the Dispute Resolution Procedures declaring specific terms and conditions that shall bind the Parties, but only where this Agreement expressly calls for such a method of resolving a Dispute.

19.4.4.5 Without limiting the effect of Section 19.4.4.3 and notwithstanding

Section 19.4.4.4, if IFA wrongfully withholds an approval or consent required under this Agreement, or wrongfully issues an objection to or disapproval of a Submittal or other matter under this Agreement, then Developer's sole remedies against IFA shall be compensation and extensions of time to the extent provided in Article 15.

19.4.4.6 Without limiting the effect of Section 19.4.4.3, Developer shall have no right to suspend Work except as set forth in Section 19.4.2.2.

19.4.4.7 Developer's remedies for certain breaches of warranties are limited as provided in Section 18.4.

19.5 Partnering

19.5.1 The provisions of this Section 19.5 are not part of the Informal Resolution Procedures or the Dispute Resolution Procedures contemplated under this Agreement. Compliance with the provisions of this Section 19.5 or the terms of any partnering charter is not required as a condition precedent to any Party's right to initiate a claim or seek resolution of any Dispute under the relevant procedures specified in Section 19.6.

19.5.2 IFA and Developer have developed and intend to continue fostering a cohesive relationship to carry out their respective responsibilities under this Agreement through a voluntary, non-binding "partnering" process drawing upon the strengths of each organization to identify and achieve reciprocal goals.

19.5.3 The objectives of the partnering process are (a) to identify potential problem areas, issues and differences of opinion early, (b) to develop and implement procedures for resolving them in order to prevent them from becoming Claims and Disputes, (c) to achieve effective and efficient performance and completion of the Work in accordance with the PPA Documents, and (d) to create mutual trust and respect for each Party's respective roles and interests in the Project while recognizing the respective risks inherent in those roles.

19.5.4 In continuance of their existing partnering process, within ninety (90) days after the Effective Date IFA and Developer shall attend a team-building workshop and through such workshop negotiate and sign a mutually acceptable non-binding partnering charter to govern the process of partnering for the Project. The charter shall include non-binding rules and guidelines for engaging in free and open communications, discussions and partnering meetings between them, in order to further the goals of the partnering process. The charter shall call for the formation and meetings of a partnering panel, identify the Key Personnel of Developer and key representatives of IFA who shall serve on the partnering panel, and set the location for meetings. The charter also shall include non-binding rules and guidelines on whether and under what circumstances to select and use the services of a facilitator, where and when to conduct partnering panel meetings, who should attend such meetings, and, subject to Section 19.6.5, exchange of statements, materials and communications during partnering panel meetings. In any event, the partnering charter shall recognize and be consistent with the obligations of IFA and Developer contained in this Agreement with respect to communications, cooperation, coordination and procedures for resolving Claims and Disputes.

19.5.5 Under the non-binding procedures, rules and guidelines of the partnering charter, the Parties will address at partnering meetings specific interface issues, oversight interface issues, division of responsibilities, communication channels, application of alternative resolution principles and other matters.

19.5.6 If Developer and IFA succeed in resolving a Claim or Dispute through the partnering procedures, they shall memorialize the resolution in writing, including execution of Change Orders as appropriate, and promptly perform their respective obligations in accordance therewith.

19.6 Dispute Resolution Procedures

19.6.1 General Provisions

19.6.1.1 Disputes Governed by These Procedures

a. Any Claim or Dispute arising out of, relating to, or in connection with this Agreement that is not resolved by partnering per Section 19.5, including the question as to whether such dispute is subject to nonbinding arbitration, shall be resolved pursuant to this Section 19.6.

b. Resolutions of Claims and Disputes pursuant to this Section 19.6 shall be final, binding, conclusive and enforceable as set forth in this Section 19.6.

c. FAILURE OF DEVELOPER TO CONFORM TO THE DISPUTE RESOLUTION PROCEDURES IN ALL MATERIAL RESPECTS AS TO ANY DISPUTE OR CLAIM SUBJECT THERETO SHALL CONSTITUTE A FAILURE TO PURSUE DILIGENTLY AND EXHAUST THE ADMINISTRATIVE PROCEDURES IN THE PPA DOCUMENTS AND SHALL OPERATE AS A BAR TO THE DISPUTE OR CLAIM. THIS SECTION 19.6.1.1(C) SHALL NOT BAR A CLAIM OR DISPUTE IF THE FAILURE TO MEET APPLICABLE DEADLINES IS DUE TO CONDUCT ON BEHALF OF IFA OR ITS REPRESENTATIVES.

d. The Parties adopt these expedited methods for resolving disputes between or among IFA, Developer, and units of local government that contain any part of the Project, all of whom are proper parties to these dispute resolution procedures.

19.6.1.2 Burden of Proof

The Party bringing a Claim or Dispute shall bear the burden of proving the same.

19.6.2 Informal Resolution as Condition Precedent

As a condition precedent to the right to have any Dispute resolved pursuant to the Dispute Resolution Procedures or by the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana, the claiming Party must first attempt to resolve the Dispute directly with the responding Party through the Informal Resolution Procedures described in Section 19.6.3. Time limitations set forth for those Informal Resolution Procedures may be changed by mutual written agreement of the Parties. Changes to the time limitations for the Informal Resolution Procedures agreed upon by the Parties shall pertain to the particular Dispute only and shall not affect the time limitations for Informal Resolution Procedures applicable to any other or subsequent Disputes.

19.6.3 Informal Resolution Procedures

19.6.3.1 Notice of Dispute to Designated Agent

a. A Party desiring to pursue a Dispute against the other Party shall initiate the informal resolution procedures by serving a Notice on the other Party's designated agent. Unless otherwise indicated by Notice from one Party to the other Party, each Party's designated agent shall be its Authorized Representative. The Notice shall contain a concise statement describing:

i. The date of the act, inaction or omission giving rise to the Dispute;

ii. An explanation of the Dispute, including a description of its nature, circumstances and cause;

iii. A reference to any pertinent provision(s) from the PPA Documents;

iv. If applicable, the estimated dollar amount of the Dispute, and how that estimate was determined (including any cost and revenue element that has been or may be affected);

v. If applicable, an analysis of the Project Schedule and Project Schedule Deadlines showing any changes or disruptions (including an impacted delay analysis reflecting the disruption in the manner and sequence of performance that has been or will be caused, delivery schedules, staging, and adjusted Project Schedule Deadlines);

vi. If applicable, the claiming Party's plan for mitigating the amount claimed and the delay claimed;

vii. The claiming Party's desired resolution of the Dispute; and

viii. Any other information the claiming Party considers relevant.

b. The Notice shall be signed by the Authorized Representative of the claiming Party, and shall contain a written certification by the claiming Party that:

i. The Notice of Dispute is served in good faith;

ii. Except as to specific matters stated in the Notice as being unknown or subject to discovery, all supporting information is reasonably believed by the claiming Party to be accurate and complete;

iii. The Dispute accurately reflects the amount of money or other right, remedy or relief to which the claiming Party reasonably believes it is entitled; and

iv. The Authorized Representative is duly authorized to execute and deliver the Notice and such certification on behalf of the claiming Party.

c. The Parties shall attempt in good faith to resolve such Dispute within fifteen (15) days of delivery of the Notice of Dispute to the responding Party. If the responding Party agrees with the claiming Party's position and desired resolution of the Dispute, it shall so state in a written response. The Notice of the Dispute and such response shall suffice to evidence the Parties' resolution of the subject Dispute unless either Party requests further documentation. Upon either Party's request, within five Business Days after the claiming Party's receipt of the responding Party's response in agreement, the Parties' designated representatives shall state the resolution of the Dispute in writing.

19.6.3.2 Public Finance Director Meetings

If the Dispute is not resolved pursuant to Section 19.6.3.1(c), then commencing within ten (10) Business Days after the Notice of Dispute is served and concluding ten (10) Business Days thereafter, the Chief Executive Officer of Developer and the Public Finance Director or the Public Finance Director's designee, shall meet and confer, in good faith, to seek to resolve the Dispute raised in the claiming Party's Notice of Dispute. If they succeed in resolving the Dispute, Developer and IFA shall memorialize the resolution in writing.

19.6.3.3 Failure to Resolve Dispute with Informal Resolution Procedures

a. If a Dispute is not timely resolved under the Informal Resolution Procedures, then the Parties may mutually agree to initiate mediation.

b. If a Dispute is not timely resolved under the Informal Resolution Procedures or by mediation, or the Parties do not mutually agree to initiate mediation or other alternative dispute resolution process, either Party may:

i. As a condition precedent to the right to have any Dispute within the jurisdiction of the Arbitrator pursuant to Section 19.6.4.2(a) resolved by the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana, refer the Dispute to the Arbitrator for a non-binding determination pursuant to Section 19.6.4.1; or

ii. With respect to all other Disputes, as well as Disputes submitted to but not finally resolved through the Arbitrator, pursue any other relief that may be available in the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana, pursuant to Section 19.6.4.2.

19.6.4 Formal Resolution Procedures

19.6.4.1 Non-binding Arbitration

a. It is the intent of the Parties to resolve the Dispute between them whenever possible by mutual and voluntary settlement rather than through any binding dispute resolution process. In support of this, the Parties acknowledge that, except as otherwise provided herein, if the Dispute cannot be settled through the Informal Resolution Procedures set forth in Section 19.6.3, the Parties agree first to submit their Dispute to non-binding arbitration as a condition precedent to filing litigation under Section 19.6.4.2. The Parties recognize that

non-binding arbitration is a process to assist them in resolving their disputes by making their own free and informed choices and that the neutral Arbitrator will have no authority to impose a binding award on any Party but only to issue an advisory decision. The non-binding award cannot be entered as a judgment in any court, except on mutual consent of the Parties, nor can it be used as evidence or cited as precedent with any preclusive effect, in any court or other proceeding, except for the limited purpose of enforcing a Party's rights pursuant to Section 19.6.4.2(b).

b. A Party shall initiate the non-binding arbitration process by serving a written demand for arbitration on the other Party's designated agent. Unless otherwise indicated by Notice from one Party to the other Party, each Party's designated agent shall be its Authorized Representative. The arbitration demand shall contain a concise statement of the following:

i. The date of the act, inaction or omission giving rise to the Dispute;

ii. An explanation of the Dispute, including a description of its nature, circumstances and cause;

iii. A reference to any pertinent provision(s) from the PPA Documents; and

iv. If applicable, the estimated dollar amount of the Dispute, and how that estimate was determined (including any cost and revenue element that has been or may be affected).

c. The receiving Party shall respond to the demand for arbitration within twenty-one (21) days of receipt thereof.

d. The Parties shall attempt in good faith to select an arbitrator to which they mutually agree within ten (10) days of the Notice of non-binding arbitration. If the Parties are unable to agree on an arbitrator, the Parties agree to select from the most current list of arbitrators as maintained by the Indiana Supreme Court Division of State Court Administration. If the Parties cannot agree, the arbitrator shall be selected through a striking process by which the initiating Party shall strike first. The Parties shall proceed with the striking process until only one arbitrator remains on the list. If the remaining arbitrator does not serve, then the arbitrator's whose name was stricken immediately before shall be selected. This procedure shall be repeated, if necessary, until an arbitrator who agrees to serve is selected. Unless mutually agreed otherwise, the Parties shall complete the process of selecting an arbitrator within twenty (20) days of the Notice initiating non-binding arbitration.

e. The cost of the arbitration shall be equally divided between the Parties, regardless of outcome.

f. Unless otherwise agreed, the arbitration hearing shall take place in Indianapolis, Indiana, at a location to be mutually agreed upon or determined by the Arbitrator. The hearing shall be scheduled for a date no later than ninety (90) days after the demand for arbitration is sent.

g. The rules of discovery set forth in Indiana Rules of Civil Procedure shall apply. Notwithstanding the preceding sentence, each Party shall disclose to the other party witnesses and exhibits intended for use in the proceedings. The claiming Party shall make all of its disclosures no later than forty-five (45) days after the date of the filing of the demand for arbitration under Section 19.4.6.1(b). The responding Party shall make all of its disclosures no later than thirty (30) days after the date that is forty-five (45) days after the date of the filing of the demand for arbitration under Section 19.4.6.1(b). Unless agreed otherwise, each Party shall be entitled to take no more than two depositions.

h. No later than thirty (30) days before the hearing, each Party shall provide the Arbitrator and the opposing Party with a listing of witnesses and documentary evidence to be considered. The listing of witnesses shall designate those to be called in person, by deposition and/or by written report.

i. Unless otherwise agreed, all documents the Parties desire to be considered in the arbitration process shall be filed with the Arbitrator and exchanged between the Parties no later than fifteen (15) days prior to the arbitration hearing. In addition, no later than five (5) days prior to hearing, each Party may file with the Arbitrator a pre-arbitration brief setting forth the factual and legal positions as to the issues being arbitrated.

j. Unless agreed otherwise, the arbitration hearing shall be limited to three (3) days, and the Arbitrator shall issue its written determination within twenty (20) days of the close of the hearing and shall serve a copy of this determination on the Parties who participated in the arbitration.

k. If the non-binding arbitration is not completed and the Parties do not reach a mutually agreeable settlement within one hundred twenty (120) days after initiation of the non-binding arbitration, either Party may continue to pursue the Dispute by filing a complaint in the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana, or the Parties may mutually agree to extend the time for non-binding arbitration.

l. If neither Party rejects the Arbitrator's non-binding determination within thirty (30) days of its being issued by the Arbitrator, such decision shall become final and binding as between the Parties, and shall be enforceable in any court of competent jurisdiction.

m. If one Party rejects the Arbitrator's determination, then it shall send a Notice of its objection/rejection to the other Party within thirty (30) days of such decision and either Party may proceed with state court litigation as provided in Section 19.6.4.2.

n. The non-binding arbitration proceedings shall be considered as settlement negotiations and shall be governed by Section 19.6.5.1.

o. If the amount at issue in the Dispute is greater than \$5,000,000, then at IFA's sole discretion the Dispute may proceed directly from the Informal Resolution Procedures in Section 19.6.3 to state court litigation per Section 19.6.4.2. IFA shall advise Developer of its decision to forgo the non-binding arbitration procedures by Notice submitted no later than the date by which the response to an arbitration demand is due. For clarification, if there is no arbitration hearing and decision under the paragraph, then the attorneys' fees provisions in Section 19.6.4.2(b) shall not apply.

19.6.4.2 State Court Litigation

a. If a Party rejects the Arbitrator's determination in accordance with Section 19.6.4.1(m), or IFA determines to forego non-binding arbitration in accordance with Section 19.6.4.1(o), then either Party may thereafter file a lawsuit in the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana.

b. If the Party that rejected the Arbitrator's decision does not obtain a more favorable result at the trial court level in the state court litigation, that Party shall be responsible to pay for the litigation costs, including the attorneys' fees, incurred by the other Party in the state court litigation.

19.6.5 Confidentiality of Settlement Negotiations and Other Documents Used in Dispute Resolution Process

19.6.5.1 All discussions, negotiations, Informal Resolution Procedures described in Section 19.6.3 and non-binding arbitration proceedings described in Section 19.6.4 between the Parties to resolve a Dispute, and all documents and other written materials furnished to a Party or exchanged between the Parties during any such discussions, negotiations, procedures or proceedings shall be considered confidential and not subject to disclosure by either Party.

19.6.5.2 During any arbitration, alternative dispute resolution or judicial proceeding regarding a Dispute, all information that has been deposited in an Intellectual Property Escrow pursuant to Section 23.5 shall be available as evidence but treated as confidential and subject to a protective order issued by the Arbitrator or court to protect the information from public disclosure.

19.6.5.3 The Parties may also request a protective order in any arbitration, alternative dispute resolution or judicial proceeding to prohibit the public disclosure of any other information they believe is confidential. Determinations of such requests by the Arbitrator or court shall be governed by the standards in the Indiana Rules of Evidence and Indiana Rules of Trial Procedure and/or Indiana's Administrative Rules, as applicable.

19.6.6 Administrative Hearings; Venue and Jurisdiction

19.6.6.1 IFA acknowledges that Developer Claims are not subject to the jurisdiction of any Indiana administrative agency, and IFA agrees that no defense based on failure to exhaust administrative remedies not otherwise set forth in this Agreement may be raised in any court proceeding arising out of or relating to the Project.

19.6.6.2 The Parties agree that the exclusive original jurisdiction and venue for any legal action or proceeding, at Law or in equity, that is permitted to be brought by a Party in court arising out of the PPA Documents shall be the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana.

19.6.7 Continuation of Disputed Work and Payments

19.6.7.1 At all times during Dispute Resolution Procedures, Developer and all Contractors shall continue with the performance of the Work and their obligations, including any disputed Work or obligations, diligently and without delay, in accordance with this

Agreement, except to the extent enjoined by order of a court or otherwise approved by IFA in its sole discretion. Developer acknowledges that it shall be solely responsible for the results of any delaying actions or inactions taken during the course of Dispute Resolution Procedures relating to the disputed Work even if Developer's position in connection with the Dispute ultimately prevails.

19.6.7.2 During the course of any Dispute Resolution Procedures, the Parties shall continue to comply with all provisions of the PPA Documents, the Project Management Plan, the Governmental Approvals and applicable Law.

19.6.7.3 Throughout the course of any disputed Work, Developer shall keep complete records that provide a clear distinction between the incurred direct and indirect costs of disputed Work and that of undisputed Work. Developer shall provide IFA access to all Project-related Books and Records on an Open Book Basis as IFA desires to evaluate the Dispute. The Arbitrator shall have similar access to all such records. These records shall be retained for a period of not less than one (1) year after the date of resolution of the Dispute pertaining to such disputed Work (or for any longer period required under any other applicable provision of the PPA Documents).

19.6.7.4 During the course of any Dispute Resolution Procedures, IFA shall continue to pay to Developer when due all undisputed amounts owing under this Agreement.

ARTICLE 20. TERMINATION

20.1 Termination for Convenience

20.1.1 IFA may terminate this Agreement in whole, but not in part, if IFA determines, in its sole discretion, that termination is in IFA's best interest (a "Termination for Convenience"). Termination of this Agreement shall not relieve Developer or any Guarantor or Surety of its obligation for any claims arising prior to termination.

20.1.2 IFA may exercise Termination for Convenience by delivering to Developer a Notice of Termination for Convenience specifying the election to terminate. Termination for Convenience shall be effective as and when provided in Section 1 of Exhibit 21 (Early Termination Dates and Terms for Termination Compensation).

20.1.3 In the event of a Termination for Convenience, Developer will be entitled to compensation determined in accordance with Section 1 of Exhibit 21 (Early Termination Dates and Terms for Termination Compensation). Payment will be due and payable as and when provided in Section 1 of Exhibit 21 (Early Termination Dates and Terms for Termination Compensation).

20.1.4 If IFA terminates this Agreement on grounds or in circumstances beyond IFA's termination rights specifically set forth in this Agreement, such termination shall be deemed a Termination for Convenience for the purpose of determining the amount of Termination Compensation due (but not for any other purpose).

20.2 Termination for Extended Relief Event, Extended Permitted Closure or Commercially-Unreasonable Insurance Availability

20.2.1 Notice of Conditional Election to Terminate – Extended Relief Event or Extended Permitted Closure

Either Party may deliver to the other Party Notice of its conditional election to terminate this Agreement under the following circumstances:

20.2.1.1 One or both of the following have occurred:

a. One or more Relief Events occur before the Substantial Completion Date and the resulting Relief Event Delays exceed two hundred twenty (220) days in the aggregate, except that in the case of a Relief Event under clause (s) of the definition thereof (court order prohibits prosecution of any portion of the Work), in which case IFA may elect to deliver such Notice if the resulting Relief Event Delay exceeds, or IFA establishes to a high degree of certainty that the resulting Relief Event Delays will exceed one hundred eighty (180) days in the aggregate, even if such date arrives or would arrive before two hundred twenty (220) days of aggregate Relief Event Delays; or

b. A Permitted Closure affecting all or substantially all of the lanes of travel through the Project persists for a consecutive period of two hundred twenty (220) days or more, provided that IFA may elect to deliver such Notice before such time period elapses if IFA establishes to a high degree of certainty that such a Permitted Closure will persist for a consecutive period of two hundred twenty (220) days or more, provided such Permitted Closure has persisted for a consecutive period of ninety (90) days;

20.2.1.2 The Notice sets forth:

- a. The notifying Party's intent to terminate this Agreement;
- b. In reasonable detail the Relief Event or Permitted Closure;
- c. A description of the direct result and its duration;
- d. In the case of Notice from IFA given before the applicable period of time has elapsed, facts and analysis establishing the high degree of certainty required; and
- e. In the case of a Notice from Developer, an estimate (with supporting documentation) of the compensation that would be paid or reimbursed to Developer under Section 20.2.4.1.

20.2.1.3 Except as specifically provided above, the Notice is delivered after such result has occurred, and such result is continuing at the time of delivery of the Notice; and

20.2.1.4 Developer could not have mitigated or cured, or will not be able to mitigate or cure, such result through the exercise of diligent efforts.

20.2.2 Notice of Election to Terminate – Commercially-Unreasonable Insurance Availability

IFA may deliver to Developer Notice of its conditional election to terminate this Agreement in the event of Commercially-Unreasonable Insurance Availability.

20.2.3 Developer Options upon IFA Notice

20.2.3.1 If IFA gives Notice of conditional election to terminate, Developer shall have the option either to accept such Notice or to continue this Agreement in effect by delivering to IFA Notice of Developer's choice not later than thirty (30) days after IFA delivers its Notice. If Developer desires to dispute IFA's right to terminate, then it shall include in its Notice both Developer's choice and a Notice of protest and dispute, in which case Developer's choice will be effective contingent upon resolution of the protest and dispute in favor of IFA. If Developer does not deliver such Notice within such thirty- (30)-day period, then it shall be conclusively deemed to have accepted IFA's election to terminate this Agreement.

20.2.3.2 In the case of a conditional election to terminate under Section 20.2.1, if Developer delivers timely Notice choosing to continue this Agreement in effect, then:

a. IFA shall have no obligation to compensate Developer for any costs of restoration and repair arising out of the Relief Event or Permitted Closure, as applicable;

b. IFA shall have no obligation to compensate Developer for any loss of Availability Payments or for any other Extra Work Costs or Delay Costs arising out of the continuation of the Relief Event or Closure beyond the applicable time period set forth in Section 20.2.1, and for this purpose the Closure shall not qualify as a Permitted Closure beyond two hundred seventy (270) consecutive days;

c. If the Relief Event occurs prior to the Final Acceptance Date and results in a Relief Event Delay, Developer shall be entitled to an extension of the applicable Project Schedule Deadlines in accordance with the PPA Documents; provided that IFA may require delivery and implementation of a logic-based critical path recovery schedule for reducing further delay in the D&C Work; and

d. This Agreement shall continue in full force and effect and IFA's election to terminate shall not take effect.

20.2.3.3 In the case of existence or occurrence of Commercially-Unreasonable Insurance Availability, if Developer delivers timely Notice choosing to continue this Agreement in effect, then:

a. IFA shall have no liability for harm or loss from the risks that are the subject of Commercially-Unreasonable Insurance Availability, except to the extent caused by IFA's fraud, criminal conduct, intentional misconduct, recklessness, bad faith or breach of the PPA Documents;

b. Developer shall be irrevocably deemed to self-insure all such harm and loss, including harm or loss to IFA and third parties, as provided in Section

17.1.4.4, except to the extent caused by IFA's fraud, criminal conduct, intentional misconduct, recklessness, bad faith or breach of the PPA Documents;

c. Developer shall solely bear and pay all insurance premiums in excess of the Commercially Reasonable Insurance Rates during the period of Commercially-Unreasonable Insurance Availability;

d. Developer shall promptly and diligently repair and restore all damage and destruction to the Project arising out of occurrence at any time during Commercially-Unreasonable Insurance Availability of the risks that are the subject of the Commercially-Unreasonable Insurance Availability, in order to put the Project in a safe, good and sound condition in compliance with all applicable provisions of the PPA Documents; and

e. This Agreement shall continue in full force and effect and IFA's election to terminate shall not take effect.

20.2.4 IFA Options upon Developer Notice

If Developer gives Notice of conditional election to terminate as provided in Section 20.2.1 IFA shall have the option either to accept such Notice or to continue this Agreement in effect by delivering to Developer Notice of IFA's choice not later than thirty (30) days after Developer delivers its Notice. If IFA desires to dispute Developer's right to terminate, then it shall include in its Notice both IFA's choice and a Notice of protest and dispute, in which case IFA's choice will be effective contingent upon resolution of the protest and dispute in favor of Developer. If IFA does not deliver such Notice within such thirty- (30)-day period, then it shall be conclusively deemed to have accepted Developer's election to terminate this Agreement. If IFA delivers timely Notice choosing to continue this Agreement in effect, then the following provisions shall apply.

20.2.4.1 IFA shall pay or reimburse Developer an amount equal to (without duplicative counting):

a. Only as to Relief Event Delays under Section 20.2.1.1(a), the Extra Work Costs to repair and restore any physical damage or destruction to the Project and Delay Costs, if any, directly caused by the Relief Event which are not excluded under Section 15.7.9 and are incurred after the date Developer delivers its Notice of conditional election to terminate; plus

b. Compensation calculated and paid in accordance with Sections 15.2 and 15.3, provided that if Developer delivers its Notice of conditional election to terminate prior to Substantial Completion, then the two hundred twenty (220)-day limitation in Sections 15.2.4 and 15.3.3 shall not apply; minus

c. The sum of (i) the greater of (A) the proceeds of insurance (including casualty insurance and business interruption insurance) that is required to be carried pursuant to Section 17.1 and provides coverage to pay, reimburse or provide for any of the foregoing costs and losses or (B) the proceeds of insurance (including casualty insurance and business interruption insurance) that is actually carried by or insuring Developer under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to Section 17.1, and that provides coverage to pay, reimburse or provide for any of the

foregoing costs and losses, and (ii) the foregoing costs and losses that Developer is deemed to have self-insured pursuant to Section 17.1.4.4.

20.2.4.2 Developer's rights to delay and relief from performance obligations under Article 15 shall continue to apply to the Relief Event.

20.2.4.3 This Agreement shall continue in full force and effect and Developer's election to terminate shall not take effect.

20.2.5 Unconditional Right to Terminate

If either the Relief Event Delay or Closure described in Section 20.2.1.1 continues for twelve (12) months or more from its inception, either Party may deliver to the other Party a new Notice of its unconditional election to terminate this Agreement, in which case neither Party shall have any further option to continue this Agreement in effect.

20.2.6 No Waiver

No election by either IFA under Section 20.2.4 or Developer under Section 20.2.3 to continue this Agreement in effect shall prejudice or waive the respective Party's right to thereafter give a Notice of conditional election to terminate with respect to the same or any other Relief Event Delay, Permitted Closure or, with respect to IFA only, Commercially-Unreasonable Insurance Availability.

20.2.7 Concurrent Notices

If IFA and Developer deliver concurrent Notices of conditional election to terminate under this Section 20.2, Developer's Notice shall prevail. Notices shall be deemed to be concurrent if each Party sends its Notice before actually receiving the Notice from the other Party. Knowledge of the other Party's Notice obtained prior to actual receipt of the Notice shall have no effect on determining whether concurrent Notice has occurred.

20.2.8 Early Termination Date and Amount

If either Party accepts the other Party's conditional election to terminate, or if either Party delivers Notice of its unconditional election to terminate under Section 20.2.5, then this Agreement shall be deemed terminated on an Early Termination Date as described in Section 2 of Exhibit 21 (Early Termination Dates and Terms for Termination Compensation); and Developer will be entitled to compensation determined in accordance with Section 2 of Exhibit 21 (Early Termination Dates and Terms for Termination Compensation). Payment will be due and payable as and when provided in Section 2 of Exhibit 21 (Early Termination Dates and Terms for Termination Compensation).

20.3 Termination for Developer Default

20.3.1 Developer Defaults Triggering IFA Termination Rights

Developer agrees, acknowledges and stipulates that any of the following Developer Defaults would result in material and substantial harm to IFA's rights and interests under this Agreement and therefore constitute a material Developer Default justifying termination if not cured within the applicable cure period, if any. After expiration of the applicable cure period (if

any) provided to Developer under this Agreement, the following Developer Defaults (each a “Default Termination Event”) shall, subject to the provisions of Article 21 and any Direct Agreement, entitle IFA, at its sole election, to terminate this Agreement and the other PPA Documents by delivering Notice of termination to Developer and the Collateral Agent under the Security Documents and the Direct Agreement other than Subordinated Security Documents. Termination shall be effective as and when provided in Section 3 of Exhibit 21 (Early Termination Dates and Terms for Termination Compensation).

20.3.1.1 There occurs any Developer Default under Section 19.1.1.1, 19.1.1.2, 19.1.1.3(a), 19.1.1.5 (but only for a material failure to pay or deposit), 19.1.1.7 (but only for a material violation of this Agreement, the Technical Provisions, Governmental Approvals or Laws, as determined by IFA in its good faith discretion), 19.1.1.11, 19.1.1.14, 19.1.1.15, 19.1.1.16, 19.1.1.17, or 19.1.1.18; or

20.3.1.2 There occurs any other Developer Default for which IFA issues a Warning Notice under Section 19.2.9 and such Developer Default is not fully and completely cured within the applicable cure period, if any, set forth in Section 19.1.2 or available to Lenders under Article 21 or a Direct Agreement, provided that this provision shall have no effect in the circumstances governed by Section 18.4.

20.3.1.3 Notwithstanding anything herein to the contrary,

a. IFA shall not have the right to terminate this Agreement solely due to Developer’s failure to achieve Substantial Completion by the Baseline Substantial Completion Date; and

b. IFA shall not have the right to terminate this Agreement solely due to Developer’s failure to achieve Final Acceptance by the Final Acceptance Deadline.

20.3.2 Compensation to Developer

If IFA issues Notice of termination of this Agreement due to a Default Termination Event, or if Developer terminates this Agreement on grounds or in circumstances beyond Developer’s termination rights specifically set forth in this Agreement, Developer will be entitled to compensation to the extent (if any), and only to the extent, provided in Section 3 of Exhibit 21 (Early Termination Dates and Terms for Termination Compensation). Payment (if any) shall be due and payable as and when provided in Section 3 of Exhibit 21 (Early Termination Dates and Terms for Termination Compensation).

20.3.3 Finality

If IFA issues Notice of termination of this Agreement due to a Default Termination Event, termination shall be effective and final regardless of whether IFA is correct in determining that it has the right to terminate for Developer Default. If it is determined that IFA lacked such right, then such termination shall be treated as a Termination for Convenience as provided in Section 20.1.4 for the purpose of determining the Termination Compensation due.

20.4 Termination for IFA Default, Suspension of Work or Delayed Notice to Proceed

20.4.1 In the event of a material IFA Default under Section 19.3.1.1 or Section 19.3.1.4 that, in either case, remains uncured following Notice and expiration of the applicable

cure period under Section 19.3.2, Developer may deliver to IFA a further Notice setting forth such IFA Default and warning IFA that Developer may elect to terminate this Agreement if IFA does not cure such IFA Default within thirty (30) days after the delivery of such Notice. IFA may avoid termination by effecting cure within such thirty- (30)-day period. Failing such cure, Developer shall have the right to terminate this Agreement, effective as and when provided in Section 4 of Exhibit 21 (Early Termination Dates and Terms for Termination Compensation).

20.4.2 In the event of an IFA Default under Section 19.3.1.3 that remains uncured following Notice and expiration of the applicable cure period under Section 19.3.2, Developer shall have the right to terminate this Agreement, effective immediately upon delivery of Notice of termination to IFA.

20.4.3 If IFA orders Developer to suspend Work on all or any material portion of the Project for a reason other than those set forth in Section 19.2.8.1 and such suspension of Work continues for a period of two hundred seventy (270) days or more, Developer shall have the right to terminate this Agreement, effective immediately upon delivery of Notice of termination to IFA.

20.4.4 In the event of termination under Section 20.4.1, 20.4.2 or 20.4.3, Developer will be entitled to compensation determined in accordance with Section 4 of Exhibit 21 (Early Termination Dates and Terms for Termination Compensation). Payment shall be due and payable as and when provided in Section 4 of Exhibit 21 (Early Termination Dates and Terms for Termination Compensation). Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures. This provision shall have no effect, however, where, at the time such right to terminate would arise, circumstances exist entitling either Party to terminate under Section 20.2, 20.3 or 20.5.

20.4.5 If IFA for any reason does not issue NTP1 or NTP2 within 60 days after satisfaction of the conditions set forth in Sections 5.3.1 and 5.6.1, respectively, Developer shall have the right to terminate this Agreement, effective immediately upon delivery of Notice of termination to IFA. In the event of such termination, Developer will be entitled to compensation determined in accordance with Section 4 of Exhibit 21 (Early Termination Dates and Terms for Termination Compensation). Payment shall be due and payable as and when provided in Section 4 of Exhibit 21 (Early Termination Dates and Terms for Termination Compensation). Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

20.4.6 If Developer issues Notice of termination of this Agreement under this Section 20.4, termination shall be effective and final immediately upon delivery of such Notice regardless of whether Developer is correct in determining that it has the right to terminate. If it is determined that Developer lacked such right, then such termination shall be treated as a termination due to material Developer Default and Section 20.3.2 shall govern the measure of the Termination Compensation (if any).

20.5 Termination by Court Ruling

20.5.1 Termination by Court Ruling becomes effective as and when provided in Section 5 of Exhibit 21 (Early Termination Dates and Terms for Termination Compensation).

20.5.2 Once Termination by Court Ruling becomes effective, IFA and Developer shall cooperate to implement Sections 20.7, 20.8, 20.9 and 20.10.

20.5.3 Notwithstanding Section 20.5.2, if a Termination by Court Ruling occurs, Developer shall be entitled to compensation to the extent, and only to the extent, provided in Section 5 of Exhibit 21 (Early Termination Dates and Terms for Termination Compensation). Payment shall be due and payable as and when provided in Section 5 of Exhibit 21 (Early Termination Dates and Terms for Termination Compensation). Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

20.6 Termination for Failure of Financial Close

20.6.1 Developer or IFA may terminate this Agreement without fault or penalty if Financial Close does not occur by the Financial Close Deadline and such failure is directly attributable to any of the contingencies set forth in Section 13.7.7. However, Notice of termination shall obligate IFA and Developer to engage in good faith negotiations for a minimum period of thirty (30) days before such termination is effective. Termination shall take effect at the end of such thirty- (30)-day period unless the Parties otherwise agree in writing. In the event of such a termination:

20.6.1.1 All the PPA Documents shall be deemed terminated;

20.6.1.2 IFA and Developer shall take all actions specified to occur on or about the Termination Date set forth in Section 20.7;

20.6.1.3 IFA shall return to Developer the Financial Close Security on the Termination Date; and

20.6.1.4 Developer shall be entitled to compensation to the extent, and only to the extent, provided in Section 6 of Exhibit 21 (Early Termination Dates and Terms for Termination Compensation). Payment shall be due and payable as and when provided in Section 6 of Exhibit 21 (Early Termination Dates and Terms for Termination Compensation). Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

20.6.2 If Developer fails to achieve Financial Close by the Financial Close Deadline, such failure is not directly attributable to any of the contingencies set forth in Section 13.7.7, and neither Party is then entitled to terminate this Agreement under Section 20.5, then the following terms and conditions shall apply.

20.6.2.1 IFA shall have the right to terminate this Agreement upon five days' prior Notice to Developer, without need for Warning Notice or any other Notice and without any additional cure period, unless Developer achieves Financial Close in accordance with the conditions set forth in Section 13.7.5 within such five-day period.

20.6.2.2 In the event of such termination, Developer shall be liable for and pay to IFA liquidated damages for such failure in the amount of the Financial Close Security. Such liquidated damages shall constitute IFA's sole right to damages on account of such failure.

20.6.2.3 Upon or after the effective date of termination, IFA shall be entitled to collect the liquidated damages owing under this Section 20.6 through a draw on or forfeiture of the Financial Close Security, as applicable, without prior Notice to or demand upon Developer for such liquidated damages.

20.6.3 Developer acknowledges that the time period IFA has provided to Developer to achieve Financial Close is ample and reasonable, and that such liquidated damages are reasonable in order to compensate IFA for damages it will incur as a result of the lost opportunity to IFA represented by the PPA Documents. Such damages include the harm from the difficulty, and substantial additional expense, to IFA, to procure and deliver, operate and maintain the Project through other means, loss of or substantial delay in use, enjoyment and benefit of the Project by the general public, and injury to the credibility and reputation of IFA's transportation improvement program, with policy makers, other Governmental Entities and the general public who depend on and expect availability of service. Developer further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it.

20.7 Termination Procedures and Duties

Upon expiration of the Term, the provisions of this Section 20.7 shall apply. Developer shall timely comply with such provisions independently of, and without regard to, the timing for determining, adjusting, settling and paying any amounts due Developer or IFA on account of termination. If Developer fails to timely comply with the provisions of this Section 20.7, as judged by IFA in its sole discretion, then upon Notice from IFA to Developer making reference to this Section 20.7, Developer hereby stipulates that, and shall be deemed to have, surrendered its access rights under the Project Right of Entry and otherwise under the PPA.

20.7.1 Performance of Work Pending Early Termination Date

In any case where Notice of termination precedes the effective Early Termination Date, Developer shall continue performing the Work in accordance with, and without excuse from, all the standards, requirements and provisions of the PPA Documents, and without curtailment of services, quality and performance.

20.7.2 Transition Plan

20.7.2.1 Not later than ninety (90) days prior to expiration of the Term, or, if applicable, within three (3) days after Developer receives or delivers a Notice of termination, Developer shall meet and confer with IFA for the purpose of developing a transition plan for the orderly transition of Work, demobilization and transfer of Project management, maintenance, operation and control to IFA. The Parties shall use diligent efforts to complete preparation of the transition plan not later than thirty (30) days prior to expiration of the Term or, if applicable, within fifteen (15) days after the date Developer receives or delivers the Notice of termination.

20.7.2.2 The transition plan shall include a plan to promptly deliver to IFA or its designee possession of all the property, data and documents described in Sections 20.7.6.1 and 20.7.6.2.

20.7.2.3 The transition plan shall include an estimate of costs and expenses to be incurred by both Parties in connection with implementation of the transition plan. Neither Party shall be liable for the other Party's transition costs and expenses, regardless of the reason for termination.

20.7.2.4 The transition plan shall be in form and substance acceptable to IFA in its good faith discretion and shall include and be consistent with the other provisions and procedures set forth in this Section 20.7, all of which procedures Developer shall immediately

follow, regardless of any delay in preparation or acceptance of the transition plan.

20.7.3 Relinquishment and Possession of Project

20.7.3.1 Subject to Developer's limited rights of access pursuant to Section 20.7.3.4, on the Termination Date, or as soon thereafter as is possible or as is provided in the approved transition plan, Developer shall relinquish and surrender all management, custody and control of the Project, and Project Right of Way to IFA or IFA's Authorized Representative, and shall cause all persons and entities claiming under or through Developer to do likewise, in at least the condition required by the Handback Requirements.

20.7.3.2 On the later of the Termination Date or the date Developer relinquishes all management, custody and control (having fully performed its obligations under this Section 20.7), IFA shall have the exclusive right to, and shall assume responsibility at its expense for, management, custody and control of the Project and the Project Right of Way, subject to any rights to damages against Developer where the termination is due to a Default Termination Event.

20.7.3.3 On the Termination Date or as soon thereafter as is possible or as is provided in the approved transition plan, Developer shall execute, acknowledge and deliver to IFA a Notice, in form and substance acceptable to IFA, acting reasonably, acknowledging that Developer relinquishes, as of the Termination Date, Developer's right and license given by IFA pursuant to Section 2.1.2 with respect to the Project and the Project Right of Way.

20.7.3.4 On the Termination Date, or such later date as is agreed in the approved transition plan, IFA grants to Developer a right to access the Project ROW for the limited purpose of carrying out Developer's obligations contemplated by this Section 20.7, including without limitation, execution of the transition plan contemplated in Section 20.7.2. This right of access shall automatically expire upon Developer's fulfillment of such obligations.

20.7.4 Continuance or Termination of Key Contracts Prior to Work Completion

20.7.4.1 If as of the Termination Date Developer has not completed the Work, in whole or in part, IFA shall elect, by Notice to Developer not later than thirty (30) days after the Termination Date, to continue in effect the relevant Key Contracts or to require their termination. IFA may elect to keep certain Key Contracts in effect and require termination of other Key Contracts. If IFA does not deliver Notice of election within such time period, IFA shall be deemed to elect to require termination of the applicable Key Contract(s). If IFA elects to continue any Key Contracts, then Developer shall execute and deliver to IFA a written assignment, in form and substance acceptable to IFA, acting reasonably, of all Developer's right, title and interest in and to such Key Contracts, and IFA shall assume in writing Developer's obligations thereunder that arise from and after the later of the Termination Date or the effective date of assignment.

20.7.4.2 If IFA elects (or is deemed to elect) to require termination of any Key Contracts, then Developer shall:

a. Take such steps as are necessary to terminate the relevant Key Contracts, including notifying each Key Contractor that its Key Contract is being terminated and that each of them is to immediately stop work and stop and cancel orders for materials, services or facilities unless otherwise authorized in writing by IFA;

b. Immediately demobilize and secure in a safe manner Project Specific Locations and any other staging, lay down and storage areas used by such Key Contractors for the Project in a manner satisfactory to IFA, and remove all debris and waste materials (including Hazardous Materials that are in the process of removal) except as otherwise approved by IFA in writing;

c. Take such other actions as are necessary or appropriate to mitigate further cost;

d. Subject to IFA's reasonable prior written approval, settle all outstanding liabilities and all claims arising out of such Key Contracts;

e. As a condition to Developer receiving all payments required to be paid by IFA under Article 20 and pursuant to the requirements of the transition plan, cause each of the Key Contractors to execute and deliver to IFA a written assignment, in form and substance acceptable to IFA, acting reasonably, of all of their right, title and interest in and to (i) all Governmental Approvals to the extent legally assignable, Utility Agreements and other third-party agreements and permits pertaining to the Project or the Work, except subcontracts for performance of the Work, provided IFA assumes in writing all of the Key Contractor's obligations thereunder that arise after the Termination Date, and (ii) all warranties, to the extent assignable, claims and causes of action held by each of them against subcontractors and other third parties pertaining to the Project or the Work; and

f. As a condition to Developer receiving all payments required to be paid by IFA under Article 20 and pursuant to the requirements of the transition plan, carry out such other directions as IFA may give for termination of the Work in accordance with the transition plan.

20.7.5 [reserved]

20.7.6 Other Close-Out Activities

20.7.6.1 Not later than ninety (90) days prior to the expiration of the Term, or within thirty (30) days after any earlier Notice of termination is delivered, Developer shall provide IFA with a true and complete list of all materials, goods, machinery, equipment, hardware, parts, supplies and other tangible property in inventory or storage (whether held by Developer or any Person on behalf of or for the account of Developer) for use in or respecting the Work or the Project, or on order or previously completed but not yet delivered from Suppliers for use in or respecting the Work or the Project. In addition, on or about the Termination Date or as soon thereafter as is possible or as is provided in the approved transition plan, Developer shall transfer title through bills of sale or other documents of title, as directed by IFA, and deliver to IFA or IFA's Authorized Representative, all such materials, goods, machinery, equipment, hardware, parts, supplies and other property, provided IFA assumes in writing all of Developer's obligations under any contracts relating to the foregoing that arise after the later of the Termination Date or the effective date of the transfer.

20.7.6.2 Not later than ninety (90) days prior to the expiration of the Term, or within thirty (30) days after any earlier Notice of termination is delivered, Developer shall provide IFA with a true and complete list of all the data and documents identified in this Section 20.7.6.2. On or about the Termination Date or as soon thereafter as is possible or as is provided in the approved transition plan, Developer shall deliver to IFA the following, together

with an executed bill of sale or other written instrument, in form and substance acceptable to IFA, acting reasonably, assigning and transferring to IFA all right, title and interest of Developer and its Contractors in and to the following:

a. All completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, designs, Design Documents, Record Drawings, plans, surveys, and other documents and information pertaining to the design or construction of the Project or the Utility Adjustments, free of any intellectual property rights or claims of Developer or any Contractor;

b. All samples, borings, boring logs, geotechnical data and similar data and information relating to the Project or Project Right of Way;

c. All Books and Records, reports, test reports, studies and other documents of a similar nature relating to the Work, the Project or the Project Right of Way; and

d. All other work product and other Intellectual Property used or owned by Developer or any Affiliate relating to the Work, the Project or the Project Right of Way, provided that the transfer of any such Intellectual Property shall be subject to Sections 23.4 and 23.5.

20.7.6.3 Developer shall take all action that may be necessary, or that IFA may direct, for the protection and preservation of the Project, the Work and such materials, goods, machinery, equipment, hardware, parts, supplies, data, documentation and other property.

20.7.6.4 If applicable, on the Termination Date or as soon thereafter as is possible or as is provided in the approved transition plan, Developer shall transfer to IFA the amount in the Handback Requirements Reserve Account due IFA in accordance with Section 6.13.4.

20.7.6.5 On or about the Termination Date or as soon thereafter as is possible or as is provided in the approved transition plan, Developer shall execute and deliver to IFA a written assignment, in form and substance acceptable to IFA, acting reasonably, all of Developer's right, title and interest in and to any Intellectual Property Escrows or similar arrangements for the protection source code or source code documentation of others used for or relating to the Project or the Work.

20.7.6.6 On or about the Termination Date or as soon thereafter as is possible or as is provided in the approved transition plan, Developer shall execute and deliver to IFA a written assignment, in form and substance acceptable to IFA, acting reasonably, of all Developer's right, title and interest in and to all warranties, claims and causes of action held by Developer against third parties in connection with the Project or the Work, including claims under casualty and business interruption insurance.

20.7.6.7 Developer shall otherwise assist IFA in such manner as IFA may require prior to and for a reasonable period following the Termination Date to ensure the orderly transition of management, maintenance, operation and control of the Project, to IFA, and shall, if appropriate and if requested by IFA, take all steps as may be necessary to enforce the provisions of the Key Contracts pertaining to the surrender of Project management, maintenance, operation and

control.

20.7.6.8 For a period of four (4) years following the Termination Date, Developer shall maintain a secure archive copy of all electronic data transferred to IFA.

20.7.6.9 All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by Developer prior to execution of this Agreement, but specifically developed under this Agreement shall be considered "work for hire" and Developer transfers any ownership claim to IFA and all such materials will be the property of IFA. Use of these materials, other than related to contract performance by Developer, without the prior written consent of IFA, is prohibited. During the performance of this Agreement, Developer shall be responsible for any loss of or damage to these materials developed for or supplied by IFA and used to develop or assist in the services provided while the materials are in the possession of Developer. Any loss or damage thereto shall be restored at Developer's expense. Developer shall provide full, immediate, and unrestricted access to the work product during the term of this Agreement.

20.7.7 Compensation; Proration of Costs

20.7.7.1 From and after the Termination Date, even though Developer may be continuing services temporarily pursuant to a transition plan, Developer shall cease to have any right to Availability Payments except for those accrued and owing prior to the Termination Date (and subject to proration as provided in Section 10.2.7.2) and (b) any other compensation except with respect to compensation that remains due to Developer under this Agreement, if any.

20.7.7.2 Within ninety (90) days after the Termination Date, the Parties shall adjust and prorate as of the Termination Date costs of operation and maintenance of the Project, including utility costs and deposits. If the Parties do not have complete or accurate information by such date, they shall make the adjustment and proration using a good faith estimate, and thereafter promptly readjust when the complete and accurate information is obtained. The Parties acknowledge that certain adjustments or readjustments may depend on receipt of bills, invoices or other information from a third party, and that the third party may delay in providing such information. Any readjustment necessary only because of error in calculation and not due to lack of complete and accurate information shall be irrevocably waived unless the Party seeking readjustment delivers written request therefor to the other Party not later than one hundred eighty (180) days following the Termination Date.

20.8 Effect of Termination

20.8.1 Cessation of Developer's Interest and Liens and Encumbrances

20.8.1.1 Except as provided in Sections 20.7.3.4 and 20.11, termination of this Agreement under any provision of this Article 20 shall automatically cause, as of the Termination Date, the cessation of any and all rights or interest of Developer, tangible and intangible, in or with respect to the Project, the Project Right of Way, the Project Right of Entry and the Handback Requirements Reserve Account, which thereupon shall be and remain free and clear of any lien or encumbrance created, permitted or suffered by Developer or anyone claiming by, through or under Developer, including the liens, pledges, assignments, collateral assignments, security interests and encumbrances of any and all Funding Agreements and Security Documents.

20.8.1.2 In order to confirm the foregoing, at IFA's request, Developer shall promptly obtain and deliver to IFA recordable reconveyances, releases and discharges of all Security Documents, executed by the Lenders, but no such reconveyances, releases and discharges shall be necessary to the effectiveness of the foregoing.

20.8.2 [reserved]

20.8.3 Contracts and Agreements

Regardless of IFA's prior actual or constructive knowledge thereof, no Contract or agreement, to which Developer is a party as of the Termination Date shall bind IFA, unless IFA elects to assume such Contract or agreement in writing. Except in the case of IFA's express written assumption, no such Contract or agreement shall entitle the contracting party to continue performance of work or services respecting the Project following Developer's relinquishment to IFA of Project management, custody and control, or to any claim, legal or equitable, against IFA.

20.9 Liability after Termination; Final Release

20.9.1 No termination of this Agreement shall excuse either Party from any liability arising out of any default as provided in this Agreement that occurred prior to termination. Notwithstanding the foregoing, any termination of this Agreement under Section 20.2, 20.3, 20.5 or 20.6 shall automatically extinguish any Claim of Developer to payment of Compensation Amounts for adverse cost and revenue impacts accruing after the Early Termination Date from Relief Events that occurred prior to termination.

20.9.2 [reserved]

20.9.3 Subject to Section 20.9.1, if this Agreement is earlier terminated for any reason, then IFA's payment to Developer of the amounts required under this Agreement (if any) shall constitute full and final satisfaction of, and upon payment IFA shall be forever released and discharged from, any and all Claims, causes of action, suits, demands and Losses, known or unknown, suspected or unsuspected, that Developer may have against IFA arising out of or relating to this Agreement or termination thereof, the other PPA Documents, or the Project, except for specific Claims and Disputes that are asserted by Developer in accordance with Section 19.6.3.1 not later than thirty (30) days after the effective date of termination, are unresolved at the time of such payment and are not related to termination or Termination Compensation. Upon such payment, Developer shall execute and deliver to IFA all such releases and discharges as IFA may reasonably require to confirm the foregoing, but no such written release and discharge shall be necessary to give effect to the foregoing satisfaction and release.

20.10 Exclusive Termination Rights

This Article 20, together with the express provisions on termination set forth in Sections 19.2.1, 19.4.1 and Article 21 and in Exhibit 21 (Early Termination Dates and Terms for Termination Compensation), contain the entire and exclusive provisions and rights of IFA and Developer regarding termination of this Agreement, and any and all other rights to terminate at Law or in equity are hereby waived to the maximum extent permitted by Law.

20.11 Payment of Termination Compensation

20.11.1 If there exists as of the expiration of the Term, any outstanding unpaid amount owing from IFA to Developer, or any outstanding, unsatisfied Claim for sums owing from IFA to Developer, including any unpaid Termination Compensation, then the terms and conditions of this Section 20.11 shall apply, and shall survive termination.

20.11.2 IFA hereby covenants and agrees to use its best efforts to cause the General Assembly to appropriate amounts that will be sufficient to enable IFA to pay the Termination Compensation owed by IFA to Developer under this Agreement, including exhausting all available reviews and appeals if such amounts are not approved for appropriation. Further, IFA hereby covenants that it will do all things lawfully within its power to obtain and maintain funds from which to pay the Termination Compensation (including any interest thereon) owed by IFA to Developer under this Agreement, including, but not limited to requesting an appropriation in an amount sufficient to pay the Termination Compensation (including interest thereon) owed by IFA to Developer under this Agreement in writing submitted to the General Assembly at a time sufficiently in advance of the date for payment thereof so that an appropriation from the General Assembly may be made in the normal State budgetary process, using its bona fide best efforts to have such request approved, and exhausting all available reviews and appeals if such request is not approved. The Termination Compensation is a limited obligation of IFA, payable solely from amounts appropriated by the General Assembly for this purpose as described herein. The obligation of IFA to pay Termination Compensation does not constitute an indebtedness of the State or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. The obligation of IFA to pay Termination Compensation does not constitute a pledge of the faith, credit or taxing power of the State or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. IFA has no taxing power. Developer has no right to have taxes levied or compel appropriations by the General Assembly for any payment of the Termination Compensation.

20.12 Access to Information

Developer shall conduct all discussions and negotiations to determine any Termination Compensation, and shall share with IFA all data, documents and information pertaining thereto, on an Open Book Basis.

ARTICLE 21. LENDERS' RIGHTS

21.1 Conditions and Limitations Respecting Lenders' Rights

21.1.1 No Security Document (including those respecting a Refinancing) shall be valid or effective, and no Lender shall be entitled to the rights, benefits and protections of this Article 21 or the Direct Agreement, unless the Security Document, other related Security Documents and related Funding Agreements strictly comply with Section 13.3.

21.1.2 No Security Document relating to any Refinancing shall be valid or effective, and no Lender shall be entitled to the rights, benefits and protections of this Article 21 or the Direct Agreement, where the Refinancing violates or causes violation of Section 13.4.

21.1.3 No Funding Agreement or Security Document shall affect IFA in the enforcement of its rights and remedies as provided herein and by Law, and no Lender shall be entitled to the rights, benefits and protections of this Article 21 or the Direct Agreement, unless

and until (a) a copy (certified as true and correct by the Collateral Agent) of the original thereof bearing, if applicable, the date and instrument number or book and page of recordation or filing thereof, including a copy of a specimen bond, note or other obligation (certified as true and correct by the Collateral Agent) secured by such Security Document, has been delivered to IFA and (b) IFA has received Notice of the address of the Collateral Agent to which Notices may be sent. In the event of an assignment of any such Funding Agreement or Security Document, such assignment shall not be binding upon IFA unless and until IFA has received a certified copy thereof, which copy shall, if required to be recorded, bear the date and instrument number or book and page of recordation thereof, and IFA has received Notice of the assignee thereof to which Notices may be sent. In the event of any change in the identity of the Collateral Agent, such change shall not be binding upon IFA unless and until IFA has received a Notice thereof signed by the replaced and substitute Collateral Agent and setting forth the address of the substitute Collateral Agent to which Notices may be sent.

21.1.4 No Lender shall be entitled to the rights, benefits and protections of this Article 21 unless the Funding Agreements in favor of the Lender are secured by senior or first tier subordinate Security Documents, and IFA shall only enter into Direct Agreements with such Lenders. For avoidance of doubt, no Lender holding Subordinate Debt or Subordinated Security Document shall have any rights, benefits or protections under this Article 21.

21.1.5 A Lender shall not, by virtue of its Funding Agreement or Security Document, acquire any greater rights to or interest in the Project than Developer has at any applicable time under this Agreement, other than the provisions in this Article 21 for the specific protection of Lenders.

21.1.6 All rights acquired by Lenders under any Funding Agreement or Security Document shall be subject to the provisions of this Agreement and the other PPA Documents and to the rights of IFA hereunder and thereunder.

21.1.7 The provisions of this Article 21 that are binding on IFA shall inure only to the benefit of such Lenders, and create no rights in favor of Developer.

21.1.8 To further evidence the rights, benefits and protections afforded to Lenders, IFA will enter into a Direct Agreement at a Lender's request.

21.2 Effect of Amendments

While any Security Document is in effect, no agreement between IFA and Developer for the modification or amendment of this Agreement shall be binding without the Collateral Agent's consent, except to the extent expressly provided otherwise in this Agreement (e.g. Sections 16.1, 16.2 and 16.3).

21.3 Notices to Collateral Agent

As long as any Security Document shall remain unsatisfied of record, IFA shall promptly provide the Collateral Agent with a copy of any Notice it sends to Developer concerning an actual or potential breach of this Agreement or an actual or potential Developer Default, including any Warning Notice.

21.4 Opportunity to Cure and Step-In

As long as any Security Document shall remain unsatisfied of record, the following provisions shall apply with respect to any such Security Document and the related Lender or Lenders and Funding Agreements.

21.4.1 Should any Developer Default occur which would either immediately or, following the applicable grace period or the giving of Notice or both, constitute a Default Termination Event enabling IFA to terminate this Agreement, IFA shall not terminate this Agreement until it first delivers to the Collateral Agent a Notice and provides the Collateral Agent a reasonable opportunity to cure such Developer Default, as provided in the Direct Agreement. The Lender shall have the right (but not the obligation) to remedy such Developer Default or cause the same to be remedied by its Substituted Entity as provided in the Direct Agreement; and IFA shall accept such performance by or at the instigation of the Lender or Substituted Entity as if Developer had done the same.

21.4.2 If Developer fails to achieve Substantial Completion by the Baseline Substantial Completion Date, then the Collateral Agent shall have until the Long Stop Date, as the same may be extended pursuant to this Agreement, to achieve or cause Developer to achieve Substantial Completion. If Substantial Completion is not achieved by such date, then it shall constitute a material Developer Default and IFA may proceed to terminate this Agreement without further Notice to, or opportunity to cure by, the Lender.

21.4.3 If the Developer Default is under Sections 19.1.1.11, 19.1.1.16 or 19.1.1.17, then IFA may terminate this Agreement without providing a cure period to any Lender.

21.4.4 New Agreements.

21.4.4.1 The provisions of this Section 21.4.4 shall apply only if:

a. There occurs an Incurable Developer Default under clause (a) or (c) of the definition of Incurable Developer Default; or

b. there occurs a Developer Default governed by clause (c) of the definition of Cure Period, (ii) the Collateral Agent pursues with good faith, diligence and continuity lawful processes and steps to obtain the appointment of a court receiver for the Project and possession, custody and control of the Project, (iii) despite such efforts the Collateral Agent is unable to obtain such possession, custody and control of the Project within the one hundred eighty- (180)-day Cure Period set forth in clause (c) of the definition of Cure Period and (iv) no Step-out Notice has been given.

21.4.4.2 If this Section 21.4.4 is applicable and either (i) IFA terminates this Agreement or (ii) IFA receives notice that this Agreement is otherwise terminated, rejected, invalidated or rendered null and void by order of a bankruptcy court, then (a) IFA shall deliver Notice of such event to the Collateral Agent, and (b) the Collateral Agent or other Step-in Party, to the extent then permitted by Law, shall have the option to obtain from IFA agreements to replace the PPA Documents, and, to the extent necessary, new ancillary agreements (e.g. escrow agreements) (together the "New Agreements") in accordance with and upon the terms and conditions of this Section 21.4.4.

21.4.4.3 In order to exercise such option, the Collateral Agent or other Step-in Party must deliver to IFA, within 60 days after IFA delivers its Notice of termination, a Step-in Notice, which must contain (a) a request for New Agreements, (b) a written commitment that the Collateral Agent or other Step-in Party will enter into the New Agreements and pay all the amounts described in Sections 21.4.4.5(a) and (c) below, and be accompanied by originals of such New Agreements, duly executed and acknowledged by the Collateral Agent or other Step-in Party. If any of the foregoing is not delivered within such 60-day period, the option in favor of the Collateral Agent and all other Step-in Parties shall automatically expire. IFA shall have the unconditional right to rely upon any Step-in Notice purported to be signed and delivered by or for the Collateral Agent, without IFA obligation or liability to ascertain or investigate its authenticity, truth or accuracy.

21.4.4.4 Within thirty (30) days after timely receipt of the conforming Step-in Notice and duly executed New Agreements, IFA shall enter into the New Agreements to which IFA is a party with the Collateral Agent or other Step-in Party, subject to any extension of such thirty- (30)-day period as IFA deems necessary to clear any claims of Developer to continued rights and possession.

21.4.4.5 Upon the execution by all parties and as conditions to the effectiveness of the New Agreements, the Collateral Agent or other Step-in Party shall perform all of the following:

a. Pay to IFA:

i. Any and all sums which would, at the time of the execution of the New Agreements, be due under the PPA Documents but for such termination; and

ii. The amount of any Termination Compensation previously paid by IFA to Developer, with interest thereon at a floating rate equal to the LIBOR in effect from time to time plus two hundred (200) basis points from the date the termination compensation was paid until so reimbursed;

b. Otherwise fully remedy any existing Developer Defaults under the PPA Documents (provided, however, that Incurable Developer Defaults need not be remedied and with respect to any Developer Default which cannot be cured until the Collateral Agent or other Step-in Party obtains possession, it shall have such time, after it obtains possession, as is necessary with the exercise of good faith, diligence and continuity to cure such default, in any event not to exceed one hundred twenty (120) days after the date it obtains possession);

c. Without duplication of amounts previously paid by Developer, pay to IFA all reasonable costs and expenses, including IFA's Recoverable Costs, incurred by IFA in connection with (i) such default and termination, (ii) the assertion of rights, interests and defenses in any bankruptcy or related proceeding, (iii) the recovery of possession of the Project, (iv) all IFA activities during its period of possession of, and respecting, the Project, including permitting, design, acquisition, construction, equipping, maintenance, operation and management activities, minus the lesser of (A) the foregoing clause (iv) amount and (B) the amount of Availability Payments, if any, that would have been paid during such period had this Agreement not been terminated and had there been no adjustments to such Availability Payments, and (v) the preparation, execution, and delivery of such New

Agreements. Upon request of the Collateral Agent or other Step-in Party, IFA will provide a written, documented statement of such costs and expenses; and

d. Deliver to IFA a new Payment Bond and Performance Security and new letters of credit and guarantees to the extent then required hereunder.

21.4.4.6 Upon execution of the New Agreements and payment of all sums due IFA, IFA shall:

a. Assign and deliver to the Collateral Agent or other Step-in Party, without warranty or representation, all the property, contracts, documents and information that Developer may have assigned and delivered to IFA upon termination of this Agreement; and

b. If applicable, transfer into a new Handback Requirements Reserve Account established by the Collateral Agent or other Step-in Party in accordance with this Agreement, all funds IFA received from the Handback Requirements Reserve Account pursuant to Section 6.13.3 (or from draw on a Handback Requirements Letter of Credit) less so much thereof that IFA spent or is entitled to as reimbursement for costs of Rehabilitation Work IFA performed prior to the effectiveness of the New Agreements.

21.4.4.7 The New Agreements shall be effective as of the date of termination of this Agreement and shall run for the remainder of the Term. The New Agreements shall otherwise contain the same covenants, terms and conditions and limitations as the PPA Documents and ancillary agreements and documents that were binding on IFA and Developer (except for any requirements which have been fulfilled by Developer prior to termination and except that Section 18.1 (and any equivalent provisions of the other PPA Documents) shall be revised to be particular to the Collateral Agent or other Step-in Party).

21.4.4.8 If the holders of more than one Security Document make written requests upon IFA for New Agreements in accordance with this Section 21.4.4, IFA shall grant the New Agreements to, as applicable, the holder whose Security Documents have the most senior priority of record. Priority shall be established as follows.

a. IFA shall submit a written request to the Collateral Agent to designate the Security Documents having the most senior priority of record. IFA shall have the right to conclusively rely on the Collateral Agent's written designation, without duty of further inquiry by IFA and without liability to any Lender; and thereupon the written requests of each holder of any other Security Document shall be deemed to be void.

b. If IFA does not receive the Collateral Agent's written designation within ten (10) days after delivering written request, then IFA may conclusively rely, without further inquiry and without liability to any Lender, on the seniority indicated by a then-current title report that IFA obtains from one of the four (4) largest title insurance companies doing business in the State (unless otherwise agreed in writing by the most senior holder so indicated); and thereupon the written requests of each holder of any other Security Document shall be deemed to be void.

c. If the holders of more than one Security Document share *pari passu* senior lien priority as indicated pursuant to clause (a) or (b) above and make written requests upon IFA for New Agreements in accordance with this Section 21.4.4, IFA shall grant

the New Agreement to such holders jointly (unless otherwise agreed in writing by such holders); and thereupon the written requests of each holder of any other Security Documents shall be deemed to be void.

21.4.5 Noncompliance Points assessed for Noncompliance Events occurring prior to the date the Collateral Agent or its Substituted Entity obtains management, custody and control of the Project shall not be counted during the period available to the Collateral Agent or its Substituted Entity to cure the Noncompliance Events for the purpose of determining Persistent Developer Default. Once all such Noncompliance Events have been cured, IFA shall cancel any Noncompliance Points assessed with respect to such Noncompliance Events. The foregoing shall not, however, excuse the Collateral Agent or its Substituted Entity from any obligation to cure prior uncured breaches or failures to perform under the PPA Documents, and except for determination of Persistent Developer Default shall not affect any rights and remedies available to IFA respecting uncured breaches or failures to perform.

21.4.6 Any curing of any Default Termination Event by the Collateral Agent shall not be construed as an assumption by the Collateral Agent of any obligations, covenants or agreements of Developer under the PPA Documents or any Principal Project Documents, except with respect to the work, services or actions taken or performed by or on behalf of the Collateral Agent.

21.4.7 Nothing in this Section 21.4 shall preclude or delay IFA from exercising any remedies other than termination of this Agreement due to Developer Default, including, subject to IFA's express covenants to forbear and as otherwise provided in the Direct Agreement, IFA's rights to cure the Developer Default at Developer's expense and to remove and replace Developer.

21.5 Forbearance

21.5.1 To the extent IFA has rights to enforce any Design-Build Contract or any O&M Contract, whether as assignee of Developer's rights or otherwise, so long as this Agreement remains in effect IFA shall forbear from exercising remedies against the Design-Build Contractor or O&M Contractor if (a) Developer or the Collateral Agent commences the good faith, diligent exercise of remedies available to Developer under the Design-Build Contract or O&M Contract within thirty (30) days after IFA delivers Notice to Developer and the Collateral Agent of default by the Design-Build Contractor or O&M Contractor, and (b) thereafter continues such good faith, diligent exercise of remedies until the default is cured.

21.5.2 At IFA's request from time to time, Developer shall provide to IFA written reports on the status of any such default, cure and exercise of remedies.

21.6 Substituted Entities

21.6.1 Any payment to be made or action to be taken by the Collateral Agent as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Collateral Agent if a Substituted Entity proposed by the Collateral Agent and approved by IFA makes such payment or takes such action. IFA shall have no obligation to recognize any claim to the Developer's Interest by any person or entity that has acquired the Developer's Interest by, through, or under any Security Document or whose acquisition shall have been derived immediately from any holder thereof, unless such person or entity is a Substituted Entity.

21.6.2 Notwithstanding the foregoing, any entity that is wholly owned by a Lender or group of Lenders shall be deemed a Substituted Entity, without necessity for IFA approval, upon delivery to IFA of documentation proving that the entity is duly formed, validly existing and wholly owned by such Lender or group of Lenders, including a certificate signed by a duly authorized officer of each such Lender in favor of IFA certifying, representing and warranting such ownership.

21.6.3 IFA shall have no obligation to approve a person or entity as a Substituted Entity unless the Lender demonstrates that:

21.6.3.1 The proposed Substituted Entity and its contractors collectively have the financial resources, qualifications and experience to timely perform Developer's obligations under the PPA Documents and Principal Project Documents; and

21.6.3.2 The proposed Substituted Entity and its contractors are in compliance with IFA's rules, regulations and adopted written policies regarding organizational conflicts of interest.

21.6.4 IFA will approve or disapprove a proposed Substituted Entity within thirty (30) days after it receives from the Lender a request for approval together with (a) such information, evidence and supporting documentation concerning the identity, financial resources, qualifications, experience and potential conflicts of interest of the proposed Substituted Entity and its contractors as IFA may request, and (b) such evidence of organization, authority, incumbency certificates, certificates regarding debarment or suspension, and other certificates, representations and warranties as IFA may reasonably request. If for any reason IFA does not act within such thirty- (30)-day period, or any extension thereof by mutual agreement of IFA and the Lender, IFA shall be deemed to disapprove.

21.6.5 IFA will request information on, and evaluate, the financial resources, qualifications, experience and potential conflicts of interest of the proposed Substituted Entity and its contractors using the same standards and criteria that it is then currently applying, or if there is no current application, then the same standards and criteria it most recently applied, to the evaluation of Persons responding to IFA requests for qualifications for concession or similar agreements for comparable projects and facilities.

21.6.6 Lender may request approval of more than one Substituted Entity. A Lender may request approval at any time or times. Any approval by IFA of a Substituted Entity shall expire one (1) year after the approval is issued, unless IFA approves an extension in its sole discretion or unless within such one-year period (or any approved extension thereof) the Substituted Entity has succeeded to the Developer's Interest.

21.6.7 IFA may revoke an approval if at any time prior to succeeding to the Developer's Interest:

21.6.7.1 The Substituted Entity ceases to be in compliance with IFA's rules and regulations regarding organizational conflicts of interest; or

21.6.7.2 There occurs, after exhaustion of all rights of appeal, any suspension or debarment of the Substituted Entity or any managing member, general partner or controlling investor of the Substituted Entity from bidding, proposing or contracting with any federal or State department or agency.

21.7 Receivers

21.7.1 The appointment of a receiver at the behest of Developer shall be subject to IFA's prior written approval in its sole discretion. The appointment of a receiver at the behest of any Lender shall be subject to the following terms and conditions:

21.7.1.1 IFA's prior approval shall not be required for the appointment of the receiver or the selection of the person or entity to serve as receiver;

21.7.1.2 Whenever any Lender commences any proceeding for the appointment of a receiver, it shall serve on IFA not less than five (5) days' prior Notice of the hearing for appointment and of the Lender's pleadings and briefs in the proceeding;

21.7.1.3 IFA may appear in any such proceeding to challenge the selection of the person or entity to serve as receiver, but waives any other right to oppose the appointment of the receiver; and

21.7.1.4 IFA may at any time seek an order for replacement of the receiver by a different receiver.

21.7.2 No receiver appointed at the behest of Developer or any Lender shall have any power or authority to replace any Design-Build Contractor or any O&M Contractor except by reason of default or unless the replacement is a Substituted Entity approved by IFA.

21.8 Other Lender Rights

21.8.1 In addition to all other rights herein granted, the Lender shall have the right to be subrogated to any and all rights of Developer under this Agreement with respect to curing any Developer Default. IFA shall permit the Collateral Agent and its Substituted Entity the same access to the Project and Project Right of Way as is permitted to Developer hereunder. IFA hereby consents to Developer constituting and appointing any Collateral Agent as Developer's authorized agent and attorney-in-fact with full power, in Developer's name, place and stead, and at Developer's sole cost and expense, to enter upon the Project and Project Right of Way and to perform all acts required to be performed herein, and in any Principal Project Document, but only in the event of a Developer Default or a default under the Lender's Funding Agreement or Security Document. IFA shall accept any such performance by the Collateral Agent as though the same had been done or performed by Developer.

21.8.2 The creating or granting of a Security Document shall not be deemed to constitute an assignment or transfer of this Agreement, the Project Right of Entry or the Developer's Interest, nor shall any Lender, as such, be deemed to be an assignee or transferee of this Agreement, the Project Right of Entry or the Developer's Interest so as to require such Lender, as such, to assume the performance of any of the terms, covenants or conditions on the part of Developer to be performed hereunder or thereunder. No Lender, nor any owner of the Developer's Interest whose ownership shall have been acquired by, through, or under any Security Document or whose ownership shall have been derived immediately from any holder thereof, shall become personally liable under the provisions of this Agreement unless and until such time as the Lender or such owner becomes the owner of the Developer's Interest.

21.8.3 Upon any permitted assignment of this Agreement, the Project Right of Entry and the Developer's Interest by a Lender or any owner of the Developer's Interest whose

ownership shall have been acquired by, through, or under any Security Document or whose ownership shall have been derived immediately from any holder thereof, the assignor shall be relieved of any further liability which may accrue hereunder or thereunder from and after the date of such assignment, provided that the assignee is a Substituted Entity and executes and delivers to IFA a recordable instrument of assumption as required under Section 22.5.

21.8.4 A Lender or the Collateral Agent may exercise its rights and remedies under its Security Documents with respect to all, but not less than all, of the Developer's Interest.

21.8.5 The exercise by a Lender of its rights with respect to the Developer's Interest under its Security Documents, this Article 21, the Direct Agreement, or otherwise, whether by judicial proceedings or by virtue of any power contained in the Security Documents, or by any conveyance from Developer to the Lender in lieu of foreclosure thereunder, or any subsequent transfer from the Lender to a Substituted Entity, shall not require the consent of IFA or constitute a breach of any provision of or a default under the PPA Documents. The foregoing does not affect the obligation to obtain approval of persons or entities as Substituted Entities pursuant to Section 21.6 (and the definition of Substituted Entity).

21.8.6 Whenever IFA or Developer obtains knowledge of any condemnation proceedings by a third party affecting the Project or Project Right of Way, it shall promptly give Notice thereof to each Lender. Each Lender shall have the right to intervene and be made a party to any such condemnation proceedings, and IFA and Developer do hereby consent that each Lender may be made such a party or an intervener.

21.9 Consents and Estoppel Certificates

21.9.1 At any time and from time to time, within fifteen (15) days after written request of any Lender or proposed Lender entitled to the rights, benefits and protections of this Article 21, IFA, without charge, shall consent to:

21.9.1.1 The exercise by any Lender of its rights under and in accordance with this Article 21 in the event of a Developer Default; and

21.9.1.2 A pledge and hypothecation by Developer of the Developer's Interest to any Lender or proposed Lender.

21.9.2 At any time and from time to time, within fifteen (15) days after written request of any Lender or proposed Lender entitled to the rights, benefits and protections of this Article 21, IFA, without charge, shall certify to its best knowledge by written instrument duly executed and acknowledged, to any Lender or proposed Lender as follows:

21.9.2.1 As to whether this Agreement has been supplemented or amended, and if so, the substance and manner of such supplement or amendment, attaching a copy thereof to such certificate;

21.9.2.2 As to the validity and force and effect of this Agreement, in accordance with its terms;

21.9.2.3 As to the existence of any Developer Default;

21.9.2.4 As to the existence of events which, by the passage of time or Notice or both, would constitute a Developer Default;

21.9.2.5 As to the then accumulated amount of Noncompliance Points;

21.9.2.6 As to the existence of any claims by IFA regarding this Agreement;

21.9.2.7 As to the Effective Date and the commencement and expiration dates of the Term;

21.9.2.8 As to whether a specified acceptance, approval or consent of IFA called for under this Agreement has been granted;

21.9.2.9 Whether the Lender and its Funding Agreements and Security Documents, or the proposed Lender and its proposed Funding Agreements and Security Documents, meet the conditions and limitations set forth in Sections 13.3 and 21.1; and

21.9.2.10 As to any other matters of fact within IFA's knowledge about the PPA Documents, Developer, the Project or the Work as may be reasonably requested.

21.9.3 IFA shall deliver the same certified, written instrument to a Substituted Entity or proposed Substituted Entity within fifteen (15) days after receiving its written request, provided that the request is delivered to IFA either before the Substituted Entity or proposed Substituted Entity succeeds to the Developer's Interest or within sixty (60) days after the Substituted Entity has succeeded to the Developer's Interest.

21.9.4 Any such certificate may be relied upon by, and only by, the Lender, proposed Lender, Substituted Entity or proposed Substituted Entity to whom the same may be delivered, and the contents of such certificate shall be binding on IFA.

21.10 No Surrender

No mutual agreement to cancel or surrender this Agreement shall be effective unless consented to in writing by the Collateral Agent, which consent Developer shall be solely responsible to obtain, or unless the Senior Debt Termination Amount is paid in full in connection with such cancellation or surrender.

21.11 Lenders as Third-Party Beneficiaries of the Provisions of Article 21

The Lenders are expressly recognized as being intended, direct third-party beneficiaries under the provisions of this Article 21 and may enforce any rights, remedies or claims conferred, given or granted thereunder.

ARTICLE 22. ASSIGNMENT AND TRANSFER

22.1 Restrictions on Assignment and Other Transfers of Developer's Interest

22.1.1 Developer shall not voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber the Developer's Interest or any portion thereof without IFA's prior written approval in accordance with Section 22.3, except:

22.1.1.1 To Lenders for security as permitted by this Agreement, provided Developer retains responsibility for the performance of Developer's obligations under the PPA Documents;

22.1.1.2 To any Lender affiliate that is a Substituted Entity or to any other Substituted Entity approved by IFA; provided that such Substituted Entity assumes in writing full responsibility for performance of the obligations of Developer under this Agreement, the other PPA Documents, and the Principal Project Documents arising from and after the date of assignment; or

22.1.1.3 To any entity in which the organizations signing this Agreement for Developer, or the shareholder(s), general partner(s) or member(s) that exercise management control over such organizations, hold and exercise effective management control and hold at least 50 percent of the equity interest.

22.1.2 Developer shall not grant any special right of entry onto, use of, or right to manage and control the Project to any other Person that is not in the ordinary course of Developer performing the Work, without IFA's prior written approval in accordance with Section 22.3.

22.1.3 Any purported voluntary or involuntary sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, grant of right of entry, or grant of other special use, management or control of the Project in violation of this Section 22.1 shall be null and void *ab initio* and IFA, at its option, may declare any such attempted action to be a material Developer Default.

22.2 Restrictions on Equity Transfers and Change of Control

22.2.1 Except as provided in Section 22.2.3, no voluntary or involuntary Equity Transfers by or among Equity Members are allowed from the Effective Date to the second anniversary of the Substantial Completion Date, unless Developer obtains IFA's approval as provided in Section 22.3.

22.2.2 Except as provided in Section 22.2.3, from and after the second anniversary of the Substantial Completion Date, any voluntary or involuntary Change of Control of Developer, including any Equity Transfer that would result in a Change of Control, shall be subject to IFA's prior written approval in accordance with Section 22.3.

22.2.3 Transfers and transactions within any of the exceptions described in clauses (a) through (g) of the definition of Change of Control are allowed at any time without necessity for IFA's approval but, in the case of exceptions described in clauses (a) through (e), subject to the condition that Developer deliver to IFA, within ten (10) days prior to the effectiveness of the transfer or transaction, Notice describing the transfer or transaction and (if applicable) the names of the transferor and transferee, together with documentation demonstrating that the transfer or transaction is within such an exception.

22.2.4 Any purported voluntary or involuntary Equity Transfer or Change of Control in violation of this Section 22.2 shall be null and void *ab initio*, and IFA, at its option, may declare such purported voluntary or involuntary Equity Transfer or Change of Control to be a material Developer Default.

22.3 Standards and Procedures for IFA Approval

22.3.1 Where IFA's prior approval is required for a proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, grant of right of entry, or grant of other special use, management or control, or for any proposed Equity Transfer or Change of Control (each a "transaction"), and such transaction is proposed at any time during the period ending two (2) years after the Substantial Completion Date, IFA may withhold or condition its approval in its sole discretion. Any such decision of IFA to withhold consent shall be final, binding and not subject to the Dispute Resolution Procedures.

22.3.2 Thereafter, IFA shall not unreasonably withhold its approval of such a transaction. Among other reasonable factors and considerations, it shall be reasonable for IFA to withhold its approval if:

22.3.2.1 Developer fails to demonstrate to IFA's reasonable satisfaction that the proposed assignee, grantee or transferee, or the proposed transferee of rights and/or equity interests that would amount to a Change of Control (collectively the "transferee"), and its proposed contractors (a) have the financial resources, qualifications and experience to timely perform Developer's obligations under the PPA Documents and Principal Project Documents and (b) are in compliance with IFA's rules, regulations and adopted written policies regarding organizational conflicts of interest;

22.3.2.2 Less than all of Developer's Interest is proposed to be assigned, conveyed, transferred, pledged, mortgaged, encumbered or granted; or

22.3.2.3 At the time of the proposed transaction, there exists any uncured Developer Default or any event or circumstance that with the lapse of time, the giving of Notice or both would constitute a Developer Default, unless IFA receives from the proposed transferee assurances of cure and performance acceptable to IFA in its good faith discretion.

22.3.3 For transactions subject to IFA's prior reasonable approval, IFA will approve or disapprove within thirty (30) days after it receives from Developer:

22.3.3.1 A request for approval;

22.3.3.2 A reasonably detailed description of the proposed transaction;

22.3.3.3 Such information, evidence and supporting documentation as IFA may request concerning the identity, financial resources, qualifications, experience and potential conflicts of interest of the proposed transferee and its proposed contractors; and

22.3.3.4 Such evidence of organization and authority, and such incumbency certificates, certificates regarding debarment or suspension, and other certificates, representations and warranties as IFA may reasonably request.

22.3.4 For transactions subject to IFA's prior reasonable approval, IFA will evaluate the identity, financial resources, qualifications, experience and potential conflicts of interest using the same standards and criteria that it is then currently applying, or if there is no current application, then the same standards and criteria it most recently applied, to the evaluation of Persons responding to IFA requests for qualifications for concession or similar agreements for comparable projects and facilities.

22.3.5 If for any reason IFA does not act within such thirty- (30)-day period, or any extension thereof by mutual agreement of the Parties, then the proposed assignment shall not be permitted, subject to Developer's right, in the case of a proposed assignment governed by Section 22.3.2, to submit a Dispute for resolution according to the Dispute Resolution Procedures.

22.3.6 Notwithstanding the foregoing, prior to the period ending two (2) years after the Substantial Completion Date, initial Equity Members whose role is restricted solely to financial matters and who have no role in the performance of the Work (other than performance of the administrative or management services to Developer not involving direct technical supervision over the Work) may assign, sell or transfer their interest (whether direct or indirect) in Developer. Any such assignment, sale, transfer or Equity Transfer prior to the period ending two (2) years after the Substantial Completion Date shall be subject to IFA's prior reasonable approval unless such assignment, sale, transfer or Equity Transfer constitutes a Change in Control (in which case it shall be subject to IFA's approval in its good faith discretion); provided, any assignment, sale, transfer or Equity Transfer to an infrastructure fund that is affiliated with or under common ownership, management or control with an Equity Member shall not be subject to IFA's prior written approval, subject to the condition that Developer deliver to IFA, within ten (10) days prior to the effectiveness of the transfer or transaction, Notice describing the transfer or transaction and the names of the transferor and transferee, together with documentation demonstrating that the transfer or transaction is to such an infrastructure fund. In determining whether to give its consent, IFA will evaluate the financial qualifications and potential conflicts of interest of the transferee using the same standards and criteria that it applied to the evaluation of Developer in its response to IFA's requests for qualifications to develop, design, construct, finance, operate and maintain the Project. Any such assignment, sale, transfer or Equity Transfer after the period ending two (2) years after the Substantial Completion Date shall not be subject to IFA's prior written approval unless such assignment, sale, transfer or Equity Transfer constitutes a Change in Control (in which case it shall be subject to IFA's approval in accordance with Sections 22.3.2 through 22.3.5).

22.4 Assignment by IFA

22.4.1 IFA may assign all or any portion of its rights, title and interests in and to the Project, Project Right of Way, appropriations, PPA Documents, Payment Bonds and Performance Security, guarantees, letters of credit and other security for payment or performance, (a) without Developer's consent, to any other Governmental Entity of the State that (i) succeeds to the governmental powers and authority of IFA, including the power and authority to request an appropriation from the General Assembly, (ii) has (A) the sources of funding for the Milestone Payments and Availability Payments that are at least as adequate and secure as IFA's at the time of the assignment and (B) an unsecured long-term debt credit rating equal to or better than the unsecured long-term debt credit rating of IFA at the time of the assignment, as measured by two Rating Agencies, and (iii) in case of an assignment of all of IFA's interests in the PPA Documents, assumes all of the rights and obligations of IFA under the Milestone Payment Agreement and the Use Agreement, as applicable, and (b) to others with the prior written consent of Developer.

22.5 Notice and Assumption

22.5.1 Assignments and transfers of the Developer's Interest permitted under this Article 22 (other than pursuant to Section 22.1.1.1) or otherwise approved in writing by IFA shall be effective only upon IFA's receipt of Notice of the assignment or transfer and a written

instrument executed by the transferee, in form and substance acceptable to IFA, in which the transferee, without condition or reservation, assumes all of Developer's obligations, duties and liabilities under this Agreement, the other PPA Documents and the Principal Project Documents then in effect and agrees to perform and observe all provisions thereof applicable to Developer.

22.5.2 Each transferee of Developer's Interest, including any Person who acquires the Developer's Interest pursuant to foreclosure, transfer in lieu of foreclosure or similar proceeding, shall take the Developer's Interest subject to, and shall be bound by, the Project Management Plan, including the Design Quality Management Plan and Construction Quality Management Plan, the Key Contracts, the Utility Agreements, the Governmental Approvals, all agreements between the transferor and third parties, and all agreements between the transferor and Governmental Entities with jurisdiction over the Project or the Work, except to the extent otherwise approved by IFA in writing in its good faith discretion.

22.5.3 Except with respect to assignments and transfers pursuant to foreclosure, transfer in lieu of foreclosure or similar proceeding, the transferor and transferee shall give IFA Notice of the assignment not less than thirty (30) days prior to the effective date thereof.

22.6 Change of Organization or Name

22.6.1 Developer shall not change the legal form of its organization in a manner that adversely affects IFA's rights, protections and remedies under the PPA Documents without the prior written approval of IFA, which consent may be granted or withheld in IFA's sole discretion.

22.6.2 If either Party changes its name, such Party agrees to promptly furnish the other Party with Notice of change of name and appropriate supporting documentation.

ARTICLE 23. RECORDS AND AUDITS; INTELLECTUAL PROPERTY

23.1 Maintenance and Inspection of Records

23.1.1 Developer shall keep and maintain in Indianapolis, Indiana, or in another location IFA approves in writing in its sole discretion, all Books and Records relating to the Project, Project Right of Way, Utility Adjustments and Work, including copies of all original documents delivered to IFA. Developer shall keep and maintain such Books and Records in accordance with applicable provisions of the PPA Documents, including the Technical Provisions, applicable provisions of the Project Management Plan, and in accordance with Good Industry Practice. Developer shall notify IFA where such records and documents are kept.

23.1.2 Without limiting the foregoing, Developer shall maintain accurate and complete all such Books and Records, as set forth in the Technical Provisions.

23.1.3 Developer shall make all its Books and Records available for inspection by IFA and its Authorized Representatives, designees and legal counsel. Developer shall make the same available at Developer's principal offices in Indiana, or pursuant to each Intellectual Property Escrow, at all times during normal business hours, or at other reasonable times, in each case, without charge, through the term of the PPA Documents until the time set forth in Section 23.1.4. Developer shall furnish copies at no cost to IFA, if requested. Developer shall provide to IFA, or make available to IFA for review pursuant to each Intellectual Property Escrow, copies thereof as and when reasonably requested by IFA, without charge. IFA may conduct any such inspection upon forty-eight (48) hours' prior Notice, or unannounced and

without prior Notice where there is good faith suspicion of fraud. The right of inspection includes the right to make extracts and take notes. To avoid confusion, this paragraph shall remain in full force and effect regardless of whether either Party or both of the Parties have invoked the Dispute Resolution Procedures herein.

23.1.4 Developer shall retain all Books and Records for a minimum of three (3) years after the date of final payment under the PPA Documents; provided that if the PPA Documents specify any different time period for retention of particular records (including pursuant to Section 23.1.6), such time period shall control, and if applicable Law specifies any longer period, such time period shall control. Any provision of the PPA Documents establishing a stated period for records retention means the period of time, as stated, after the date the record or document is generated, unless specifically provided otherwise. Notwithstanding the foregoing, all records which relate to Claims and Disputes being processed or actions brought under the Dispute Resolution Procedures shall be retained and made available until any later date that such Claims, Disputes and actions are finally resolved.

23.1.5 Developer shall permit IFA, upon ten (10) days prior Notice to Developer (which Notice shall identify the persons IFA requests to be present for an interview and describe with reasonable specificity the subject matter to be raised in the interview), to discuss the obligations of Developer under this Agreement with any of the directors, chief executive officer and chief financial officer of Developer or its Representatives, for the purpose of enabling IFA to determine whether Developer is in compliance with this Agreement and applicable Law. To avoid confusion, this paragraph shall remain in full force and effect regardless of whether either Party or both of the Parties have invoked the Dispute Resolution Procedures herein.

23.1.6 Refer to Attachment 1 to Exhibit 22 (Federal Requirements) regarding applicable federal requirements in respect of maintenance and inspection of Books and Records, with which Developer shall comply.

23.1.7 The provisions of Section 3.5.3 apply to those Books and Records that Developer deems confidential or proprietary.

23.2 Audits

23.2.1 IFA shall have such rights to review and audit Developer, its Contractors and their respective Books and Records as and when IFA deems necessary for purposes of verifying compliance with the PPA Documents and applicable Law and verifying Claims. Without limiting the foregoing:

23.2.1.1 IFA shall have the right to audit Developer's Project Management Plan and compliance therewith, including the right to inspect Work and/or activities and to verify the accuracy and adequacy of the Project Management Plan and its component parts, plans and other documentation;

23.2.1.2 The audits may be performed by employees of IFA or by an auditor under contract with IFA;

23.2.1.3 Developer, Contractors or their agents shall provide adequate facilities, acceptable to IFA, for the audits;

23.2.1.4 Developer shall allow auditor(s) access to such Books and

Records during normal business hours, allow interviews of any employee who might have information related to such Books and Records, and otherwise cooperate with the auditors; and

23.2.1.5 Developer shall cause each Contract to include a similar right of the State to audit records and interview staff of the Contractor, and a similar covenant to cooperate with the auditors.

Refer to Section 1.5.2.5 of the Technical Provisions regarding audits of performance of the activities set forth in the Project Management Plan, including the Public Involvement Plan.

23.2.2 IFA may conduct any such audit of Books and Records as follows:

23.2.2.1 In the case of an audit of a Claim, at any time following the filing of the Claim, without Notice for an audit commenced any time before 60 days after the expiration of the Term, and with five (5) days' prior Notice to Developer, any Contractors or their respective agents for an audit commenced thereafter; and

23.2.2.2 In the case of any other audit, upon forty-eight (48) hours' prior Notice, or unannounced and without prior Notice where there is good faith suspicion of fraud.

23.2.3 Failure of Developer, Contractors or their agents to maintain and retain sufficient Books and Records to allow the auditors to verify all or a portion of a Claim or to permit the auditor access to its Books and Records to verify a Claim shall constitute a waiver of the Claim and shall bar any recovery thereunder. At a minimum, the auditors shall have available to them the following documents relating to the Claim:

- 23.2.3.1 Daily time sheets and supervisor's daily reports;
- 23.2.3.2 Union agreements;
- 23.2.3.3 Insurance, welfare, and benefits records;
- 23.2.3.4 Payroll registers;
- 23.2.3.5 Earnings records;
- 23.2.3.6 Payroll tax forms;
- 23.2.3.7 Material invoices and requisitions;
- 23.2.3.8 Material cost distribution work sheet;
- 23.2.3.9 Equipment records (list of company equipment, rates, etc.);
- 23.2.3.10 Contractors' (including Suppliers') invoices;
- 23.2.3.11 Contractors' and agents' payment certificates;
- 23.2.3.12 Canceled checks (payroll and Suppliers);
- 23.2.3.13 Job cost report;

23.2.3.14 Job payroll ledger;

23.2.3.15 General ledger;

23.2.3.16 Cash disbursements journal;

23.2.3.17 All documents that relate to each and every Claim together with all documents that support the amount of damages as to each Claim; and

23.2.3.18 Work sheets used to prepare the Claim establishing (a) the cost components of the Claim, including labor, benefits and insurance, materials, equipment, Contractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals, and (b) the lost revenue components of the Claim.

23.2.4 Full compliance by Developer with the provisions of Section 23.2.3 is a contractual condition precedent to Developer's right to seek relief on a Claim under Section 19.6.

23.2.5 Any rights of the federal government and any agency thereof, including FHWA, to review and audit Developer, its Contractors and their respective Books and Records are set forth in Exhibit 22 (Federal Requirements) and applicable Law. Without limiting the foregoing, the U.S. Comptroller General and his/her representatives shall have the authority to:

23.2.5.1 Examine any records of Developer or any of its Contractors, or any State or local government agency administering this Agreement, that directly pertain to and involve transactions relating to this Agreement or any Contract; and

23.2.5.2 Interview any officer or employee of Developer or any of its Contractors, or of any State or local government agency administering this Agreement, regarding such transactions.

23.2.6 IFA's rights of audit include the right to observe the business operations of Developer and its Contractors to confirm the accuracy of Books and Records.

23.2.7 Developer shall include in the Project Management Plan internal procedures to facilitate review and audit by IFA and, if applicable, FHWA.

23.2.8 Developer represents and warrants the completeness and accuracy of all information it or its agents provides in connection with IFA audits, and shall cause all Contractors to warrant the completeness and accuracy of all information such Contractors provide in connection with IFA audits.

23.2.9 Developer's internal and third-party quality and compliance auditing responsibilities shall be set forth in the Project Management Plan, consistent with the audit requirements referred to in Section 3.2.7 and described in Section 2.2 of the Technical Provisions. In addition, Developer shall perform Performance Inspections as set forth in Section 18 of the Technical Provisions.

23.2.10 Nothing in the PPA Documents shall in any way limit the constitutional and statutory powers, duties and rights of elected State officials, including the independent rights of

the Indiana Auditor of State, in carrying out his or her legal authority. Developer understands and acknowledges that:

23.2.10.1 The Indiana Auditor of State may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a Contract;

23.2.10.2 Acceptance of funds directly under this Agreement or indirectly through a Contract acts as acceptance of the authority of the Indiana Auditor of State, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds; and

23.2.10.3 An entity that is the subject of an audit or investigation must provide the Indiana Auditor of State with access to any information the Indiana Auditor of State considers relevant to the investigation or audit.

23.3 Public Records Act; Confidential IFA Information

23.3.1 Developer acknowledges and agrees that all Submittals, records, documents, drawings, plans, specifications and other materials in IFA's possession, including materials submitted by Developer to IFA, are subject to the provisions of the Public Records Act. If Developer believes information or materials submitted to IFA constitute trade secrets or otherwise exempt from disclosure under the Public Records Act pursuant to IC 5-14-3-4, Developer shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such document or page affected, as it determines to be appropriate. Any specific trade secret or other basis for exemption shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim including the specific Law that exempts the material from disclosure under the Public Records Act. Nothing contained in this Section 23.3 shall modify or amend requirements and obligations imposed on IFA by the Public Records Act or other applicable Law, and the provisions of the Public Records Act or other Laws shall control in the event of a conflict between the procedures described above and the applicable Law. Developer is advised to contact legal counsel concerning such Law and its application to Developer.

23.3.2 If IFA receives a request for public disclosure of materials marked "CONFIDENTIAL," IFA will use reasonable efforts to notify Developer of the request and give Developer an opportunity to assert, in writing and at its sole expense, a claimed exception under the Public Records Act or other applicable Law within the time period specified in the Notice issued by IFA and allowed under the Public Records Act. Under no circumstances, however, will IFA be responsible or liable to Developer or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by Law, or court order, or occurs through inadvertence, mistake or negligence on the part of IFA or its officers, employees, contractors or consultants.

23.3.3 In the event of any proceeding or litigation concerning the disclosure of any material submitted by Developer to IFA, IFA's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and Developer shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that IFA reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. Developer shall pay and

reimburse IFA within thirty (30) days after receipt of written demand and reasonable supporting documentation for all costs and fees, including attorneys' fees and costs, IFA incurs in connection with any litigation, proceeding or request for disclosure.

23.4 Intellectual Property

23.4.1 Subject to Section 23.5, Developer shall deliver to IFA copies of all physical drawings, plans or other documents that disclose or embody Proprietary Intellectual Property owned by Developer which it uses in providing the Work. Except as provided otherwise in Section 20.7.6.2 or elsewhere in the PPA Documents, all Proprietary Intellectual Property, including with respect to source code and source code documentation, shall remain exclusively the property of Developer or its Affiliates or Contractors that supply the same, notwithstanding any delivery of copies thereof to IFA.

23.4.2 IFA shall have and is hereby granted a perpetual, nonexclusive, transferable, royalty-free, irrevocable, worldwide, fully paid-up right and license to use, reproduce, modify, adapt and disclose, and sublicense others to use, reproduce, modify, adapt and disclose, the Proprietary Intellectual Property of Developer, including with respect to source code and source code documentation, solely in connection with the Project and any other transportation facility, owned and operated by IFA or a State or regional Governmental Entity; provided that IFA shall have the right to exercise such license only at the following times:

23.4.2.1 From and after the expiration or earlier termination of the Term for any reason whatsoever;

23.4.2.2 During any time that IFA is exercising its step-in rights pursuant to Section 19.2.2 or 19.2.4, in which case IFA may exercise such license only in connection with the Project;

23.4.2.3 During any time that a receiver is appointed for Developer, or during any time that there is pending a voluntarily or involuntary proceeding in bankruptcy in which Developer is the debtor; and

23.4.2.4 During any time that Developer has been replaced.

23.4.3 IFA shall have no right to sell any Proprietary Intellectual Property of Developer or use, reproduce, modify, adapt and disclose, or allow any party to use, reproduce, modify, adapt and disclose, any such Proprietary Intellectual Property for any purpose other than as set forth in Section 23.4.2.

23.4.4 The right to transfer the license is limited to any Governmental Entity that succeeds to IFA's interests in all or any portion of the Project, or to the power and authority of IFA generally or with respect to all or any portion of the Project. The license is divisible in the event of a transfer of or with respect to a portion of the Project.

23.4.5 The right to sublicense is limited to State or regional Governmental Entities that own or operate a transportation facility, and to the concessionaires, contractors, subcontractors, employees, attorneys, consultants and agents that are retained by or on behalf of IFA or any such State or regional Governmental Entity in connection with the Project or another transportation facility. All such sublicenses shall be subject to Section 23.4.6.

23.4.6 Subject to Section 23.3, IFA shall:

23.4.6.1 Not disclose any Proprietary Intellectual Property of Developer to any Person other than authorized transferees and sublicensees who agree to be bound by any confidentiality obligations of IFA relating thereto;

23.4.6.2 Enter into a commercially reasonable confidentiality agreement if requested by Developer with respect to the licensed Proprietary Intellectual Property; and

23.4.6.3 Include, or where applicable require such State or regional Governmental Entity to include, in the contract with the sublicensee its covenant to employ sound business practices no less diligent than those used for its own confidential information, and no less diligent than required by commercially reasonable standards of confidentiality, to protect all Proprietary Intellectual Property of Developer and other materials provided under the sublicense against disclosure to third parties not in receipt of a sublicense, and to use the sublicense only for the permitted purposes.

23.4.7 Notwithstanding any contrary provision of this Agreement, in no event shall IFA or any of its directors, officers, employees, consultants or agents be liable to Developer, any Affiliate or any Contractor for any damages, including loss of profit, arising out of breach of the duty of confidentiality set forth in Section 23.4.6 unless such breach is the result of gross negligence or intentional misconduct. Developer hereby irrevocably waives all claims to any such damages. The foregoing provisions do not limit Developer's equitable remedies set forth in Section 19.4.4.4.

23.4.8 Developer shall continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

23.4.9 The following provisions shall apply with respect to any Proprietary Intellectual Property, including with respect to source code and source code documentation, owned by a Person other than Developer, including any Affiliate, except for mass-marketed software products (sometimes referred to as "shrink wrap software") owned by such a Person where such a license cannot be extended to IFA using commercially reasonable efforts.

23.4.9.1 Developer shall obtain from such owner, concurrently with execution of any contract, subcontract or purchase order with such owner or with the first use or adaptation of the Proprietary Intellectual Property in connection with the Project, both for Developer and IFA, perpetual, nonexclusive, transferable, royalty-free, irrevocable, worldwide, fully paid-up licenses to use, reproduce, modify, adapt and disclose such Proprietary Intellectual Property solely in connection with the Project and any transportation facility, owned and operated by IFA or a State or regional Governmental Entity.

23.4.9.2 Each such license shall be of at least identical scope, purpose, duration and applicability as the license granted under Section 23.4.2.

23.4.9.3 The limitations on sale, transfer, sublicensing and disclosure by IFA set forth in Sections 23.4.3 through 23.4.6 shall also apply to IFA's licenses in such Proprietary Intellectual Property.

23.4.9.4 Developer shall also either cause to be delivered to IFA copies of such Proprietary Intellectual Property or obtain from such owner consent to have the relevant

Proprietary Intellectual Property deposited into an Intellectual Property Escrow pursuant to the provisions of Section 23.5.

23.5 Intellectual Property Escrows

23.5.1 IFA and Developer acknowledge that Developer and/or Contractors that supply software, source code and source code documentation, including related modifications, updates, revisions, replacements and upgrades (collectively "such Proprietary Intellectual Property"), may not wish to deliver this Proprietary Intellectual Property directly to IFA, as public disclosure could deprive Developer and/or Contractors of commercial value. Developer further acknowledges that IFA nevertheless must be given access to such Proprietary Intellectual Property at any time, and that such Proprietary Intellectual Property is released and delivered to IFA in either of the following circumstances:

23.5.1.1 In the case of such Proprietary Intellectual Property owned by Developer or any Affiliate, (a) this Agreement is terminated for Developer Default, (b) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of Developer occurs, (c) Developer is dissolved or liquidated or (d) Developer fails or ceases to provide services as necessary to permit continued use of such Proprietary Intellectual Property pursuant to the license or any sublicense thereof.

23.5.1.2 In the case of such Proprietary Intellectual Property owned by a Contractor (other than a Contractor that is an Affiliate), this Agreement is terminated for any reason (excluding terminations under Sections 20.4.1 or 20.4.2 relating to certain IFA Defaults) and either (a) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of the Contractor occurs or (b) the Contractor is dissolved or liquidated or otherwise ceases to engage in the ordinary course of the business of manufacturing, supplying, maintaining and servicing the software, product, part or other item containing such Proprietary Intellectual Property that is the subject of a license under Section 23.4.

23.5.2 In lieu of delivering such Proprietary Intellectual Property directly to IFA, Developer may elect to deposit it with a neutral custodian. In such event, Developer shall (a) select, subject to IFA's prior approval, one or more escrow companies or other neutral custodian (each an "Escrow Agent") engaged in the business of receiving and maintaining escrows of source code and source code documentation, and (b) establish one or more escrows (each an "Intellectual Property Escrow") with the Escrow Agent on terms and conditions reasonably acceptable to IFA and Developer for the deposit, retention, upkeep and release of such Proprietary Intellectual Property. The location of such escrows is limited to Indianapolis, Indiana or another location IFA approves in writing in its sole discretion. Intellectual Property Escrows also may include Affiliates and Contractors as parties and may include deposit of such Proprietary Intellectual Property owned by Affiliates and Contractors. IFA shall not be responsible for the fees and costs of the Escrow Agent. For purposes of clarity, the Intellectual Property Escrow may be the escrow established pursuant to the RFP, subject to the terms and conditions of the escrow agreement entered into substantially in the form of "Form L" to Volume I ("Instructions to Proposers") of the RFP. IFA may direct establishment of an Intellectual Property Escrow separate from the escrow established pursuant to the Instructions to Proposers, and if such escrow no longer exists, then, if Developer elects not to deliver such proprietary Intellectual Property to IFA under this Section 23.5.2, then Developer shall deliver the same to an Intellectual Property Escrow established pursuant to this Section.

23.5.3 If Developer elects to deliver such Proprietary Intellectual Property to an Intellectual Property Escrow, Developer shall make such delivery to the Escrow Agent not later than the following times:

23.5.3.1 For pre-existing software, source code and source code documentation, immediately upon execution of this Agreement or, if provided by a Contractor, execution of the relevant Contract;

23.5.3.2 For software, source code and source code documentation incorporated into or used on or for the Project or any portion thereof, by the first to occur of (a) fifteen (15) days after it is first incorporated or used, or (b) the Substantial Completion Date; and

23.5.3.3 For any update, upgrade or correction of software, source code and source code documentation incorporated into or used on or for the Project or any portion thereof, not later than fifteen (15) days after the end of the calendar quarter in which it is first incorporated or used.

23.5.4 IFA shall be a named, intended third-party beneficiary of each escrow agreement and each Intellectual Property Escrow with direct rights of enforcement against Developer and the Escrow Agent. Each escrow agreement shall provide that neither Developer nor the Escrow Agent shall have any right to amend or supplement it, or waive any provision thereof, without IFA's prior written approval in its sole discretion.

23.5.5 Intellectual Property Escrows shall provide rights of access and inspection to IFA and its designees at any time, subject to terms and conditions reasonably necessary to protect the confidentiality and proprietary nature of the contents of such Intellectual Property Escrows.

23.5.6 The Intellectual Property Escrows shall survive Substantial Completion, Final Acceptance, and expiration or earlier termination of this Agreement regardless of the reason, until such time as both Parties mutually agree, in their respective sole discretion, that the Intellectual Property contained therein is of no further use or benefit to the Project.

23.6 Escrow of Financial Model and Financial Modeling Data

23.6.1 IFA and Developer shall, within ten (10) Business Days after the Effective Date, diligently examine and inventory all the Financial Modeling Data to verify that the Financial Modeling Data is authentic, legible and in accordance with the terms of this Section 23.6. The examination (whether done before or after the Effective Date) does not include review, nor does it constitute approval, of proposed construction methods, estimating assumptions, or interpretation of or compliance with the PPA Documents. The examination does not alter any conditions or terms of the PPA Documents.

23.6.2 Promptly after the Parties complete the examination, IFA and Developer shall seal and jointly deposit the Financial Model and Financial Modeling Data in an escrow at a commercial business mutually acceptable to the Parties located in Indianapolis, Indiana (the "Financial Escrow"). For purposes of clarity, the Financial Escrow may be the escrow established pursuant to the RFP, subject to the terms and conditions of the escrow agreement entered into substantially in the form of "Form L" to Volume I ("Instructions to Proposers") of the RFP. IFA may direct establishment of a Financial Escrow separate from the escrow established pursuant to the Instructions to Proposers. If such escrow no longer exists as of the date the

Parties seek to deposit the Financial Model and Financial Modeling Data into an escrow, then Developer shall deliver the same to a Financial Escrow established pursuant to this Section on terms and conditions substantially similar to those set out in the form of "Form L" to Volume I ("Instructions to Proposers"), or, in IFA's sole discretion, on terms and conditions reasonably acceptable to IFA and Developer.

23.6.3 The Parties shall follow comparable procedures for examining, verifying and depositing into the Financial Escrow Financial Model Updates and all Financial Modeling Data developed after the Effective Date. The Parties shall complete the examination and make the deposit within ten (10) days after the Financial Model Update or such Financial Modeling Data are developed.

23.6.4 If IFA elects, in its sole discretion, not to be a signatory party to the escrow agreement establishing the Financial Escrow, then IFA shall be a named, intended third-party beneficiary of the escrow agreement and the Financial Escrow with direct rights of enforcement against Developer and the escrow agent. The escrow agreement shall provide that neither Developer nor the escrow agent shall have any right to amend or supplement it, or waive any provision thereof, without IFA's prior written approval in its sole discretion. Provisions in the escrow agreement for access to the escrowed materials shall be consistent with this Section 23.6.

23.6.5 Developer shall submit the Financial Model, Financial Model Updates and Financial Modeling Data into the Financial Escrow as a paper copy and on electronic storage media (and, with such electronic storage media, accessible by necessary software for IFA's intended use (e.g., .XLS for the Financial Model, rather than merely in .PDF, so as to enable IFA to use the Financial Model as intended) in a sealed container, clearly marked with Developer's name, date of submittal, Project contract number and the words, "Financial Model and Financial Modeling Data for Escrow." Developer certifies that the material initially submitted to the Financial Escrow constitutes the Financial Model and all the Financial Modeling Data included in or used in preparation of the Proposal and close of the Initial Project Debt, that Developer has personally examined the contents of the container, and that they are complete.

23.6.6 Whenever Developer makes an additional deposit of the Financial Model, a Financial Model Update or Financial Modeling Data to the Financial Escrow, Developer shall certify to IFA in writing at the time of deposit that (a) the material deposited into the Financial Escrow constitutes the true Financial Model or Financial Model Update, and constitutes all the Financial Modeling Data used in preparation of the Financial Model or Financial Model Update, Claim, Change Proposal or other matter, as the case may be, (b) Developer has personally examined the contents of the container, and (c) they are complete.

23.6.7 The deposit and examination of Contractors' documentation that forms part of the Financial Modeling Data shall be accomplished in the same manner as for Developer's documentation.

23.6.8 Each of IFA and Developer shall have the right to examine, through one or more designated representatives, any and all components of the escrowed material in the Financial Escrow at any time during the escrow agent's normal business hours. The Party scheduling an examination need not have or state a specific reason to examine. Without limiting the foregoing, the Parties recognize that examination of the escrowed material may assist in the negotiation or determination of MAP adjustments, compensation, damages, extension of Project Schedule Deadlines, Request for Change Proposals, IFA Changes,

Change Requests and Refinancing Gain calculations, or may assist in the potential resolution or settlement of Claims or Disputes.

23.6.9 Except as provided below, examinations shall be performed jointly within five (5) days of receipt of a written request to do so by either Party. If either Party fails or refuses to participate in a joint examination at the scheduled time, the Party requesting the examination may proceed with the examination on condition that it is accompanied at all times by an employee of the escrow agent and signs a written certification before departing certifying that the examining Party did not alter the escrowed material, and did not add any materials to or remove any materials from the Financial Escrow.

23.6.10 If Developer fails or refuses to participate in a joint examination at a scheduled time, such failure or refusal shall be deemed to be a failure by Developer to exhaust administrative claim remedies with respect to the particular Claim or Dispute and a bar to its continuing existing legal proceedings or bringing future legal proceedings upon the Claim or Dispute.

23.6.11 The escrowed material in the Financial Escrow is, and shall remain, the property of Developer or its Contractors.

23.6.12 Either Party may introduce the escrowed material in the Financial Escrow into evidence before the Arbitrator and in court proceedings. The Parties shall promptly abide by any request from the Arbitrator to receive, review and utilize escrowed material to assist the Arbitrator in its deliberations.

23.6.13 The Financial Escrow shall remain in effect throughout the Term and thereafter until final resolution of all Disputes, subject to any mutual agreement of the Parties to discard materials therein from time to time.

23.6.14 IFA shall not be responsible for the fees and costs of the escrow agent for the Financial Escrow.

ARTICLE 24. FEDERAL REQUIREMENTS; COMPLIANCE WITH OTHER LAWS

24.1 Compliance with Federal Requirements

Developer shall comply and require its Contractors to comply with all federal requirements applicable to transportation projects that receive federal credit or funds, including those set forth in Exhibit 22 (Federal Requirements).

24.2 [reserved]

24.3 Federal Status of Project

Developer acknowledges that the FHWA considers the Project to be a "Major Project" under 23 USC § 106, which requires submission to and approval by FHWA of a project management plan, a finance plan and annual updates thereto, as provided in 23 USC § 106(h). Developer acknowledges and agrees that, in addition to prescriptions in the PPA Documents regarding the Project Management Plan, Financial Plan (and the annual updates thereto), the Project Management Plan, Financial Plan and the annual updates thereto required under the PPA Documents shall be submitted to FHWA to fulfill these requirements, and accordingly, shall, in

each case, comply with the applicable prescriptions in 23 USC § 106. Developer acknowledges that the Project will be part of the National Highway System, as defined in 23 CFR § 470. Accordingly, Developer shall perform the Work such that the Project shall meet all applicable federal design and construction requirements for facilities on the National Highway System.

24.4 Role of and Cooperation with FHWA

Developer acknowledges that the FHWA may have certain approval and oversight rights respecting the Project Management Plan, Financial Plan and design and construction standards for the entire Project. Developer shall cooperate with FHWA in the reasonable exercise of FHWA's duties and responsibilities in connection with the Project.

24.5 Conflicting Provisions

In the event of any conflict between any applicable federal requirements and the other requirements of the PPA Documents, the federal requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.

24.6 Compliance with other Laws

24.6.1 Developer and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with IFA or the State, as set forth in IC 4-2-6 *et seq.*, IC 4-2-7 *et seq.*, the regulations promulgated thereunder, Executive Order 04-08, dated April 27, 2004. If Developer is not familiar with these ethical requirements, Developer should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<<http://www.in.gov/ethics/>>>>. If Developer or its agents violate any applicable ethical standards, Developer may be subject to penalties under IC 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable Laws.

24.6.2 Developer and its agents shall abide by all requirements of IC 8-15.5-13-7 in respect of the prohibition on political contributions by Developer. Neither Developer nor any individual who has an interest in Developer, may make any contribution to any candidate, or committee, during and up to and including three (3) years following the Term.

24.6.3 Developer shall comply with all applicable federal, state and local Laws, and all provisions required thereby to be included herein are hereby incorporated by reference.

ARTICLE 25. MISCELLANEOUS

25.1 Taxes

Developer shall pay, prior to delinquency, all applicable Taxes, including, pursuant to IC 8-15.5-8-3, all sales and use Taxes, in each case for which Developer is responsible in carrying out the Work and its other obligations hereunder. Developer accepts sole responsibility, and agrees that it shall have no right to a Relief Event or to any other Claim, due to its misinterpretation of Laws respecting Taxes or incorrect assumptions regarding applicability of Taxes. IFA is exempt from state, federal, and local Taxes; IFA will not be responsible for any Taxes levied on Developer or any other Developer-Related Entities as a result of this Agreement.

25.2 Amendments

The PPA Documents may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this Agreement (e.g. Sections 5.2.6, 6.1.2, 16.1 and 16.3).

25.3 Waiver

25.3.1 No waiver of any term, covenant or condition of this Agreement or the other PPA Documents shall be valid unless in writing and signed by the obligee Party. No right conferred on either Party under this Agreement or the other PPA Documents shall be deemed waived, and no breach of this Agreement or other PPA Documents excused, unless such waiver is in writing and signed by the Party claimed to have waived such right. The exercise by a Party of any right or remedy provided under this Agreement or the other PPA Documents shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any Party of any right or remedy under this Agreement or the other PPA Documents shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or the other PPA Documents. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

25.3.2 Except as provided otherwise in the PPA Documents, no act, delay or omission done, suffered or permitted by one Party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under this Agreement or the other PPA Documents.

25.3.3 Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the PPA Documents at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the Parties make and implement any interpretation of the PPA Documents without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes.

25.3.4 Neither IFA's review, approval or acceptance of, nor payment for, the services required under this Agreement or the other PPA Documents shall be construed to operate as a waiver of any rights under this Agreement or any of the other PPA Documents or for any cause of action arising out of the performance of this Agreement or the other PPA Documents, and Developer shall be and remain liable to IFA in accordance with applicable Law for all damages to IFA as set forth in the PPA Documents.

25.4 Independent Contractor; No Joint Venture or Partnership

25.4.1 Developer is an independent contractor, and nothing contained in the PPA Documents shall be construed as constituting any relationship with IFA other than that of Project developer and independent contractor.

25.4.2 Both Parties, in the performance of the PPA Documents, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. Nothing in the PPA Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between IFA and Developer; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists. While the term “public-private partnership” may be used on occasion to refer to contractual relationships of the type hereby created, the Parties do not thereby express any intention to form or hold themselves out as a *de jure* or *de facto* partnership, joint venture or similar relationship, to share net profits or net losses, or to give IFA control or joint control over Developer’s financial decisions or discretionary actions concerning the Project and Work.

25.4.3 In no event shall the relationship between IFA and Developer be construed as creating any relationship whatsoever between IFA and Developer’s employees or agents. Neither Developer nor any of its employees or agents is or shall be deemed to be an employee or agent of IFA. Except as otherwise specified in the PPA Documents, Developer has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Contractors and for all other Persons that Developer or any Contractor hires to perform or assist in performing the Work.

25.5 Successors and Assigns

The PPA Documents shall be binding upon and inure to the benefit of IFA and Developer and each of their permitted successors, assigns and legal representatives.

25.6 Designation of Representatives; Cooperation with Representatives

25.6.1 IFA and Developer shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to the PPA Documents (“Authorized Representative”). Exhibit 23 (Initial Designation of Authorized Representatives) provides the initial Authorized Representative designations. A Party may change such designations by a subsequent writing delivered to the other Party in accordance with Section 25.11.

25.6.2 Developer shall cooperate with IFA and all representatives of IFA designated as described above.

25.7 Survival

Developer’s and IFA’s representations and warranties, the dispute resolution provisions contained in Section 19.6, the indemnifications, limitations and releases contained in Sections 5.9.10 and 17.5, the express obligations of the Parties following termination (including those set forth in Sections 17.1.9.4, 20.7, 20.8, 20.10, 20.11, 21.11, 23.5.6 and Exhibit 21), and all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement and/or completion of the Work shall survive the expiration or earlier termination of this Agreement and/or the completion of the Work. The jurisdiction of the Arbitrator shall continue to apply after expiration or earlier termination of this Agreement to all Claims and Disputes between the Parties arising out of the PPA Documents that are subject to its jurisdiction as set forth in Section 19.6.

25.8 Limitation on Third-party Beneficiaries

25.8.1 It is not intended by any of the provisions of the PPA Documents to create any third-party beneficiary hereunder or to authorize anyone not a Party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions, and the provisions for the protection of certain Lenders under Article 21 and any Direct Agreement) identify third parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 25.8.1, the duties, obligations and responsibilities of the Parties to the PPA Documents with respect to third parties shall remain as imposed by Law. The PPA Documents shall not be construed to create a contractual relationship of any kind between IFA and a Contractor or any Person other than Developer.

25.8.2 The statute of limitations for any cause of action under this Section 25.8 shall not begin to run until the Substantial Completion Date, or such other date as may be provided by law, whichever is later.

25.9 No Personal Liability of IFA Employees; No Tort Liability

25.9.1 IFA's Authorized Representatives are acting solely as agents and representatives of IFA when carrying out the provisions of or exercising the power or authority granted to them under this Agreement. They shall not be liable either personally or as employees of IFA for actions in their ordinary course of employment.

25.9.2 The Parties agree to provide to each other's Authorized Representative Notice of any claim which such Party may receive from any third party relating in any way to the matters addressed in this Agreement, and shall otherwise provide Notice in such form and within such period as is required by Law.

25.10 Governing Law

The PPA Documents shall be governed by and construed in accordance with the laws of the State. Any suit must be brought in the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana. Developer hereby specifically consents to this jurisdiction.

25.11 Notices and Communications

25.11.1 Notices under the PPA Documents shall be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

25.11.2 All Notices to Developer shall be delivered to the following address or as otherwise directed by Developer's Authorized Representative:

I-69 Development Partners LLC
c/o Mr. Kirk Grable
Barnes & Thornburg LLP

11 South Meridian Street
Indianapolis, Indiana 46204-3535
Attention: Project Manager
Telephone: 317-236-1313
Facsimile: 317-231-7433
E-mail: jrballesteros@isoluxinfrastructure.com

In addition, copies of all notices to proceed, Notices regarding Disputes, and suspension, termination and default Notices shall be delivered to the following persons:

I-69 Development Partners LLC
Calle Caballero Andante, 8
28021 – Madrid (Spain)
Attention: Project Executive
Telephone: 34 91 449 3122
Facsimile: 34 91 449 3811
E-mail: jlabarra@isoluxinfrastructure.com

and:

Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, Indiana 46204-3535
Attention: Mr. Kirk Grable
Telephone: 317-236-1313
Facsimile: 317-231-7433
E-mail: Kirk.Grable@btlaw.com

25.11.3 All Notices to IFA shall be marked as regarding the Project and shall be delivered to the following address or as otherwise directed by IFA's Authorized Representative:

Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, Indiana 46204
Attention: Public Finance Director
Telephone: 317-233-4332
Facsimile: 317-232-6786
E-mail: ifa@ifa.in.gov

In addition, copies of all Notices to proceed, Notices regarding Disputes, and suspension, termination and default Notices shall be delivered to the following persons:

Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, Indiana 46204
Attention: General Counsel
Telephone: 317-233-4332
Facsimile: 317-232-6786
E-mail: ifa@ifa.in.gov

25.11.4 Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, Notices sent by facsimile after 4:00 p.m. ET and all other Notices received after 5:00 p.m. shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.). Any technical or other communications pertaining to the Work shall be conducted by Developer's Authorized Representative and technical representatives designated by IFA.

25.12 Integration of PPA Documents

IFA and Developer agree and expressly intend that, subject to Sections 1.2.2, 1.2.3 and 25.13, this Agreement and other PPA Documents constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.

25.13 Severability

25.13.1 If any clause, provision, section, subsection or part of the PPA Documents is ruled invalid (including invalid due to Change in Law) by a court having proper jurisdiction, then the Parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including an equitable adjustment to the Financial Model Update (or, if there has been no Update, the Financial Model) and Developer's compensation to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section, subsection or part shall not affect the validity or enforceability of the balance of the PPA Documents, which shall be construed and enforced as if the PPA Documents did not contain such invalid or unenforceable clause, provision, section, subsection or part.

25.13.2 If after the efforts required by Section 25.13.1 there is no interpretation or reformation of the PPA Documents that can reasonably be adopted which will return the Parties to the benefits of their original bargain, then the court order shall be treated as a Termination by Court Ruling pursuant to Section 20.5.

25.14 Construction and Interpretation of Agreement

25.14.1 The language in all parts of the PPA Documents shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Party. The Parties hereto acknowledge and agree that the PPA Documents are the product of an extensive and thorough, arm's length exchange of ideas, questions, answers, information and drafts during the Proposal preparation process, that each Party has been given the opportunity to independently review the PPA Documents with legal counsel, and that each Party has the requisite experience and sophistication to negotiate, understand, interpret and agree to the particular language of the provisions of the PPA Documents. Accordingly, in the event of an ambiguity in or Dispute regarding the interpretation of the PPA Documents, the PPA Documents shall not be interpreted or construed against the Party preparing it, and instead other rules of interpretation and construction shall be utilized. IFA's final answers to the questions posed during the Proposal preparation process for the PPA Documents shall in no

event be deemed part of the PPA Documents and shall not be relevant in interpreting the PPA Documents except as they may clarify provisions otherwise considered ambiguous.

25.14.2 The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

25.14.3 References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by reference) or other documents expressly incorporated by reference in this instrument, and all amendments hereto and thereto. Any references to any covenant, condition, obligation and/or undertaking "herein," "hereunder" or "pursuant hereto" (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument. All terms defined in this instrument shall be deemed to have the same meanings in all riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument unless the context thereof clearly requires the contrary. Unless expressly provided otherwise, all references to Exhibits, Articles and Sections refer to the Exhibits, Articles and Sections set forth in this Agreement. Unless otherwise stated in this Agreement or the other PPA Documents, words that have well-known technical or construction industry meanings are used in this Agreement or the other PPA Documents in accordance with such recognized meaning. All references to a subsection or clause "above" or "below" refer to the denoted subsection or clause within the Section in which the reference appears. Wherever the word "including," "includes" or "include" is used in the PPA Documents, it is deemed to be followed by the words "without limitation." Wherever reference is made in the PPA Documents to a particular Governmental Entity, it includes any public agency succeeding to the powers and authority of such Governmental Entity.

25.14.4 As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

25.14.5 All monetary amounts and obligations set forth in the PPA Documents are expressed and payable in U.S. dollars.

25.15 Usury Savings

The PPA Documents are subject to the express condition that at no time shall either Party be obligated or required to pay interest on any amount due the other Party at a rate which could subject the other Party to either civil or criminal liability as a result of being in excess of the maximum non-usurious interest rate permitted by Indiana Law (the "maximum legal rate"), if any. If, by the terms of the PPA Documents either Party at any time is obligated to pay interest on any amount due in excess of the maximum legal rate, then such interest shall be deemed to be immediately reduced to the maximum legal rate and all previous payments in excess of the maximum legal rate shall be deemed to have been payments in reduction of the principal amount due and not on account of the interest due. All sums paid or agreed to be paid to a Party for the use, forbearance, or detention of the sums due that Party under the PPA Documents shall, to the extent permitted by applicable Indiana Law, be amortized, prorated, allocated, and spread throughout the full period over which the interest accrues until payment in full so that the rate or amount of interest on account of the amount due does not exceed the

maximum legal rate in effect from time to time during such period. If after the foregoing adjustments a Party still holds interest payments in excess of the maximum legal rate, it shall promptly refund the excess to the other Party.

25.16 Approvals under PPA Documents

25.16.1 Refer to Sections 3.1.3 and 3.1.4.1 regarding the standards for IFA approval or consent.

25.16.2 In all cases where approvals or consents are required to be provided under the PPA Documents by Developer and no particular standard for such approvals or consents is expressly provided, such approvals or consents shall not be unreasonably withheld or delayed. In cases where sole discretion is specified, Developer's decision shall be final, binding and not subject to the Dispute Resolution Procedures.

25.17 Entire Agreement

The PPA Documents contain the entire understanding of the Parties with respect to the subject matter thereof and supersede all prior agreements, understandings, statements, representations and negotiations, in each case oral or written, between the Parties with respect to their subject matter.

25.18 Authority to Bind Developer

The signatory for Developer represents that he/she has been duly authorized to execute this Agreement on behalf of Developer and has obtained all necessary or applicable approvals to make this Agreement fully binding upon Developer when his/her signature is affixed, and accepted by the Authority.

25.19 Counterparts

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties intending to be legally bound, have executed this Agreement as of the date first written above.

Developer

I-69 DEVELOPMENT PARTNERS LLC

By _____
Name: José Antonio Labarra Blanco
Title: Director

IFA

INDIANA FINANCE AUTHORITY

By _____
Name: Kendra York
Title: Public Finance Director
of the State of Indiana

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 <i>et seq.</i>), 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 <i>et seq.</i> 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 <i>et seq.</i> , 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 <u>Section 21</u> 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 <i>et seq.</i> , 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
SSHPP	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, 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 has the meaning set forth 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 Corsán-Corviam Construcción, S.A. a corporation (*sociedad anónima*) under the laws of the Kingdom of Spain.

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 I-69 Development Partners LLC a Delaware limited liability company, 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, 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 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: